
(2015) 04 JH CK 0136

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1247 of 2003

George Lakra and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 299, 300, 302, 304, 34

Citation : (2015) 2 JLJR 587

Hon'ble Judges : Virender Singh, C.J;P.P. Bhatt, J

Bench : Division Bench

Advocate : Parwez Ahmad and Ignatius Minz, for the Appellant; Vijay Kumar Gupta, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Virender Singh, C.J—In all there are three appellants namely George Lakra, John Lakra and Maksi Marianus Lakra. John Lakra and Maksi Marianus Lakra are sons of George Lakra. Vide impugned judgement dated 23.7.2003 of learned Additional Dist. & Sessions Judge, Fast Track Court-II, Gumla, they stand convicted for the charge of Section 302 read with Section 34 IPC for allegedly committing the murder of two persons namely Tobius Lakra and Domnik Lakra (real brothers) and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- each, in default thereof, further to simple imprisonment for a period of three months. George Lakra and John Lakra are stated to be on bail as their substantive sentence was suspended by this Court vide order dated 25th August, 2014, whereas Maksi Marianus Lakra is stated to be in custody for the last about 13 years (exact period is 12 years 8 months and few odd days). Because of incarceration period of one of the appellants, priority has been given to the instant appeal.

2. The present case originates from F.I.R. No. 18/2002 registered in PS-Raidih recorded at the statement of Jasinta Kujur, wife of Tobius Lakra, deceased herein. The date of occurrence is 4th July, 2002; time of occurrence is about 5.00 pm

and the place of occurrence is Village-Bakashpur. The distance between the place of occurrence and the police station is 3 km. PW Jasinta Kujur alleged that on 4.7.2002 at about 5.00 pm, her husband Tobius Lakra and her brother-in-law (dewar) namely Domnik Lakra (other deceased herein) came to the house from Silam market and kept the vegetables which they had brought with them, and, thereafter, her husband went outside the house and entered into some discussion with accused John Lakra with regard to partition- of jackfruit, (in vernacular At that time both were intoxicated and started shouting at each other (in vernacular) She further alleged that it attracted them also and in the meantime, her brother-in-law Domnik Lakra (deceased) also reached there and while shouting at each other, her husband and her brother-in-law entered the house of accused George Lakra. It is then alleged that at that time accused Maksi Marianus Lakra, who was present there at some distance after hearing noise, picked up a heavy weight lathi out of anger and gave blow on the head of her husband and brother-in-law, (in vernacular) Blood started oozing from their head and then they fell on the ground unconscious and succumbed to injuries after sometime. It is then alleged that she and the wife of Domnik Lakra, reached the spot to save their husbands when accused Maksi Marianus Lakra gave them injuries but they ran towards the village out of fear. After sometime, villagers gathered at spot and all the accused by that time had fled away. The motive projected here is partition of land with regard to which some dispute was going on.

3. On the aforesaid allegation, formal F.I.R. came to be registered which was investigated by PW-10 Sistidhar Mahto, which culminated into filing challan against all the accused under Section 302/34 IPC for which they were charged also, faced trial and now stand convicted and sentenced as stated above.

4. The prosecution in support of its case has examined the following witnesses:---

"PW-1 Mrs. Jyoti Lakra--She is the wife of the deceased namely Domnik Lakra and is an eye-witness also. She has supported the initial statement lodged at the instance of Jasinta Kujur wife of other deceased Tobius Lakra.

PW-2 Shidho Mistry--He saw the accused persons running away from the place of occurrence. He also deposed that he saw that the stick has been lying near the dead body.

PW-3 Shidho Tirky--He also saw the accused running away from the place of occurrence.

PW-4 Khristophar Lakra--He deposed about the enmity between the deceased and the accused persons.

PW-5 Habii Lakra--He also saw the accused running away from the place of occurrence. He has also deposed about the enmity between the accused and the deceased.

PW-6 Siril Tirky--He is an witness of hear say evidence.

PW-7 Agapit Ekka--He is a witness to seizure memo of stick taken into possession by the Investigating Officer. He also deposed about the preparation of the inquest report in his presence.

PW-8 Mikhail Tirkey--He is also a witness to seizure memo of the stick and inquest report.

PW-9 Jasinta Kujur--She is the wife of deceased Tobius Lakra and another eye-witness to the occurrence. She is the first informant and when stepped into the witness box, made an attempt to improve upon her initial statement stating that accused George Lakra caught hold of Domnik Lakra and John Lakra caught hold of other deceased Tobius Lakra and thereafter Maksi Marianus Lakra assaulted upon the deceased with stick upon the head of both the deceased. She also stated that when she tried to resist the accused persons, she also got injured at the hands of the accused Maksi Marianus Lakra resulting into fracture of her hand. She also stated about the enmity.

