
(2003) 07 JH CK 0084
In the Jharkhand High Court
Case No : Criminal Appeal No. 180 of 1994

Mukti Prasad Rai and Others	Vs	APPELLANT
State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 302, 307, 34

Citation : (2003) 3 JCR 641

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : Pankaj Kumar, for the Appellant; Vijay Gopal, APP, for the Respondent

Final Decision : Dismissed

Judgement

Lakshman Uraon, J.—The appellants have preferred this appeal against the judgment and order of conviction and sentence dated

23.2.1994, passed by Sri Alakh Kumar Dubey, learned 1st Additional Sessions Judge, Deoghar, in Sessions Trial No. 79 of 1992/54 of 1992,

whereby and whereunder, appellants Bhangi Prasad Rai, Manohar Prasad Rai and Bharat Prasad Rai have been convicted u/s 302/34 of the

Indian Penal Code and 307 of the Indian Penal Code whereas" appellants Mukti Prasad Rai and Parmeshwar Prasad Rai have been convicted u/s

302/114 of the Indian Penal Code and all of them have been sentenced to undergo imprisonment for life thereunder. Appellant Shakti Prasad Rai

has died during the pendency of this appeal.

2. The prosecution case has arisen on the basis of the First Information Report (Ext. 1/1), lodged by the informant Sikandar Prasad Rai (PW 6) on

13.11.1989 at 20.15 hours, alleging therein, that on the same day at about 3.00 to 4.00 p.m. pumpkin (Kaddu) of Ram Prasad Rai was plucked

off by Rambha Kumari, daughter of appellant No. 1 Shakti Prasad Rai, which was seen by the wife of the informant. When the owner tried to enquire as to who plucked the pumpkin, wife of the informant revealed that it was Rambha Kumari, daughter of appellant Shakti Prasad Rai, who had plucked the pumpkin and took away the same. Being aggrieved, wife of Shakti Prasad Rai and Bhangi Prasad Rai abused the wife of the informant, using filthy languages. On the protest made by informant and his father Kartik Prasad Rai, all the appellants, namely, Mukti Prasad Rai, Parmeshwar Prasad Rai and Bhangi Prasad Rai, all sons of Nathu Prasad Rai, Manohar alias Manu Prasad Rai and Bharat Prasad Rai along with Shakti Prasad Rai (since dead) forming an unlawful assembly entered into the courtyard of the informant. Appellant Bhangi Prasad Rai was having iron rod in his hand and the others had lathi in their hands. All of them surrounded the informant and his father. Appellants Mukti Prasad Rai and Parmeshwar Prasad Rai, besides Shakti Prasad Rai aforesaid, instigated and threatened both the informant and his son to be killed. On their instigation, appellant Bhangi Prasad Rai assaulted with iron rod on the head of Kartik Prasad Rai, causing bleeding injury. Appellant Mahohar alias Manu Prasad Rai and Bharat Prasad Rai assaulted him with lathi, as a result of which Kartik Prasad Rai fell down. The informant when went to rescue his father, appellant Bhangi Prasad Rai and Bharat Prasad Rai assaulted him with iron rod and lathi respectively. He also fell down. On their alarms. Tiro Prasad Rai (PW 3), Saligram Rai (PW 1) and Bishun Rai, including others rushed there and saw the alleged occurrence. Father of the informant became unconscious. Thereafter the assailants fled away. The villagers took the injured informant and his unconscious father to the police station where First Information Report of the informant was recorded, on which he signed. PW 2 Dhananjay Prasad Rai also signed (Ext. 1) on it. The injured Kartik Prasad Rai was taken to Deoghar for treatment where he succumbed to his injuries and hence Section 302, IPC was added in the First Information Report.

