

(2001) 08 PAT CK 0071

In the Patna High Court

Case No : Criminal Appeal No. 117 of 1990

Khadu Ram, Makhan Ram, Baijnath Ram and Jadu Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0071

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—White Appellant Khedu Ram was tried for offence punishable u/s 302 of the Indian Penal Code (IPC), others, namely, Jaddu Ram, Baijnath Ram, Makhan Ram, Laxmi Ram, Ramashankar Ram, Tappi Ram, Bhola Chamar, Jagernath Ram and Rajbanshi Ram, were tried for offence punishable u/s 302/149 IPC. Appellants Jaddu Ram, Makhan Ram, and Baijnath Ram also stood charged for the offence punishable u/s 323 IPC. The trial court on appreciation of evidences placed on behalf of the State, while acquitted Laxmi Ram, Ramashankar Ram, Tappi Mahara, Bhola Chamar, Jagernath Ram and Rajbanshi Ram of the charges brought against them, rendered verdict of guilt against Appellants Makhan Ram, Baijnath Ram, and Jaddu Ram u/s 323 IPC and sentenced them to suffer rigorous imprisonment for six months. The trial court found Appellant Khedu Ram guilty also u/s 304 Part II IPC, finding him not guilty u/s 302 IPC, and sentenced him to suffer rigorous imprisonment for seven years.

2. Shorn of details, prosecution version based on Station Diary Entry No. 400 dated 23rd March, 1981 was that on the said date at about 6-7 a.m. while Mahavir Ram (P.W. 9) along with Tapsi Ram (P.W. 6) and Bipat Ram (P.W. 8) was harvesting wheat crops from the field for which he had secured an order in a proceeding u/s 144 of the Code of Criminal Procedure (Code of Criminal Procedure) from a competent court, the Appellants emerged holding wooden substances with them and wanted to restrain them from harvesting the crops on premises that since the appeal preferred by them against the findings recorded by the Magistrate in a proceeding u/s 144 Code of Criminal Procedure was

pending before the Court, they would not permit him to harvest the wheat crop. It was alleged that after Mahavir Ram retorted with assertion of his right as vested in him by virtue of an order of the Court, Appellant Khedu Ram dealt lathi blow on his head and it was alleged that when Tapsi and Bipat came for his rescue, they too were subjected to assault by the Appellants. As if this was not enough for the Appellants, it was alleged that after Indrajit Ram (deceased), who was passing through the way, wanted to pacify them advising them to take the matter to Court of Law, Appellant Khedu dealt a severe blow on his head whereupon he dropped to the ground and with these narrations made by Mahavir Ram, first information report was drawn up at Sikta Police Station and investigation commenced. During pendency of investigation, after Inderjit Ram succumbed to the injuries sustained by him, the Investigating Officer held inquest over the dead body of Indrajit Ram, sent the dead body to mortuary for post mortem examination, recorded statement of witnesses, seized blood stained wearing apparels of Inderjit Ram and on receipt of the post mortem report and on conclusion of the investigation, laid charge sheet before the Court and the Appellants along with others were eventually put on trial. At trial, the State examined altogether 11 witnesses which include two doctors, the injured, father of the deceased and also independent witnesses, and the trial court finding the witnesses credible, rendered verdict of guilt against the Appellants and sentenced them in the manner stated above.

3. Now adverting to the evidences placed on record, while one will find P.W. 1 Gopal Prasad to be formal in nature, P.W. 2 Mubarak Mian stated before the Court that while Mahavir, Bipat and Tapsi were harvesting the wheat crops, Khedu Ram, Jaddu Ram, Rajbanshi, Makhan and Baijnath came holding lathi with them when Khedu dealt a lathi blow on Mahavir. He would further state that Khedu, Rajbanshi, Makhan, Jaddu and Baijnath also did assault Tapsi and Bipat and while Indrajit, passing through the way, wanted to pacify them, Khedu dealt a lathi blow on his head when he dashed to the ground. He would further state before the Court that on being exhorted by Bhola Ram, Ramashankar Ram and Tapsi Ram, dealt indiscriminate blows with lathi on Bipat, Mahavir and Tapsi. The injured was carried to the hospital when Indrajit eventually succumbed to the injuries in Bettiah Hospital. He stated to have put signature on the inquest report. He also claimed to be witness to the production of blood stained wearing apparels by Inderjit before the Police Officer. Similar had been evidence of P.W. 3 Mohammad Islam about Khedu, Laxmi, Jaddu and Makhan dealing blows with lathi on Mahavir. About eight persons also came for rescue of Khedu who too assaulted Mahavir and Bipat. About Indrajit, this witness would state that though he advised them not to quarrel and take the matter to the Court, Khedu dealt lathi blows on his head and arms. Indrajit was taken to Sikta Hospital from where he was removed to Bettiah Hospital where he succumbed to the injuries.