PW-10 Sistidhar Mahtc--He is the Investigating Officer in this case who, after recording the initial statement of PW Jasinta -Kujur, started investigation, got autopsy done on the dead body of the deceased, recorded the statement of the witnesses, prepared seizure memo with regard to the recovery of the bloodstained stick (weapon of the offence) and after completion of the investigation filed the challan.

PW-11 Dr. Saroj Kumar--He conducted post mortem on the persons of both the deceased. He noticed the following injuries on the person of deceased Domnik Lakra:---

1. Lacerated wound 4" x 1" x bone deep on left occipital region of head with fracture of underline bone.
2. Lacerated wound 3" x 2" x bone deep on left parietal region of head with depressed fracture of underlined bone.

Laceration of brain underneath depressed fracture was also noticed by the Doctor. There was presence of subdural blood and blood clot over left hemisphere of brain. In his opinion, the injuries on the person of the deceased was possible by Shakua Danda, the weapon of the offence. This, witness found the following injuries on the person of deceased Tobius Lakra:---

1. Lacerated wound 4" x 1/2" x soft tissue on left frontal region of head situated vertically,
2. Lacerated wound 2" x 1/2" x soft tissue on left parietal region of head,
3. Lacerated wound 3" x 1" x bone deep oh left occipital region of head with fracture of underline bone. On the left occipital region with fracture underneath brain.
4. Abrasion 2" x 1" x left fore arm."

He noticed contusion of brain left side and presence of subdural blood and blood clot over left hemisphere of brain. According to him, injuries could be possible by Shakua Danda, weapon of the offence.

5. All the accused have, however, pleaded their false implication in this case.

6. We have heard Mr. Parwez Ahmad, learned counsel appearing for all the three appellants-accused and Mr. Vijay Kumar Gupta, learned APP appearing for the State. Trial court records have also been perused by us minutely.

7. Mr. Parwez Ahmad, at the very outset, submitted that taking the prosecution case as it is on its face value, the prosecution cannot seek the conviction of all the accused with the aid of Section 34 IPC. Learned counsel submitted that the very case set up by the first informant, wife of one of the deceased Tobius Lakra is that when her husband and her brother-in-law (Domnik Lakra) had come back home, her husband, who was already drunk (intoxicated), went outside the house and joined issue with George Lakra with regard to partition of jackfruit and at that time George Lakra was also under the influence of liquor. Learned counsel submitted that when both of them were shouting at each other, deceased Domnik Lakra also reached there and both the deceased entered the courtyard of accused George Lakra, where accused Maksi Marianus Lakra was incidentally present and he, on hearing the noise (hulla) picked up the stick and then gave one injury each on the head of both the deceased. Learned counsel submitted that admittedly the accused George Lakra and John Lakra were empty handed and they did not cause any injury to the deceased and when all these facts taken collectively, take accused George Lakra and John Lakra out of mischief of Section 34 IPC so as to hold them guilty for the main charge of Section 302 IPC with the aid of Section 34 IPC as it cannot be said, by any stretch of imagination, that these two accused had shared common intention to commit the murder of both the deceased. According to learned counsel, there appears to be no prior meeting of mind of all the three accused before committing the offence which, according to the prosecution case itself, has originated all of a sudden, when accused John Lakra had entered into hot discussion with deceased Tobius Lakra. Learned counsel thus submits that accused George Lakra and John Lakra, at least, deserve acquittal for the main charge of Section 302 read with Section 34 IPC.

8. Learned counsel then submitted that once in the aforesaid factual backdrop, Section 34 IPC falls on the ground, in that eventuality even against accused Maksi Marianus Lakra, charge of Section 302 IPC is not proved and he, at the most, can be held guilty under Section 304 Part-I IPC or 304 Part-II IPC. According to learned counsel, it is a case in which prosecution case qua accused Maksi Marianus Lakra would fall within the mischief of Section 302 (sic--304?) Part-II IPC as the weapon used by him is not a lethal weapon being a stick, may be of heavy weight, which is commonly available in the village and at the time of occurrence, was also lying in the courtyard and picked up by him. He submitted that admittedly, it is not a case of repetition of blow. Learned counsel submitted

that no doubt, both the deceased had fallen unconscious immediately after receipt of the injury which proved fatal causing instant death at the site, still keeping in view the totality of the facts and circumstances of the present case, it would at the most attract Section 304 Part-II and not beyond that.

9. Learned counsel then submitted that appellant Maksi Marianus Lakra has already undergone long period of sentence which turns out to be few months less than 13 years and the period already undergone by him would serve the ends of justice, in the event of his conviction under Section 302 IPC being altered to Section 304 Part-II IPC or even 304 Part-I IPC.

10. Learned State Counsel, however, vehemently opposes the submissions advanced by Mr. Parwez Ahmad, and states that all the three accused are from one family, therefore, even if two of them were not armed with any weapon, still they shared the common intention of causing death of two persons in this case, when they entered the courtyard of their house. He submitted that it is a case where common intention had gathered at the spot in which one of the accused (Maksi Marianus Lakra) killed two persons with a stick of very heavy weight which resulted into instantaneous death. Learned counsel thus prays for upholding the conviction/sentence of all the three appellants, as recorded by the learned trial court.

