Supreme Court of India
Lattu Mahto & Anr vs State Of Bihar (Now Jharkhand) on 16 April, 2008
Author: . A Pasayat
Bench: Arijit Pasayat, Lokeshwar Singh Panta

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2008
(Arising out of S.L.P. (Crl.) No. 881 of 2007)

Lattu Mahto & Anr. ... Appellants

Vs.

The State of Bihar ...Respondent
(now Jharkhand)

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Jharkhand High Court dismissing the appeal filed by the appellant. Three appeals were filed by ten accused persons. In all there were 11 accused persons who were convicted. Appellants Latu Mahto and Nanu Chand Mahto along with one Khiru Mahto had filed Criminal Appeal No.384 of 2000 (R). Five others had filed Criminal Appeal No. 362 of 2000 (R). They were convicted for offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (in short the `IPC'). Two others had filed Criminal Appeal No. 411 of 2000(R) and they were found guilty of offence punishable under Section 302/34 and 302/149 IPC.

3. Prosecution version as unfolded during trial is as follows:

Informant Phulchand Mahto was planting sweet potato alongwith Buddhu Mahto (hereinafter referred to as `deceased') in the morning of 17.7.1987 in the field situated near their house in village Taranari, Tola-Beharatand, when appellants Kartik Mahto, Sukar Mahto and Bhim Mahto came there with bullock to plough and tried to plough the field belonging to them. This was protested to and they were forced to retreat by the informant side. However, within a short time, all the above named accused persons along with appellants Beni Mahto, Manjhi Mahto, Nunuchandra Mahto, Latu Mahto, Koyla Mahto, Khiru Mahto, Mahru Thakur returned armed variously with Bhakuwa, farsa, sword, lathi, bows and arrows. According to the informant, appellant Beni Mahto was carrying

Bhakuwa, appellant Kartik was carrying sword, appellant Koyal Mahto was carrying Farsa, appellant Khiru Mahto was carrying Ballam, appellant Sukar Mahto was carrying bow and arrows, appellant Nunuchand was carrying Tangri, and appellant Bhim Mahto was carrying Bhakuwa and others were carrying lathi.

According to informant Phulchand Mahto (PW4), deceased was given Bhakuwa blow by appellant Beni Mahto on his neck after which he fell down. Thereafter, Kartik Mahto started giving sword blows on his father causing various injuries on his body. It is further asserted that when the informant and his uncle Bhola Mahto tried to intervene, they were also assaulted. Appellants further assaulted Sanjhwa Devi and one Lakhan Mahto, who were ploughing the field nearby. During this incident, appellant Sukar Mahto was shooting arrows. The informant and other injured witnesses raised alarms on which the villagers arrived there and saw the occurrence. The appellants thereafter fled away. The reason behind this incident was said to be dispute regarding Gairmajarua land which was possessed by the informant since long. The father of the informant, Budhu Mahto died on the spot.

The matter was reported to Nawadih Police, which arrived at the spot in presence of witnesses and started investigation. The police prepared inquest report of the dead body of Budhu Mahto and seized bloodstained Bhakuwa, soil and seven arrows from the spot in presence of witnesses. On the basis of the fardbeyan, Nawadih P.S. Case No.38 of 1987 was registered under Sections 147,148,149,323,324,307,302 and 447 IPC. The police completed investigation and finally submitted charge sheet against eleven accused persons who were charged under Sections 326,147,148,447and 302/149 IPC to which they pleaded not guilty. They were further charged under Section 302/34 IPC.

The main defence taken by the appellants was false of implication. They also claimed that they were ploughing the land in question since long. However, the learned trial court after examining the witnesses found and held all of them guilty of offence punishable under Section 302/149 IPC. The learned trial court further found and held guilty appellants Beni Mahto and Kartik Mahto in Criminal Appeal No.411 of 2000(R) under Section 302/34 IPC. All the appellants were sentenced to serve rigorous imprisonment for life for the offences proved against them. However, they were not sentenced for any of the minor offences though found to be proved against them. Appellants Koyla Mahto, Mahru Mahto and Khiru Mahto died during pendency of the appeals.

It is to be noted that out of accused persons who had filed appeals before the High Court, appellants Koyla Mahto, Manjhi Mahto and Bhim Mahto died during the pendency of the appeal. Apart from other factual aspects appellants in the appeal before the High Court had submitted that the examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the `Cr.P.C.') was not properly done. The details of the accusations were not brought to their notice even the charges framed were not proper. The High Court noted that separate charge form was not framed by the trial court against the appellant while framing charges. It was held that the accusations were explained to the appellants during their statements while their statements were being recorded under Section 313 Cr.P.C.

4. Learned counsel for the appellants submitted that the appellants have been convicted by application of Section 149 IPC. Their presence and/or participation have not been established. Examination under Section 313 Cr.P.C. was not properly done and in any event the charges framed were totally defective.

5. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court and the High Court.

6. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar and Ors. (2003 (7) SCC 152).

7. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

8. The above position was highlighted in State of Punjab v. Bhag Singh (2004 (1) SCC 547).

9. In the instant case, High Court's judgment is practically unreasoned.

10. Coming to the evidence of PWs 4, 5 & 6, it is clear that PW5 Bhola does not name the appellant No.1 to be an assailant while PW3 states that he had assaulted Bhola-PW 5. Charges framed were common for all the accused persons and so far as Section 149 and 302/34 are concerned, it reads as follows:

> "That you on or about the same day at same place were members of an unlawful assembly, and in prosecution of the common object of which, caused murder to Budhu Mahto and assault to Bhola Mahto, Sanjhwa Devi and Phulchand Mahto and you are, thereby, under Section 149 IPC guilty of causing the said murder and assaults.
>
> And thereby committed an offence punishable under Section 149 IPC and within Forth that you, on or about the same day of same at same place did committed murder to Budhu Mahto with common intention committed an offence."

11. So far as Section 313 statement is concerned the only relevant question was as follows:

> "This is the case of the prosecution witnesses that on 17.7.1987 at villageTaranari, Tola Behratand, P.S. Nawadhi, District Bokaro, you together with other accused persons armed with weapons formed an unlawful assembly and in furtherance of the common object of the unlawful assembly, you and other accused persons killed Budhu Mahto and in course of which injured Bhola Mahto, Sanjhwa Devi and Phulchand Mahto. What do you have to say?"

12. It is rightly contented by learned counsel for the appellant that no appropriate question was posed during examination under Section 313 Cr.P.C. and appropriate charges were also not framed. It is not the case of the prosecution that the appellants had committed murder of Budhu Mahto. Additionally, in their evidence PWs 4, 5 & 6 have not spoken a word about appellants having assaulted any one of them, so far as the charge under Section 326 IPC is concerned.

13. In Bibhuti Bhusan Das Gupta & Anr. v. State of West Bengal (AIR 1969 SC 381), this Court held that the pleader cannot represent the accused for the purpose of Section 342 of the Code of Criminal Procedure, 1898 (hereinafter referred to as `Old Code') which is presently Section 313 Cr.P.C.

14. Section 313 Cr.P.C. reads as follows:

> "313. Power to examine the accused.--(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the court--
>
> (a) may at any stage, without previously warning the accused, put such questions to him as the court considers necessary;
>
> (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:
>
> Provided that in a summons case, where the court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).
>
> (2) No oath shall be administered to the accused when he is examined under sub-section (1).
>
> (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.
>
> (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

15. The forerunner of the said provision in the Old Code was Section 342 therein. It was worded thus:

> "342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.
>
> (2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.
>
> (3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
>
> (4) No oath shall be administered to the accused when he is examined under sub-section (1)."

16. Dealing with the position as the section remained in the original form under the Old Code, a three-Judge Bench of this Court in Hate Singh Bhagat Singh v. State of Madhya Bharat (AIR 1953 SC 468) held that:

"The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness- box. They have to be received in evidence and treated as evidence and be duly considered at the trial."

17. Contextually we cannot bypass the decision of a three- Judge Bench of this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 (2) SCC 793) as the Bench has widened the sweep of the provision concerning examination of the accused after closing prosecution evidence. Learned Judges in that case were considering the fallout of omission to put to the accused a question on a vital circumstance appearing against him in the prosecution evidence. The three- Judge Bench made the following observations therein: (SCC p. 806, para 16) "It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the Court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is

unable to offer the appellate Court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial Court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction."

18. What is the object of examination of an accused under Section 313 of the Code? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In Jai Dev v. State of Punjab (AIR1963 SC 612) Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focussed on the ultimate test in determining whether the provision has been fairly complied with. He observed thus:

"The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to inquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."

19. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion.

20. At the same time it should be borne in mind that the provision is not intended to nail him to any position, but to comply with the most salutary principle of natural justice enshrined in the maxim audi alteram partem. The word "may" in clause (a) of sub-section (1) in Section 313 of the Code indicates, without any doubt, that even if the court does not put any question under that clause the accused cannot raise any grievance for it. But if the court fails to put the needed question under clause (b) of the sub-section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

21. High Court was clearly wrong in holding that the charges were properly explained to the accused persons while recording their statement under Section 313 Cr.P.C. Therefore, their conviction as recorded by the trial court and upheld by the High Court cannot be maintained.

22. The appellants are acquitted from the charges. They be set at liberty forthwith unless required to be in custody in connection with any other case.

23. The appeal is allowed.

.....J. (Dr. ARIJIT PASAYAT) .....J. (LOKESHWAR SINGH PANTA) New Delhi, May 16, 2008