

CASE NO.:

Appeal (crl.) 195 of 2001

Appeal (crl.) 196 of 2001

PETITIONER:

SHANKAR MAHTO & ANR.

Vs.

RESPONDENT:

VS.

DATE OF JUDGMENT: 31/07/2002

BENCH:

SHIVARAJ V. PATIL, B.N.AGRawal.

JUDGMENT:

B.N.AGRawal, J.

In these two appeals by special leave, the appellants have assailed their convictions and sentences awarded by the trial court and upheld by the Patna High Court.

The short facts are that on 28th February, 1991 at about 8.00 p.m., when the informant Liro Kumari- (PW.6) along with her father Doman Mahto, mother Shibo Devi, sister Shakho Devi and children of her family was sitting near fire at the outer door of her house, all of a sudden, all the appellants along with accused Shrilal Sharma, Haro Sharma, Ram Bilash Mahto, Ram Udgar Sharma and 3-4 others armed with farsas and lathis came to the house and seeing them she and her family members out of fear ran to the courtyard of the house. The appellants and their companions following them entered the courtyard. Accused Shrilal Sharma and Haro Sharma, both of whom were armed with farsas and co-accused Ram Bilash Mahto, who was armed with lathi, caught hold of Doman Mahto, father of the informant, and took him to outer door of the house. Appellants Harilal Mahto and Jharilal Mahto, who were armed with lathis, caught hold of Shibo Devi, mother of the informant and appellants Tulbul Mahto and Shankar Mahto, who were also armed with lathis, caught hold of Shakho Devi, sister of the informant inasmuch as they were taken to outer door of the house. The informant raised alarm and when she came out from her courtyard, she saw that accused Shrilal Sharma and Haro Sharma were assaulting her father and mother with farsas and appellants Shankar Mahto, Tulbul Mahto and Sitaram Mahto were assaulting them with lathis. Appellants Jharilal Mahto, Shankar Mahto and co-accused Ram Bilash Mahto were assaulting Shakho Devi, sister of the informant. Doman Mahto, father of the informant, died on the spot and when the informant raised alarm, accused Shrilal Sharma gave a farsa blow to her in order to kill her but it caused injury on her left palm. Thereafter the appellants and their companions lifted the dead body of father of the informant and her injured mother and sister and took them away. The informant along with her nephew Arjun Mahto (PW.4) came to the village where they raised alarm on which the villagers assembled, who, after arranging rickshaw, sent them to Gangor Police outpost where the fard beyan of informant was recorded by A.S.I. Dilip Kumar Singh (PW.1) on the basis of which formal first information report was drawn up at the concerned police station against twelve accused persons including the appellants.

Police after registering the case took up investigation during the course of which dead body of Shibo Devi, mother of the informant, was recovered from a river near Sohagi Ghat besides blood stained kurta which Doman Mahto, father of the informant, was wearing. It transpired during investigation that sister of the

informant, who was assaulted, succumbed to the injuries, but her dead body and that of her father-Doman Mahto could not be recovered. Upon completion of investigation, the police submitted charge sheet against all the accused persons, on receipt whereof, learned Magistrate took cognizance and committed all the twelve accused persons, including the appellants, to the court of Session to face trial.

Defence of the accused was that they were innocent, falsely implicated out of animosity and no occurrence much less the one alleged had taken place.