11. After giving thoughtful consideration to all the aspects of the present case, we are of the considered view that accused George Lakra and John Lakra deserve clear cut acquittal for the charge of Section 302/34 IPC for the reason that the prosecution has not been able to prove its case to the hilt so as to sharing of common intention with common object viz. to commit the murder of two persons in this case. One can comfortably find out from the evidence available on record that there was no prior meeting of mind in this case so as to attract Section 34 IPC in this case as the occurrence had flared all of a sudden over a trivial matter when John Lakra and deceased Tobius Lakra had entered into a hot discussion, which no doubt, ultimately ended up in two deaths. The first informant made an attempt to attribute some overt act to these two accused of catching hold in the court by way of crude padding, but, that does not prove the culpability of these two accused with the aid of Section 34 IPC. Viewed thus, we acquit George Lakra and John Lakra of the charge of Section 302 read with Section 34 IPC.

12. So far as accused Maksi Marianus Lakra is concerned, the part attributed to him is that when both the deceased after entering into altercation with accused John Lakra on partition of jack fruit entered the courtyard of accused George Lakra, he (Maksi Marianus Lakra), who was present there, on hearing the noise (hulla), got enraged and then picked up the stick lying there and gave one injury each on the head of both the deceased.

13. We are conscious of the fact that in this case two persons have lost their lives after receiving injuries at the hand of accused Maksi Marianus Lakra with the stick but after making threadbare analysis of the evidence on record, it can be

comfortably said that it is not a case falling within the mischief of Section 302 IPC qua accused Maksi Marianus Lakra and the said offence deserves to be diluted to a lesser gravity.

14. We for our satisfaction have also noticed the injuries on the person of both the deceased. No doubt, for the purposes of counting, the Doctor of autopsy noticed two lacerated wounds on the left parietal region of the head of deceased Domnik Lakra, but, both these injuries are on one side only and underneath this injuries there is a depressed fracture, therefore, from medical evidence it can be comfortably said that there was, in fact, one injury which is on the left parietal region, may be causing acute damage to left side. So is the position in the case of deceased Tobius Lakra who too received injury on the head which is covering almost the entire area of the head right from frontal region upto occipital region. The entire effect of these injuries is on the left side as one finds from the Post Mortem Report. Clotting of blood is also on the left hemisphere of the brain. What appears to us is that heavy weight lathi has caused massive damage resulting into instantaneous death at the place of occurrence itself. Still keeping in view the totality of the facts of case and the manner in which the occurrence originated and ended, it would not attract 302 IPC qua accused Maksi Marianus Lakra. We would like to reproduce some evidence in vernacular in this regard

15. In case of Raj Pal and Others Vs. The State of Haryana, (2006) 11 JT 124 : (2006) 4 SCALE 456 : (2006) 9 SCC 678 : (2006) 1 SCR 74 Supp , Hon'ble Supreme Court in paragraph Nos. 15 and 16 has drawn the following distinction between Section 299 and Section 300 for academic discussion:---

"15. The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:---

16. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention, of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300."

16. In the aforesaid judgment, celebrated judgment of Hon"ble Supreme Court rendered in the case Virsa Singh Vs. The State of Punjab, AIR 1958 SC 465 : (1958) CriLJ 818 : (1958) 1 SCR 1495 has also been reiterated and ultimately it was held in paragraphs-24 and 25 as under:---

"24. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

25. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate and clear-cut treatment to the matters involved in the second and third stages".

17. Applying the ratio of the aforesaid judgment on the facts of the present case, we are of the considered view that the case of the prosecution qua accused Maksi Marianus Lakra would fall within the mischief of Section 304 Part-I IPC instead of Section 302 IPC. We, however, do not accept the contention of learned counsel for the accused that his case falls within the mischief of Section 304 Part-II IPC only. The conviction of accused Maksi Marianus Lakra, thus, deserves to be altered. Ordered accordingly.

18. Accused Maksi Marianus Lakrais stated to be in custody for about 13 years (exact period 12 years 8 months and few odd days). In our considered view, ends of justice would adequately be met if the sentence qua the altered offence (Section 304 Part-I IPC) is reduced to the period already undergone by him. Ordered accordingly.

19. The net result is that the appeal on hand stands allowed partly. Accused George Lakra and John Lakra are hereby acquitted of the charge of Section 302/34 IPC, where as conviction of accused Maksi Marianus Lakra is altered to Section 304 Part-I IPC with the sentence part as indicated hereinabove.

20. Accused Maksi Marianus Lakra shall be released forthwith in this case if not required in any other case(s). Release order in this regard shall be sent to the jail authority concerned without any delay.

21. Learned trial court be also apprised of the outcome of the instant appeal. Lower court records (in original) be submitted to the court concerned without

any delay.