

**CRIMINAL APPEAL(SJ) NO. 103 OF 2003**

*[ Against the judgment of conviction and order of sentence dated 23.12.2002 passed in Sessions Trial No. 185 of 1990 by learned Additional Sessions Judge, F.T.C. 3<sup>rd</sup> Bokaro ]*

1. Tarani Mahto son of Late Mahabar Mahto
2. Hemant Kumar Mahto son of Late Ritbaran Mahto
3. Khepu Mahto son of Mahabar Mahto
4. Madhu Mahto @ Madhusudan Mahto son of Late Shashi Bhushan Mahto
5. Nirmal Kr. Mahto son of Ajit Mahto
6. Ajit Mahto son of Late Mahabar Mahto
7. Surendra Mahto son of Late Adalat Mahto
8. Roshan Mahto son of Late Siki Mahto
9. Chinibas Mahto son of Late Bhushan Mahto.

All resident of village Pokhana, P.O.- Kumardaga,  
P.S.- Pinderajora, District-Bokaro .....Appellants

Vs.

The State of Jharkhand .....Respondent

For the Appellants : Mr. Lukesh Kumar, Advocate  
For the Respondent : Mrs. Vandana Bharti, APP

**PRESENT**

**HON'BLE MR. JUSTICE RATNAKER BHENGRA**

**C.A.V. ON 29.03.2019**

**DELIVERED ON 26 / 06 /2020**

***Ratnaker Bhengra,J***: The present appeal is directed against the judgment of conviction and order of sentence dated 23.12.2002 passed by learned Additional Sessions Judge, F.T.C. 3<sup>Rd</sup>, Bokaro in Sessions Trial No. 185 of 1990, whereby and whereunder the appellants were convicted under section 325/149 of the IPC and they were sentenced to undergo R.I. for three years.

2. As per office report Appellant No. 8 Roshan Mahto son of Late Siki Mahto has died. Hence, appeal of Roshan Mahto stands abated.

3. The prosecution case, in brief, as per the fardbeyan dated 27.3.1990 given by the informant Dashrath Mahato P.W.-2 is that on at about 6 a.m. in the morning they were demolishing the wall made of mud situated in their land. In the mean time the accused persons came there armed with *bhala*, *tangi*, *talwar* and *lathi* and started assaulting the informant's party. Accused persons were abusing them and were saying that the wall is on their land and why they were demolishing it. When the informant's party objected

to the use of filthy language then the accused Sashi Bhushan Mahato assaulted the informant by means of *ballam* causing injuries on his left ear as a result blood oozed out. Thereafter, the younger brother of the informant Niwaran Mahato was assaulted by the accused persons Bhibhuti Mahato and Madhu Mahato by means of *lathi* and *talwar*. Then Amaran Mahato, another brother of the informant was assaulted by Ritbaran Mahato by *tangi*. One of the persons of the informant party, namely Baghambar Mahato was also assaulted by the accused persons. Informant further stated that due to assault, informant and his three brothers sustained injuries and fell down. Thereafter, the accused persons fled away.

4. On the basis of the fardbeyan of the informant Pindrajora P.S. Case No.24 of 1990 was registered against the accused persons under sections 147, 148, 149, 323 and 324 of the IPC. After completion of investigation charge sheet was submitted and the cognizance of the offences were taken and the case was committed to the court of sessions. Charges were framed under sections 307/149 and 326/149 of IPC against the accused persons and at the conclusion of the trial, the accused or the appellants herein were convicted and sentenced as aforesaid. Hence this appeal.

5. Prosecution in support of its case examined altogether 14 witnesses out of which PW-2 Dashrath Mahato is the informant of this case and PW-8 Baghambar Mahato, PW-10 Niwaran Mahato and PW-11 Amaran Mahato are the three other injured witnesses and also the brothers of the informant. PW-5 Shanti Ram Mahato, PW-6 Kusu Mahatain, PW-7 Sabu Devi are related to informant. PW-12 Charku Mahto and PW-13 Mangru Mahato are hearsay witnesses. PW-14 is doctor Mithilesh Kumar who examined the injured and PW-1 is a formal witness who has proved the formal FIR which was marked as Ext.-1. PW-3, PW-4 and PW-9 are hostile witnesses.