Evidence of P.W. 4 Sk. Rauf also was about Khedu dealing blows on Mahavir, when the latter along with Bipat and Tapsi was harvesting wheat crops. He would saddle Rajbanshi, Makhan, Baijnath, Jaddu, Bhola, Jagernath and Laxmi also for

dealing blows on Bipat and Tapsi. About Indrajit, this witness would state that when he wanted to intervene between them, he was assaulted by Khedu with lathi on his head and arms when he dropped to the ground. Narration made by P.W. 6 Tapsi about Mahavir sustaining injuries on his head on being assaulted by Khedu was in similar tune as that of other witnesses when he along with Bipat and Mahavir was harvesting wheat crop in the field. He would also saddle Laxmi, Tapsi, Jaggernath, Ramashankar, Rajbanshi and Bhola about giving blows on them with wooden substance. The evidence of Mahavir Ram (P.W. 9), who was person who set the Police in motion, was in fact reiteration of his earlier version which he rendered before the Police about he along with Bipat and Tapsi sustaining injuries on his person at the hands of the Appellant when they were harvesting wheat crops from the field for which he had secured an order in a proceeding u/s 144 Code of Criminal Procedure. He would state that while he along with Tapsi and Bipat was harvesting the wheat crop in the field, Khedu wanted to restrain them with assertion that as the appeal preferred by him was pending, he would not permit them to harvest the wheat crops from the field and. on being retorted by him, Khedu dealt lathi blows on his head He would assert that he sustained injuries on his wrist and also right leg. About Indrajit, this witness would state that when he wanted to intervene in the matter, Khedu dealt lathi blow on his head. Mahadeo Ram (P.W. 5) stated to have learnt about the incident including assault on his son Indrajit. Though he was not an ocular witness to the incident but claimed to have witnessed injuries on the person of the injured. P.W. 11 Dr. Ashok Kumar Shrivastava stated to have examined Mahavir Ram, Tapsi, Bipat and also Indrajit when he noticed lacerated wound and also abrasion on different parts of person of Mahavir Ram. He stated to have noticed lacerated wound and swelling on the person of Tapsi, and likewise he found lacerated wounds, abrasions and swelling on the person of Bipat. As for Indrajit Ram, the doctor stated to have found lacerated wound on his head and also swelling on other parts of the person. These injuries in the opinion of the doctor were caused by hard and blunt substance and some of the injuries were also found grievous in nature. It seems that after Indrajit succumbed to the injuries, autopsy was held over his dead body by Dr. Sarvesh Prasad Verma (P.W. 7), who stated to have found depressed fracture of 1-1/2 diameter on junction of frontal and occipital bone. Death in the opinion of the doctor was caused by head injury due to hard and blunt substance like lathi. This is all the evidence that has been adduced on behalf of the State.

4. A lot of criticisms were made by the learned Counsel for the Appellants to impeach the propriety of the findings recorded by the trial court and it is sought to be urged with the aid of evidence of Mahadeo Ram (P.W. 5) that if the evidence of this witness was considered to be true on its face value, when Indrajit was admitted in Bettiah Hospital, the doctor attending him did not treat properly and for want of proper treatment, Indrajit eventually succumbed to the injuries. In quick succession, the learned Counsel would urge that even the doctor (P.W. 7) who held autopsy over the dead body, was firm in his opinion that

