

(2006) 03 JH CK 0100

In the Jharkhand High Court

Case No : Criminal Appeal No. 462 of 1990 (P)

Hopna Kisku and Another

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 324, 34

Citation : (2006) 2 JCR 412

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

Bench : Division Bench

Advocate : Vishnu Kumar Sharma, for the Appellant; R. Mukhopadhyay, APP, for the Respondent

Judgement

1. The appellants, Hopna Kisku and Shibnath Kisku, were arrayed as A-2 and A-3, along with Patni Marandi, who was arrayed as A-1. They were charged u/s 302/34 of the Indian Penal Code, on the allegation that on 23.4.1983 at about 6.00 p.m. the appellants caused injury to Matal Kisku, father of PW 12, and as a result of the said in-juries the said Matal Kisku died later at the hospital on 24.4.1983.

2. The learned trial Judge, while acquitting Patni Marandi, who was arrayed as A-1, convicted the appellants, who were arrayed as A-2 and A~3, and sentenced each one of them to imprisonment for life u/s 302/34 of the Indian Penal Code. The present appeal by the convicted accused-appellants is against their conviction and sentence.

3. There was a dispute pending between the deceased Matal Kisku and the appellants as regards the enjoyment of a mahua tree as both were claiming to be the owners of the said tree. At about 6.00 p.m. on 23.4.1983, quarrel ensued between the appellants and the deceased during which the deceased was beaten with lathi by the appellants. Matal Kisku suffered injuries and, therefore, he was taken to Ramgarh Police Station where an entry, Ext. 3, was made in the Station

Diary by PW 14, the Officer-in-charge of the police station. He referred Matal Kisku to hospital.

4. On Matal Kisku being produced before PW 8, Dr. Binod Kumar Safi, PW 8, found an injury on Matal Kisku who was admitted as in-patient. In the meantime, Shibnath Kisku, A-3, also appeared at the police station and as he and Hopna Kisku, A-2, had injuries on their person, they were also referred to the same hospital after an entry was made (Ext. A) by PW 14 in the Station Diary. Matal Kisku, while undergoing treatment, at the hospital died on 24.4.1983 and thereafter Ext. 3, the entry in the Station Diary, was registered as a crime by registering an FIR which stands marked as Ext. 4. PW 14, after taking up investigation, went to the scene of occurrence and found blood stained earth. It was seized under Ext. 6. He also seized one bamboo lathi and one wooden lathi under the seizure list Ext. 6/1, attested by PW 6. Thereafter, inquest was conducted at the hospital over the dead body and later a requisition was given to the doctor for conducting autopsy.

5. On receipt of the requisition, PW 13, Dr. Sita Ram Sah, conducted autopsy on the dead body and he found the following injuries ;

(i) Swelling with ecchymosis over left temporal region, 4" x 2". On dissection there was fracture of left temporal bone underneath; brain and membrane was lacerated and a big haematoma was there.

(ii) Swelling with ecchymosis over left chest and right chest and on dissection there was fracture of 4th, 5th, 6th and 7th ribs of left side and underneath pleura of lungs of both sides were lacerated and there were haematoma.

The doctor issued Ext. 2, the postmortem certificate containing his opinion that the deceased died on account of shock and haemorrhage due to the above injuries and that the above injuries are sufficient in the ordinary course of nature to cause death.

6. After the completion of investigation, final report was filed. The appellants were questioned u/s 313, Cr PC and they have denied the incriminating circumstances, but examined PW 8 as DW 1, through whom Exts. B, B/1 and B/2, the injury reports, were marked to show that they also suffered injuries during the course of same transaction. They also relied upon Ext. A, marked through PW 14, which is a Station Diary.

7. The learned counsel appearing for the appellants submits that though there can be no dispute that Matal Kisku died on account of injuries suffered by him, it cannot be said that the said injuries were caused by any of the accused with intention or knowledge that such injuries will result in death of Matal Kisku. It is his further submission that Exts. B, B/1 and B/2, when seen on the background of Ext. A, it could be seen that there was quarrel between the two groups over the enjoyment of a mahua tree and there was quarrel between them during which parties have exchanged blows and not only the deceased but also the appellants

suffered injuries.

8. On the above, contention, we have heard Mr. R. Mukhopadhyay, learned A.P.P., appearing for the State.

9. We find some substance In the said argument. The case of the prosecution itself is that the 1st appellant appeared at the police station immediately after the incident and his statement was entered in the Station Diary and immediately thereafter referred to the hospital along with other injured accused. Thereafter, the deceased was produced before PW 14, the Police Officer, by PWs 5, 6 and 12 and the entry, Ext. 3, was made in the Station Diary. The case of the prosecution itself, therefore, shows that there was quarrel between the two parties over the enjoyment of a mahua tree, during which both sides had suffered injuries and that the 2nd and 3rd accused went to the police station along with other injured and gave statement.

10. In the above circumstances, we find it difficult to uphold the conviction of appellants u/s 302/34 of the Indian Penal Code as the occurrence had taken place during a quarrel and that the deceased and the accused suffered injuries during a free fight. We, therefore, set aside the conviction and sentence imposed upon the appellants u/s 302/34 of the Indian Penal Code and the consequence imposed upon them.

11. The fact, we have extracted above, shows that during free fight; the deceased suffered injuries and in the absence of any definite evidence as to who caused the injuries leading to death of Matal Kisku, we are unable to pin down any of the two appellants for holding them guilty u/s 304, Part II of the Indian Penal Code, as there is no definite evidence as to who caused the fatal injury, during a quarrel. We, therefore, find the appellants guilty u/s 324/34 of the Indian Penal Code for which each one of them is sentenced to six months" rigorous imprisonment and this sentence of six months is imposed, taking into consideration the fact that the occurrence had taken place in the year 1983 and that any harsh punishment at this length of time will not serve the ends of justice.

12. In the result, the conviction of the appellants u/s 302/34 of the Indian Penal Code and the consequence sentence imposed upon them are set aside. The appellants are now found guilty for the offence u/s 324/34 of the Indian Penal Code, for which each one of them is sentenced to rigorous imprisonment for six months.

13. It is made clear that the period, in which the appellants have been in jail, either during investigation or after the conviction, will be given set-off.