6. P.W. 2 Dashrath Mahato is the informant of the case. He has stated in his evidence that on the day of occurrence at about 6:00 a.m. in the morning he along with his brothers, namely, Amaran Mahato, Niwaran Mahato, Baghambar Mahato and others were demolishing the wall at his *bari*. In the meantime accused Shashi Bhushan Mahato along with 25 to 30 persons came there. The

informant further stated that the accused persons who reached along with Shashi Bhushan Mahato were Ritbaran Mahato, Shambhu Mahto, Tarani Mahato, Khep Chand Mahato, Ajit Mahato, Nirmal Mahato, Bhushan Mahato, Roshan Mahato, Surendra Mahato, Chinibas Mahato, Bibhuthi Mahato, Hemant Mahto and Madhu Mahato and they were armed with *tangi*, *lathi* and *bhala* in their hands. In his evidence the informant further stated that all the accused persons surrounded the informant's party and began to assault them. Accused Sashi Bhushan Mahato assaulted Amaran Mahato by *tangi* on his head and Ritbaran Mahato assaulted Niwaran Mahato with *lathi* at his back side. Informant himself was assaulted by the accused Tarani Mahato by *tangi* which hit on his left temple of his head. At the same time 10 to 12 other persons assaulted the informant party with *lathi* and fled away. In para-2 of his examination-in-chief, informant further stated that Amaran, Nibaran and Shanta Ram had sustained injuries. Thereafter they went to the police station and gave statement to police. Informant has proved his signature on the fardbeyan which was marked as Ext.-2. Informant further stated that on requisition of police, they were taken to the hospital and treated there. In his cross-examination, informant has stated that accused persons have for the same day of occurrence has filed the case against them in the police station.

7. P.W.-8 is Baghambar Mahato has stated in his evidence that on the day of occurrence on 27-3-1990 at about 6.30 a.m. in the morning he was demolishing the wall of his house. In the mean time accused persons came on the place of occurrence variously armed with weapons. PW-8 further stated that Shashi Bhushan Mahato assaulted the informant Dashrath Mahato by *tangi* on the back side of his neck. Tarani Mahato assaulted Amaran Mahato with *tangi* on his head and accused Ritbaran Mahato assaulted Niwaran Mahato with *tangi* on his hand and thereafter assaulted the informant of the case over his head. Hemant Mahato assaulted Niwaran Mahato with *lathi* on his head. P.W.-8 further stated that he was assaulted by Bibhuti Mahato by *lathi* on the back side of his head. In his cross-examination PW-8 has stated that accused sashi Bhushan Mahato had lodged a case against them for the same occurrence.

8. P.W. 10 Niwaran Mahato is also the brother of the informant and one of the injured. He has stated in his evidence that Ritbaran Mahato assaulted him with tangi on his head. Shashi Mahato assaulted Dashrath Mahato with tangi on his head. Hemant Mahato assaulted him with tangi on his head. Tarani Mahato assaulted Amaran Mahato with tangi on his head. In his cross-examination PW-10 stated that for the same day of occurrence accused persons had filed a case against them.

9. P.W. 11 Amaran Mahato is also the brother of the informant and one of the injured. He has stated in his evidence that the accused Tarani Mahato had assaulted with tangi on his head and accused Ajit assaulted him by lathi. Informant Dashrath Mahato was assaulted by Ritbaran Mahato with tangi on his head. Sashi Bhushan Mahato assaulted the informant Dashrath Mahato by tangi on his neck. In his cross-examination PW-11 said that for the same day of occurrence Sashi Mahato had filed case of assault on them and the case is pending before the court. PW-11 also stated that Ritbaran Mahato also sustained head injury.

10. P.W. 5 is Shanti Ram Mahato, PW-6 Kusu Mahatain and PW-7 Sabu Devi are related to the informant. All these witnesses have stated in their evidence that on hulla when they came out of their house they saw accused persons variously armed with weapon assaulted the informant party and fled away as a result 4-5 persons from the informant side sustained injury.

11. P.W. 12 is Charku Mahato and PW-13 Mangru Mahato are hearsay witnesses but both have stated in their evidence that they had seen the informant party in injured condition.