the injury would become septic after lapse of some time. Contentions were raised that as there was no occasion for the witnesses, who are said to be independent, to assemble at the place of occurrence in the morning hours of the day of incident, they were no better than chance witnesses and hence no reliance can be placed on their testimony rendered before the Court. It is urged that admitted case of the parties was that there was land dispute persisting between the parties and both the parties were putting their rival claims over the disputed land from which wheat crop was being harvested by Mahavir Ram, and in that view of the matter, it is not unlikely that Khedu Ram would exercise his right, as the appeal preferred by him against the findings recorded by the Court of Executive Magistrate was pending. Stress was laid by the learned Counsel for the Appellants about admissions made by some of the prosecution witnesses about presence of injuries on some of the Appellants also, and in this backdrop, it is strenuously urged that since the prosecution had not offered satisfactory explanation about injuries sustained by the Appellants, on that score too, the prosecution case has to be considered to be incredible. learned Counsel for the State would counter the arguments advanced on behalf of the Appellants.

5. Thrust of the prosecution case, as has been stated, was that land dispute was persisting between both the parties in which Mahavir Ram claimed to have secured an order in a proceeding u/s 144 Code of Criminal Procedure. He claims to have sown crops over the disputed land in exercise of his right, he stated to have harvested the standing crops. Evidence of all the prosecution witnesses including that of Md. Mubarak Mian (P.W. 2), Mahammad Islam (P.W. 3) and Sk. Rauf (P.W. 4), who are independent witnesses, was quite coherent on this score. As for injuries suffered by Mahavir Ram, there was evidence of P.Ws. 2 and 3 about Mahavir sustaining injuries on his person at the hands of Khedu Ram. There were evidences of P.Ws. 4, 6 and 9 about Mahavir sustaining injuries on his head at the hands of Khedu Ram. The prosecution witnesses including P.Ws. 4 and 6 would also state about Mahavir sustaining injuries on his arms and also left knee and if one goes to the evidence of the doctor who claims to have clinically examined Mahavir Ram, he noticed corresponding injuries on his person. As for Tapsi, P.Ws. 6 and 9 would state that he sustained injuries on his head. P.W. 6 would also state about Tapsi sustaining injuries on his right elbow, right thigh and right knee and there are corresponding findings of the doctor about Tapsi sustaining injuries on these parts of his person for which Jaddu, Makhan and Baijnath are said to be the authors. As for Bipat Ram, P.Ws 6 and 9 would state that he sustained injuries on his right hand and also right leg and the doctor claimed to have found corresponding injuries on his person.

6. Now, adverting to the evidence of the doctor, who held autopsy over the dead body of Indrajit, as has been stated, there was depressed fracture on junction of frontal and occipital bone and for the said injury none but Khedu was suggested to be the author and in this backdrop of evidence placed on record, one cannot help feeling that narration made by the witnesses about their sustaining injuries on their person had received ample corroboration from the findings recorded by

the doctor. The prosecution had also examined Investigating Officer and in conformity with the prosecution case, he found that the place of occurrence was 84 decimals of land north to the railway track and it was the property of the Railways which was shown to have been settled to Mahavir Ram. True it is that the injuries sustained by the Appellants had also been admitted by some of the witnesses including P.Ws. 4, 6 and 9. The Appellants had relied on Exhibits A and A/1 which were xerox copies of the injury reports placed on the record on behalf of the Appellants, ostensibly to suggest that Jaddu and Khedu too sustained injuries on their persons in the same transaction. Though the defence too had examined one witness to buttress the contentions raised at Bar and also xerox copy of the first information report (exhibit-B) was placed on record, but one cannot help feeling that the evidence sought to be placed on the record on behalf of the Appellants fail to produce the desired result as neither original injury reports were ever brought on the record nor the doctor who examined injuries on their persons was ever examined at trial and once this situation is accepted, the Court was not obliged to take notice about the injuries said to have been sustained by some of the Appellants. Even if the arguments canvassed on behalf of the Appellants about some of the Appellants sustaining injuries on their persons in the same transaction was accepted for a moment, that would not change the case of the Appellants any further as law which holds good now after authoritative pronouncements of the Apex Court in the case of Vijayee Singh and others Vs. State of U.P., was that even if prosecution had not explained the injuries on the part of the defence, that would not render the prosecution case entirely untrue. The evidence placed on the record do suggest and also there has been objective finding of the I.I. that the place of occurrence situates north to the Railway track where the incident took place when Mahavir along with Bipat and Tapsi was harvesting wheat crops.

