

(2006) 05 JH CK 0035
In the Jharkhand High Court

Bishwanath Kalindi and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2007) 1 JCR 326

Hon'ble Judges : N. Dhinakar, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

1. The appellants, two in number, challenge their conviction and sentence in this appeal. They were tried and convicted u/s 302 read with 34, IPC. They were sentenced to imprisonment for life. Hence, the appeal.

2. The allegation against them is that Bishwanth Kalindi, the first appellant sharing the common intention of Shatrughan Kalindi, second appellant, stabbed the deceased, Mantu Kalindi at about 5.30 p.m. on 12.2.1996 during a quarrel.

3. The facts are as follows:

PW 6, Manju Kalindi is the wife of the deceased, Mantu Kalindi. The deceased, Mantu Kalindi and PW 6, Manju Kalindi were residing in the same village where the appellants were also residing. The first appellant is said to be the son of the second appellant. At about 5.30 p.m. on 12.2.1996, the deceased went out of the house and sometime thereafter, PW 6 heard the voice of her husband. She came out of the house and saw her husband quarreling with Shatrughan Kalindi, the second appellant. While the quarrel was going on between the deceased and the second appellant, Bishwanath Kalindi the son of the second appellant brought a dagger from his house, in front of which the second appellant and the deceased were quarreling and inflicted a blow. On seeing this, PW 1, Jugal Patro raised alarm. The occurrence was witnessed by Jugal Patro (PW 1), Kalipado Kalindi (PW 4) and Manju Kalindi (PW 6). The villagers gathered and appellants went away. The fardbeyan, Ext. 4 was given at the police station on the basis of which,

a crime was registered and investigation was taken up by PW 12, Mukut Dhari Mahto. PW 12 Mukut Dhari Mahto, on taking up investigation conducted inquest over the dead body and sent the body to the hospital for autopsy.

4. On receipt of the requisition and the dead body, PW 8, Dr. Nawal Kishore Sinha conducted autopsy and found a sharp cutting pointed wound on the right side of middle of sub clavicular groove near the root of the right side of neck measuring 3" x 1" x 5". The doctor noticed rupture of right lung. He issued Ext. 3, the postmortem certificate with his opinion that death is on account of shock and hamerroeage due to the rupture of lung and the said injury could have caused by a sharp cutting weapon.

5. After the completion of investigation, the final report was filed against the appellants who denied their complicity in the crime.

6. Learned Counsel appearing for the appellants submits that the materials placed before the Court below, by the prosecution, do not show that the first appellant shared the common intention of Shatrughan Kalindi, the second appellant causing the death of deceased, Mantu Kalindi and that the facts also show that Bishwanath Kalindi, the first appellant is entitled for the benefit of Section 304 Part I, IPC since even according to the prosecution the occurrence took place during a quarrel. We have heard learned Counsel appearing for the State.

7. Mantu Kalindi died on account of homicidal violence is beyond dispute since, the same stands established by the evidence of PW 8, who conducted autopsy " and the post-mortem certificate, Ext. 3 issued by him. The evidence of PWs. 1, 4 and 6 is that the first appellant stabbed the deceased while the second appellant was quarreling with him. On going through the evidence of these witnesses, it could be seen that the deceased left the house at 5.30 p.m. on 12.2.1996 and later, on hearing the voice of her husband, Manju Kalindi (PW 6), came out of her house and saw her husband quarreling with Shatrughan Kalindi. The evidence further shows that while the quarrel was going on between the second appellant and the deceased, the first appellant was not there and he suddenly came there and stabbed the deceased on the neck. On going through the evidence of the witnesses, we are unable to reject their evidence since no material worthwhile was elicited from any of the witnesses to show that they could not have been present and witnessed the occurrence. We accept their evidence. Their evidence is also supported by the medical evidence as well as by the evidence of other villagers like Sishir Patro (PW 9) and Jayant Patro (PW 10), who have stated that they saw the deceased lying dead with injuries and that PW 1 informed them that the deceased was stabbed by Bishwanath Kalindi. We, accordingly accept the evidence of PWs. 1, 4 and 6 and hold that the deceased died due to the injuries inflicted by Bishwanath Kalindi. The next question that is to be decided that the nature of offence committed by the first appellant, Bishwanath Kalindi. The facts put forth by the prosecution itself show that on the date of incident the deceased was found quarreling with the second appellant, who is said to be

the father of the first appellant. While the quarreling was going the first appellant entered the house which was nearby and brought a dagger with which he inflicted an injury on the deceased. There is no material either by way of oral or documentary evidence to show that Bishwanath Kalindi had a motive to attack the deceased. The facts clearly indicate that the first appellant, Bishwanath Kalindi stabbed the deceased without any premeditation on seeing his father and the deceased quarreling with each other. He also did not take any undue advantage or act in an unusual manner. We therefore of the view that the conviction of the first appellant, Bishwanath Kalindi u/s 302 read with 34, IPC is to be modified into one u/s 304 Part I, IPC and it is accordingly modified. The conviction and sentence of the first appellant u/s 302 read with 34, IPC are set aside instead he is found guilty u/s 304 Part I, IPC for which he is sentenced to 7 years RI. As regards the part played by the second accused, Shtrughan Kalindi, we are of the view that the facts do not indicate that he shared the common intention of the first appellant, Bishwanath Kalindi and they only show that while the second appellant was quarreling with the deceased, the first appellant suddenly went inside the house and brought a knife and stabbed the deceased. The second appellant could not have anticipated that the first appellant will stab the deceased and in the above circumstances, it cannot be said that the second appellant shared the common intention of the first appellant. We therefore, acquit the second appellant, Shatrughan Kalindi.

8. In the result the conviction and sentence of the first appellant, Bishwanath Kalindi is modified to one u/s 304 Part I, IPC for which he is sentenced to 7 years RI. It is reported that the first appellant, Bishwanath Kalindi is in jail. If he has served the sentence of 7 years RI the period undergone by him will be given set off. As regards the second appellant, Shtrughan Kalindi is concerned, he is acquitted of the charge. It is reported that he is on bail. He is discharged from his bail bonds.

9. With the above modification in conviction and sentence, the appeal is disposed of.