

CASE NO.:
Appeal (crl.) 411 of 1997

PETITIONER:
Chowa Mandal & Anr.

RESPONDENT:
State of Bihar (Now Jharkhand)

DATE OF JUDGMENT: 04/02/2004

BENCH:
N Santosh Hegde & B P Singh

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Two of the original 6 accused persons who were charged for offence punishable under section 302 read with 34, 109, 148, 147, 323 IPC before the 1st Additional Sessions Judge, Giridih are before us in this appeal challenging their conviction and sentence imposed on them by the said trial court as confirmed by the High Court of Judicature of Patna, Ranchi Bench. Brief facts necessary for the disposal of this appeal are as follows :

The appellant herein and 4 other accused persons formed themselves into an unlawful assembly armed with lathis and Tangi on 23.6.1980 and went to the field of Ugan Mandal PW-4 when said PW-4 and his cousin Shankar Mandal were ploughing the land situated on the Eastern side of village Karmatand, P.S. Birni, District Giridih and picked up a fight with the said 2 persons. Being afraid of attack on themselves said Ugan Mandal and Shankar Mandal ran away from the said place. The prosecution further alleges that after the said persons ran away, the accused returned back to the village. On the way they met Jhalar Mandal uncle of abovesaid Ugan Mandal who happened to ask them what the matter was. Being enraged by such a question from Jhalar Mandal the appellants herein allegedly hit him on his head with a lathi as a result of which he received injury on his head and fell down. Prosecution then alleges that all other accused persons also assaulted said Jhalar Mandal which was noticed by Ugan Mandal and on his raising an alarm his son Dhanu Mandal and nephew Bhuneshwar Mandal also reached the place and they were also assaulted by the accused. When other villagers came to the place of occurrence the accused persons went away. Said Ugan Mandal and other relatives of Jhalar Mandal then took the injured Jhalar Mandal to Giridih hospital where he died. Based on a complaint lodged by Ugan Mandal after completion of investigation 6 persons including the 2 appellants in this appeal were charged for offences mentioned hereinabove. The Sessions Court after trial came to the conclusion that the prosecution has proved the major charge of section 302 read with 34 IPC against the appellants herein and convicted and sentenced them to imprisonment for life, while it found the other 4 accused persons guilty of offence under section 302 read with section 109 IPC and sentenced them to undergo imprisonment for life on that count while those accused persons were also found guilty of offences punishable under sections 323, 147 and 148 IPC but no separate sentences were awarded

on those counts. In an appeal filed against the said judgment and conviction before the High Court of Patna at Ranchi Bench, the High Court came to the conclusion that the prosecution has failed to establish its charge against other accused, accordingly, conviction and sentence imposed on them by the trial court was set aside while it found the two appellants before us guilty of offence punishable under section 302 read with 34 IPC and confirmed the sentence of imprisonment for life imposed by the trial court. It is against the said judgment of the High Court the two appellants are before us in this appeal.

We have heard Mr. A. Sharan, learned senior counsel for the appellants and Mr. Ashok Mathur, learned counsel for the respondent-State and perused the recods. So far as the incident in question which led to the death of Jhalar Mandal on 23.6.1980 is concerned, we are in agreement with the findings of the two courts below. We are also in agreement with the finding of the High Court that it is the injury caused on the head of the deceased which led to his death.

Learned senior counsel appearing for the appellants, however, contended assuming that the death of the deceased was caused by the injury suffered by him on his head said act of the accused persons cannot be construed as an act of committing murder or even culpable homicide not amounting to murder, and at the most it could be an act of causing grievous hurt. In support of this argument of his, he relies on the finding of the High Court itself that none of the accused persons including the appellants herein had any motive or enmity against the deceased and the incident in question had occurred due to the provocation caused by the deceased while the accused persons were returning back to the village therefore at the most the act of the appellants could be one of causing grievous hurt and nothing more than that. In support of this contention of his learned counsel relied on the following observations of the High Court :

"I have carefully gone through the submissions of the learned counsel for the appellants. There is no doubt on the fact that the occurrence happened and in which Jhalar Mandal died. The defence has also not disputed this point specifically. Now the submission of Mr. Dayal that the accused persons actually went with common intention either to assault or to commit murder of the informant and others, but when they escaped, on the way back they assaulted the deceased and caused his death and, therefore, the elements of common intention is missing in this occurrence cannot be discarded. From the evidence of the doctor (P.W.7), it appears that Jhalar Mandal had only the injury on his head, which is said to be the cause of his death."

Having perused the entire evidence on record, we are inclined to accept the argument addressed by learned counsel for the appellants. From the evidence on record, it is clear that at the time when the second incident took place which led to the death of the deceased even according to the prosecution, none of the accused persons was motivated by any particular desire to attack Jhalar Mandal. The incident in question occurred on the spur of the moment without there being any intention of causing death or of causing such injury as they knew was likely

to cause death, and was an act arising out of the enmity they had with the nephew of the deceased and aggravated by the unwanted questioning by the deceased. From the evidence it is clear that the act of the appellant cannot be construed as an act other than causing grievous hurt. In this background, we agree with the learned counsel for the appellants that in the absence of any motive, intention or knowledge as to their act which led to the death of the deceased the appellants can only be held guilty for an offence punishable under section 326 read with 34 IPC since there is material to show that these 2 appellants did wield their lathis out of which at least one blow, if not both, struck the head of the deceased causing him grievous injury which ultimately led to his death.

In view of the above finding of ours we think the High Court was not justified in convicting the appellants for offence punishable under section 304 read with 34 IPC while the appropriate conviction would have been one under section 326 read with 34 IPC. We accordingly modify the conviction and sentence recorded by the High Court and convert it to one under section 326 read with 34 IPC and direct the appellants to undergo 5 years' RI on that count. Sentence undergone, if any, shall be given remission. The appellants are on bail. Their bail-bonds are cancelled. They shall surrender and serve out the remainder of the sentence.

The appeal is allowed partly.