7. However, there are some disturbing features also in the prosecution case which cannot remain unnoticed. Firstly, if the evidence of Mahadeo Ram (P.W. 5) was taken into consideration, Indrajit while losing battle for his life, rendered a dying declaration before his father when even Mubarak Mian (P.W. 2), Md. Islam (P.W. 3) and Sk. Rauf (P.W. 4) were also present but barring the evidence of the father of the deceased on this score, no such narration was ever made by any witness including that of Mubarak, Rauf and Islam, who were suggested to be independent witnesses. Secondly, though the Police claimed to have seized blood stained wearing apparel of Indrajit Ram for which a seizure memo was prepared, which is Exhibit 7, the recitals made therein are quite erroneous on the face of it as the said wearing apparels were shown to be produced before the Police by none-else but Indrajit Rai son of Mahavir Ram. This is admitted that Indrajit was not the son of Mahavir Ram but the son of Mahadeo Ram and that apart, if the evidence of Mahavir Ram (P.W. 9) was taken into consideration, no such wearing apparel with marks of blood was ever produced before the Police Officer. Though attention of some of the witnesses were drawn by the defence challenging their statements rendered in the Court and that being not in conformity with the

statement rendered before the Police they do (sic) appear to be (sic) detract the probative value of the evidence of these witnesses. Though the counsel for the defence confronted the I.O. with volume of questions shown to have been not stated by the witnesses before the Police, no significance can be attached to them even if be negated, as attention of those witnesses were never drawn by the defence. Though some embellishments were sought to be introduced by the prosecution in the statement of the witnesses to saddle Laxmi, Makhan, Rama Shankar, Tappi Bhola, Jagernath and Rajbanshi also with these allegations but rightly the trial court did not find their complicity in the occurrence and they were acquitted of the charges. It is admitted that Indrajit was in no way concerned with the affairs of either the prosecution or the Appellants. As was admitted by the witnesses, in no way he was concerned with the disputed land. He was simply a passerby and it was for the good of both the parties that he advised them not to resolve the dispute in the field and to take the matter to the Court of law. However, innocent Indrajit suffered the wrath of Khedu who dealt severe blow on his head when he eventually succumbed to the injuries in Bettiah Hospital. Though arguments were sought to be made that case of Khedu did not fall within the ambit of Section 304 Part II" IPC, no such finding was ever recorded by the doctor who held the autopsy over the dead body of Indrajit that the injuries got septic for which Indrajit succumbed to the injuries. Evidence of all the witnesses coupled with the findings of the doctor cannot be brushed aside merely on the strength of the evidence of the father of the deceased that the doctor attending him did not treat him properly due to which his son died. As there was no evidence to attract the (sic) to Khedu within the mischief of Section 302 IPC rightly he was convicted by the trial court u/s 304 Part II IPC, as there was evidence to show that the act was committed by Khedu Ram, with knowledge which was likely to cause death but without intention to cause death or to cause such bodily injury as was likely to cause death. As accusations made against him was about dealing lathi blow on the head of Indrajit, evidences placed on record have been rightly appreciated by the trial Court. Hence, the findings recorded by the trial court holding Appellant Khedu guilty u/s 304 Part II IPC is accordingly upheld.

8. learned Counsel would urge that since the Appellant has suffered rigours of the prosecution for about 20 years, the Court should take a lenient view while awarding sentence against him. This Appellant has not remained in custody for long in post conviction period. However, considering the rigours of the prosecution, as has been urged at Bar, for about 20 years, sentence awarded to Appellant Khedu Ram is reduced to three years. As for conviction of other Appellants u/s 323 IPC, instead of sentencing them to suffer substantive imprisonment, they are sentenced to pay a fine of Rs. 500/- (five hundred) each, and in default, to undergo rigorous imprisonment for two months and with these modifications in the order of sentence, this appeal is dismissed. Bail bonds of Appellant Khedu Ram are cancelled and he is directed to surrender. The trial court is also directed to take him in custody forthwith to serve the remaining

sentence. In case of other Appellants also follow up action should be taken by trial court.