12.(i) P.W.-14 is Dr. Mithlesh Kumar who had examined the injured persons from the informant party. On examination of injured Niwaran Mahato (P.W.-10) he found following injuries on his persons:-

- I. Swelling right dorsom of hand.
- ii. Diffuse swelling of whole of right middle finger with dislocation of middle phalinx.
- iii. Abrasion 1"x1.6" right parietal area of head.
- iv. One abrasion 1/2"x1.6" over left thigh.
- v. One abrasion 1/2"x1.6" on left leg.
- vi. Complaint of Chest pain.
- Vii. Complaint of pain to right shoulder.

Doctor opined that all the injuries were simple but injury no. 2

was grievous and injuries were caused by hard blunt substance. The doctor proved injury report of Niwaran Mahato PW-10 which was marked as Ext.-3.

(ii) Doctor on the same day examined the injured PW-11 Amaran Mahato and found the following injuries on his person :

- I. One incised wound in middle of head 2 1/2"x 1/2" bone deep.
- ii. One bruise over left fore arm 2"x1/4".
- lii. One bruise over right forearm 1 1/2" x 1/4".

Doctor opined that all the injuries were simple in nature and injury no.1 was caused by sharp cutting substance and injury no. 2 and 3 by hard blunt substance. Doctor has proved the injury report of PW-11 Amaran Mahato which was marked as Ext.-3/1.

(iii). On the same day Doctor examined PW-2 Dashrath Mahato, the informant of the case and found following injuries on his person:-

- I. Penetrating wound 1/4"x1/4"x1/2" behind left ear.

Doctor opined that the injury was simple in nature and caused by sharp penetrating weapon. Doctor has proved the injury report of PW-2 Dashrath Mahato which was marked as Ext.-3/2.

(iv). On the same day the doctor examined PW-8 Baghambar Mahato and found following injuries on his person :

- I. One bruise 1"x1/2" on right thigh.
- ii. Complaint of pain all over the body.

Doctor opined that both the injuries were simple in nature and caused by hard and blunt substance. Doctor proved the injury report of PW-8 Baghambar Mahato which was marked as Ext.-3/3.

#### **ARGUMENTS ON BEHALF OF APPELLANTS**

13. Learned counsel for the appellants has submitted that the case pertains to Pindrajora P.S. Case No. 24 of 1990, S.T. Case No. 185 of 1990. There are nine appellants in this case out of whom appellant no. 8 Roshan Mahto son of Siki Mahto has passed away. Learned counsel for the appellants has argued that in the fardbeyan or the FIR the assaults indicated have been allegedly made by Sashi Bhushan Mahato on the informant

Dashrath Mahato by means of Ballam on his left ear and allegation against Bhibhuti Mahto and Madhu Mahato for having assaulted Niwaran Mahato by lathi and talwar. Further accused Ritwaran Mahato assaulted Amaran Mahato by tangi and accused persons had also assaulted one Baghambar Mahato. Learned counsel for the appellants referring to the deposition of P.W. 2 Dashrath Mahato who is informant submitted that in his evidence informant has made developments in the prosecution case alleging that Tarani Mahato had assaulted the informant by tangi on his head. Counsel says that this is clearly a new development because Tarani has not been indicated as a assailants specifically in the fardbeyan or the FIR. Counsel for the appellants says that P.W. 2 in his evidence has now not referred to the Bhibhuti Mahto specifically as a assailant, which in the case of Bhibhuti Mahto is actually a retraction of what was stated in the fardbeyan or FIR wherein Bhibhuti Mahato is said to have assaulted by means of lathi to Niwaran Mahato. Counsel for the appellants further says that the informant P.W. 2 has only claimed over *bari* but does not know the plot number and *khata* no. of *bari*. Referring then to the evidence of P.W. 8 who is Baghambar Mahato , counsel for the appellants pointed out that he has deposed that Tarani Mahato had assaulted Amaran Mahato by tangi on his head but informant P.W.2 has deposed that Tarani had assaulted the informant by tangi. Counsel for the appellants therefore submitted that this is an inconsistency or contradictory statements of the informant P.W. 2 as well as Baghambar Mahato P.W. 8 regarding whom Tarani Mahato had assaulted i.e. whether the informant, Dashrath Mahato was assaulted or whether Amaran Mahato was assaulted by Tarani is a questionable doubt that has been raised. The counsel for the appellants has further argued that P.W. 8 has further deposed that Ritwaran Mahato had assaulted the informant by tangi on his head and this is at variance or inconsistent to what is said in the fardbeyan as in the fardbeyan Ritbaran Mahato is said to have assaulted Amaran Mahato by tangi. Learned counsel has then referred to the evidence of P.W. 11 Amaran Mahato, another brother of the informant and pointed out that P.W. 11 has