During trial, on behalf of the prosecution several documents were exhibited and eleven witnesses were examined, out of whom, Satyanarain Mahto (PW.2), Arjun Mahto (PW.4) and Liro Kumari, informant (PW.6) claimed to be eye witnesses to the occurrence whereas other witnesses were police officials, seizure witnesses, medical witnesses and some formal witnesses. Upon conclusion of trial, the learned Additional Sessions Judge while convicting five appellants of these appeals and accused Shrilal Sharma and Haro Sharma, acquitted other five accused persons of all the charges. Accused Shrilal Sharma and Haro Sharma were convicted under Sections 302, 201 and 148 of the Penal Code and each of them was sentenced to undergo imprisonment for life and rigorous imprisonment for a period of five years and two years respectively. They were also convicted under Section 364 of the Penal Code but no separate sentence was awarded. Accused Shrilal Sharma was further convicted under Section 324 of the Penal Code and sentenced to undergo rigorous imprisonment for two years. Five appellants of these two appeals were convicted under Sections 364 and 147 of the Penal Code and each of them was sentenced to undergo rigorous imprisonment for a period of ten years and one year respectively. The sentences, however, were ordered to run concurrently. On appeal being preferred by all the seven accused persons including the appellants, their convictions and sentences have been upheld by the High Court with this modification only that the conviction of accused Shrilal Sharma and Haro Sharma under Section 302 has been converted into one under Section 302/149 of the Penal Code. Hence, two petitions for grant of special leave to appeal were filed, one by Shankar Mahto and Sita Ram Mahto, who are appellants in Criminal Appeal No. 195 of 2001 and the other from jail by accused Shrilal Sharma, Haro Sharma, Hari Lal Mahto, Jhari Lal Mahto and Tulbul Mahto out of whom the latter three are appellants in Criminal Appeal No. 196 of 2001. Petition for grant of special leave to appeal filed by accused Shrilal Sharma and Haro Sharma was rejected and leave to appeal was granted only in relation to the five appellants of these two appeals.

Mr. Khwairakpam Nobin Singh, learned counsel who appeared as Amicus Curie on behalf of the appellants in Criminal Appeal No. 196 of 2001 raised three points in support of this appeal which have been adopted by Mr. Shambhu Prasad Singh, learned counsel appearing on behalf of the appellants in Criminal Appeal No. 195 of 2001. Firstly, it has been submitted that evidence of the two child witnesses viz., PWs. 2 and 4, who claimed to be eye witnesses, was rejected by the trial court on two grounds; (i) that there was no injury report in respect of their injuries although they claimed to have received injuries by lathi and (ii) their names were not disclosed by the informant either in the first information report or in her statement made before the police and the High Court was not justified in accepting their evidence. So far as first ground of attack for rejection of their evidence which weighed with the trial court is concerned, the High Court observed "it is true that PW.2 and PW.4 have stated that they also received injuries by 'lathis' and PW.4 has also stated that he and PW.2 along with informant received treatment at hospital but then absence of injury reports in respect of injuries on PW.2 and PW.4 can at best be a ground for raising doubt on the point of their receiving injuries. It will not be a ground to discard their entire evidence." In relation to the second ground which weighed with the trial court, it would appear from judgment of High Court that the evidence of these two witnesses has been thoroughly considered by it and it has been found that they supported the prosecution case, disclosed in the first information report as well as the evidence of Liro Kumari-informant (PW.6), in all material particulars. The High Court while considering this ground observed "about the presence of PW.2 and PW.4 at the relevant time at the place of occurrence in the statements of informant given before the police, we have already discussed that the I.O. in his evidence has admitted that the informant stated before him that at the time of occurrence she was sitting near 'ghura' along with her parents, sister and

children of her family and PW.2 and PW.4 though not individually named in fard beyan are definitely the children of the family of informant. If the informant in fard beyan as well as in her statement before the police without giving specific names of PW.2 and PW.4 has stated that at the relevant time children of her family were also at the place of occurrence it will not negative the presence of PW.2 and PW.4 at the place of occurrence." In our opinion, view taken by the High Court was reasonable one, as such we do not find any merit in the submission of the learned Amicus.

Learned Amicus next submitted that evidence of Ramo Devi (PW.5) that she identified dead body recovered from the river to be of her mother Shibo Devi by tattoo marks on the arms of the body does not inspire confidence because identification by this means was not possible in view of the fact that such marks disappear and the doctor (PW.9) did not find any tattoo marks on the dead body. While dealing with this point, the High Court made reference to Modi's Medical Jurisprudence and Toxicology (at page 29 of Seventh Reprint of Twenty-first Edition) in which it is stated that the tattoo marks may disappear if pigment used is vermilion or ultra-marine and if it has not penetrated deep into the skin. According to the evidence of PWs. 2, 5 and 6, both the arms of Shibo Devi, deceased, were tattooed. The High Court has considered the evidence of PW.5 who identified dead body of her mother by face, ears, teeth as well and not by tattoo marks only and her evidence suggests that when the dead body was recovered, face of the deceased was visible and tattoo marks were present at that time. The High Court was of the opinion that the fact that according to the evidence of Dr. Rama Nand Kumar (PW.9) who held postmortem examination on the dead body of Shibo Devi on 5th March, 1991 at 10.00 a.m., mentioned in the postmortem report that the dead body was found badly decomposed and he did not find any tattoo marks does not suggest that when the body was recovered from the river on the previous day at 4.00 p.m., it was so badly decomposed that the same could not have been identified by Ramo Devi (PW.5), who is none else but daughter of Shibo Devi and she, by tattoo marks which were visible at that time, identified the dead body to be of her mother which was not unusual. We do not find that reasoning of the High Court suffers from any infirmity. Therefore, this submission as well has no merit.

Learned Amicus then submitted that the Investigating Officer Shrinarain Singh (PW.7) has admitted in his evidence that though he found blood at the place of occurrence, but did not find any trail of blood around the place of occurrence which falsifies the evidence of informant PW 6 that after assault when her father was being carried away by the accused persons, blood was oozing out from the injuries sustained by the deceased. While considering this question, the High Court observed "if the blood was found where the deceased was inflicted injuries and if it has not been found in the way it itself will not be a ground to disbelieve prosecution evidence which otherwise is trustworthy." The High Court further observed that "in the present case, besides the father of informant who, as alleged, died on the spot, the mother and sister of informant are said to have been kidnapped by the appellants in order that they may be murdered. There is consistent evidence of informant, PW.2 and PW.4 that the appellants after assaulting the mother and sister of informant lifted them and took away them along with the dead body of father of informant. The I.O. found blood stains at the place of occurrence. In these circumstances, if the blood was not found around the place of occurrence, it alone will not be sufficient to disbelieve the evidence of informant, PW.2 and PW.4". Learned Amicus could not point out any flaw in reasoning of the High Court. Moreover, as the prosecution case has been supported in all material particulars by medical evidence as well apart from other unimpeachable evidence already referred to by the High Court, we are of the opinion that merely because the investigating officer did not find any trail of blood, the place of occurrence cannot be doubted, especially when blood was found there by the police. This being the position, we do not find any merit in this contention too.

Mr. Shambhu Prasad Singh, learned counsel appearing on behalf of the appellants in Criminal Appeal No. 195 of 2001 while adopting the submissions of the learned Amicus, made a further submission that identification of the appellants was highly doubtful as there was no source of identification. In our view, the submission has been made only to be rejected. Firstly, it would be impermissible for this Court to go into merit of this point and reconsider the same as by rejection of Special Leave Petition filed by accused Shrilal Sharma and

Haro Sharma, who were the main accused in this case and whose convictions have been upheld, the same would be deemed to have been rejected. Apart from that, PWs. 2, 4 and 6 have consistently stated in their evidence that it was a moon lit night. The appellants were undisputedly known to members of the prosecution party from before as such their identification by PWs. 2, 4 and 6 in the moon lit night was quite possible. Moreover, according to the prosecution case and the evidence of PWs. 2, 4 and 6 in the winter night when the accused persons arrived at house of the informant, she along with three deceased persons and children of her family was sitting near fire which was burning at the outer door of her house. Therefore, otherwise also there could not have been any difficulty in identifying the appellants in the light of fire as well. This being the position, we do not find any substance in the submission of learned counsel appearing on behalf of the appellants in Criminal Appeal No. 195 of 2001.

Both the learned counsel lastly submitted that sentence of ten years imprisonment awarded against the appellants be reduced to the period of three years which they have already undergone. We find that Section 364 of the Penal Code prescribes two alternative punishments. First, imprisonment for life and second, rigorous imprisonment for a term which may extend to ten years. In our view, the trial court has not awarded the sentence of life imprisonment and by taking a lenient view, awarded the alternative punishment of rigorous imprisonment for ten years to each of the appellants which has been upheld by the High Court. Keeping in mind the serious allegations made against the appellants as well and the present case being a case of murder of three persons, no interference is called for with the sentence awarded. No other point having been raised, we do not find any ground to interfere with the well reasoned judgment rendered by the High Court in which evidence has been discussed threadbare.

In the result, the appeals fail and the same are accordingly dismissed.