admitted that Ritbaran Mahato was injured and he had sustained head injury therefore, this clearly indicates that there was a free-fight amongst both the parties and that it is not necessarily the accused or the appellants who are to be blamed in the issue. Further P.W. 11 in his cross-examination has expressed ignorance regarding the khata number or the number of the plot in question which only indicates that informant side simply did not have ownership of the land in question and therefore no right accrued to them and they had no right also to make any complaint against the accused or the appellants. Learned Counsel has then pointed to the evidence of the doctor PW-14 who had examined the injured from the informant party and pointed out that in spite of three or four persons having received injuries however, amongst all the injury only one injured P.W-10 Niwaran Mahato had received one grievous injury which is injury no. ii. Counsel for the appellants, therefore said that looking at the large number of injuries which are indicated as simple injuries, it is clearly made out that in spite of the claim of the informant side that a large number of person ( 14 in numbers) who had assaulted the informant side only simple injuries have been received and only one grievous injury which clearly shows that there was no intention on the part of the accused appellants herein to cause any serious injuries. Therefore, learned counsel submitted that the offence under section 325 IPC is surely not made out and given the inconsistent or contradictory nature of the manner of occurrence regarding the assaults made by whom and on whom as seen in the fardbeyan and the evidences of the prosecution witnesses the assaults made are not determined as to by whom they were made. Learned counsel for the appellants has also pointed out to Ext.-A which is the certified copy of the Khatian which is in the name of one Chotu Mahato and argued that the Khatian pertains to the side of the accused or the appellants. Lastly, learned counsel for the appellants submitted that the conviction of the appellants is under section 325/149 of the IPC and, therefore, considering the year of occurrence, which is of the year 1990 and much time has passed and the appellants have already undergone rigors and vigors of trial and

appeal and therefore, at this stage, no further punishment or sentencing may be required.

**ARGUMENTS OF STATE LEARNED APP.**

14. Learned counsel for the State, learned APP has, on the other hand, argued that the offences of conviction are fully made out and pointed out that in fact the offences of section 441 IPC which deals with criminal trespass is also made out and submitted that the lawful ownership is not required of the land but only possession of the land is required and it is clear from the records and the evidences that informant side were in possession of the land. Further in the FIR and in the evidence of the prosecution witnesses it has been revealed that the informant's side including the injured persons were breaking and demolishing the wall on their lands which clearly indicates possession of the land by the informant side and therein they were assaulted by the accused persons or the appellants. In the said assault P.W.-10 Niwaran Mahato had sustained an injury which was grievous in nature as deposed by PW-14 Doctor . As there is some differences in the FIR and the deposition of the prosecution witnesses regarding the manner of assault but by looking at the date of FIR which was registered on 27-03-1990 and the date of the depositions of the injured witnesses which were recorded in of the year 2000-2001 and so, it is quite natural that after the gap of 10 years a person cannot remember the exact incident as to the manner of assault and that too when appellant side were 14 in numbers and had assaulted the informant party. Moreover, the accused persons have come armed to the place of occurrence forming an unlawful assembly and therefore the conviction with the assistance of section 149 IPC is surely made out. Learned Counsel also submitted that under section 313 Cr. P.C. specific question was asked to the appellants but the accused persons or the appellants did not take the defense that land in question belonged to them i.e. the ownership or title of the land belonged to them. Lastly, learned counsel for the state submitted that impugned judgment passed by the learned court below is based on proper evidence and requires no interference.

## FINDINGS

15. Having heard counsel for both the sides, having gone through the record of case and in the facts and circumstances of the case, I find from the evidence :

(i) The matter pertains to case and counter case as Pindrajora P.S. Case no. 23 of 1990 dated 27-3-1990 was also filed by the appellants side herein for the same occurrence against the informant side and informant side were accused persons.

(ii) As discussed, matter relates to case and counter case by both the parties and resulting in two judgements - one is the impugned judgment dated 23-12-2002 passed in S.T. Case no. 185/1990 arising out of Pindrajora P.S. case no. 24 of 1990 and the other judgment is Ext.-B (filed by the appellants party herein) which is judgment dated 21-5-2002 passed in S.T. Case no. 184/1990 arising out of Pindrajora P.S. case no. 23 of 1990. Here, it is pertinent to note that appeal of the informant side arising out of S.T. Case No. 184 of 1990, Pindrajora P.S. Case No. 23 of 1990 bearing Cr. Appeal (SJ) No. 305 of 2002 has been decided by this court on 11.3.2010. At this juncture it would be pertinent to note the judgment of Hon'ble Apex Court delivered in case of **Nathi Lal and others v. State of U.P. and anothers** reported in **1990(Supp) Supreme Court cases 145** wherein Apex Court has held that both the cross cases must be tried by same learned judge one after another and both the judgments must be pronounced by the same learned judge one after the other. But on perusal of the both these judgments, of the case in hand, it is clear that ratio of **Nathi Lal case (supra)** has not been followed by the learned trial court in deciding the case and counter case as both the judgment has been delivered by the two different learned judges after a considerable time gap.

16. From the evidences available on record, I find that both the parties were claiming that the mud wall, the demolition of which led to incident of assault and injury to both the parties, lies in their land. The appellants side have claimed the land in question on the basis of Ext.-A which is record of right in name of one Chootu Mahato. But, appellants side have not proved how

ownership of the land in question accrued to them. By Simply filling a copy of record of right, ownership of a land maynot be proved. Even, in their statements under section 313 of the Cr.P.C. appellants have not stated that ownership of the land belonged to them. Learned trial court has also dealt with the issue regarding the claim of disputed land by the appellants in paragraph-25 of its impugned judgment and noted that no satisfactory documents were produced by either parties. Hence, as ownership over the land in question is not conclusively proved by the appellants herein, so the defense of the appellants that informant side is the aggressor is not available to the appellants.

17. So, far as criminal liability of the appellants herein are concerned, I find from the evidence of doctor that four persons from the informants side i.e. PW-2, PW-8, PW-10 and PW-11 had sustained injury. PW-14 doctor had found all the injuries caused to these four injured were simple in nature except the injury no. 2 caused to PW-10 Niwaran Mahato which was as per opinion of doctor was grievous in nature. On perusal of injury report Ext.-3 of PW-10 Niwaran Mahato, injury no.2 caused to Niwaran Mahato is said to be diffuse swelling of whole of right middle finger with dislocation of middle phalinx. But, in cross-examination doctor has stated that he did not advise for X-ray and on the basis of dislocation he has opined that injury no.2 was grievous. So, the opinion of doctor that injury no.2 caused to PW-10 Niwaran Mahato is grievous in nature is doubtful. Therefore, the appellants are convicted for the offence under section 324/149 of IPC.

18. In the result , the judgment of conviction of the appellants under section 325/149 of IPC and order of sentence both dated 23.12.2002 passed by the learned Additional Sessions Judge, F.T.C. 3<sup>rd</sup>, Bokaro in Sessions Trial No. 185 of 1990 are set aside and the conviction of the appellants are modified to one under section under section 324/149 of IPC.

19. As far as sentence is concerned, I find that incident occurred in 1990 i.e. almost 30 years ago and some of the appellants are in their 70's and 60's and also appellants have faced rigors and vigors of trial. I have also taken note of the

sentencing order in Cr. Appeal (SJ) No. 305 of 2002. Therefore, the surviving appellants are now not sentenced to any period of custody or imprisonment. As, four persons from the informant side i.e PW-2 Dashrath Mahato, PW-8 Baghambar Mahato, PW-10 Niwaran Mahato and PW-11 Amaran Mahato had sustained injury hence, appellants will pay a consolidated compensation amount of Rs.20,000/- to the injured informant which shall be apportioned equally among the four injured Dashrath Mahato, Baghambar Mahato, Niwaran Mahato and Amaran Mahato. In default of payment of compensation amount, appellants will further undergo S.I for two months.

20. Accordingly, the appeal is dismissed with above modification in conviction and sentence.

**( Ratnaker Bhengra,J.)**

Jharkhand High Court, Ranchi  
Dated 26/06 /2020  
Sharda/NAFR