3. Appellant Bhangi Prasad Rai, Manohar Prasad Rai and Bharat Prasad Rai were charged under Sections 302/34 and 307, IPC and have been convicted under both the Sections but it appears that the learned 1st Additional Sessions Judge, Deoghar, is silent about the sentence, passed

against them u/s 307, IPC whereas they have been convicted and sentenced to undergo imprisonment for life. Appellants Mukti Prasad Rai and

Parmeshwar Prasad Rai, including Shakti Prasad Rai aforesaid, have been charged u/s 302/114, IPC for abetting the commission of murder in

whose presence the other three co-accused assaulted Kartik Prasad Rai, resulting his death, who were convicted and sentenced to undergo

imprisonment for life. During pendency of this appeal, Shakti Prasad Rai had died regarding which an affidavit has been sworn by Mahavir Prasad

son of late Chanarik Sao, and, as such, the appeal against him stands abated and his name is expunged from the title page of this appeal.

4. The learned 1st Additional Sessions Judge recorded the evidence of altogether eight witnesses. PW 1 Salo alias Saligram Rai, PW 3 Tiro

Prasad Rai and PW 6 informant Sikandar Prasad Rai are the eye-witnesses of the alleged occurrence. They have informed Dhananjay Prasad Rai

(PW 2) and Kailash Rai (PW 4), who also saw injured Kartik Rai fallen down in unconscious condition and also saw the informant Sikandar

Prasad Rai in injured condition, due to assault by the appellants. PW 5 A.K. Chatterjee has conducted the post mortem examination on the dead

body of Kartik Rai. Post mortem report is Ext. 1 in his pen and signature. PW 7 Randhir Singh is the Investigating Officer and PW 8 is Dr.

Rajendra Prasad Singh, who examined the injured informant Sikandar Prasad Rai, who examined the injured informant Sikandar Prasad Rai and

issued injury report (Ext. 3).

5. The appellants have also examined three Defence Witnesses out of whom, DW 1 is Dindayal Choubey and DW 2 is Dr. A.K. Chatterjee, who

examined the appellants Bhangi Prasad Rai and Bharat Prasad Rai. Exts. A and A/1 are the injury reports issued by him. DW 3 Bharat Prasad Rai

is the appellant himself. The defence has taken a plea that it was the informant and his father Kartik Prasad Rai, who assaulted appellant Bhangi

Prasad Rai and Bharat Prasad Rai, who sustained injuries on their persons and in course of scuffle. Kartik Prasad Rai, being an old man, fell down

and sustained head injury, resulting in his death subsequently.

6. The learned 1st Additional Sessions Judge considered the evidence of the informant (PW 6), corroborated by the eyewitnesses, namely, PW 1

Saligram Rai and PW 3 Tiro Prasad Rai, who informed PW 2 Dhananjay Prasad

Rai and PW 4 Kailash Rai about the alleged occurrence, besides the evidence of the medical witness (PW 5) and the objective finding of the I.O. Randhir Singh (PW 7) as also the injury found by Dr. Rajendra Prasad Singh (PW 8) on the person of the informant and convicted the appellants and sentenced them to undergo imprisonment for life for the charges, framed against them.

7. Assailing the judgment and order of conviction and sentence, passed by the learned 1st Additional Sessions Judge, learned counsel for the

appellants has argued that the informant Sikandar Rai and his father Kartik Rai assaulted the appellants Bharat Prasad Rai and Bhangi Rai and in

course of scuffle, Kartik Rai fell down on a stone and sustained injury on his head, Dr. A.K. Chatterjee has examined the injured appellants Bharat

Prasad Rai and Bhangi Prasad Rai and having found injuries on their persons, issued injury reports Exts. A and A/1 respectively. The learned

Court below did not consider the defence version of the case properly. There is contradictory statements in the depositions of PW 6, PW 1 and

PW 3, who are the alleged eye-witnesses of the alleged occurrence. PW 1, PW 2, PW 3 and PW 6 are closely related with each other and are

interested witnesses. PW 1 Saligram Rai is the cousin brother of the deceased whereas PW 2 Dhananjay Rai and PW 6 Sikandar Rai are the sons

of the deceased. PW 3 Tiro Rai is full brother of the deceased whereas PW 4 is the nephew of the deceased. No independent village witnesses

has come forward to support the case of the prosecution, taking oath in this case. Bishun Prasad Rai, an independent witness, named in the First

Information Report as eye-witness of the alleged occurrence, has not been examined by the prosecution. The prosecution has failed to explain the

injuries sustained by the appellants, namely, Bhangi Prasad Rai and Bharat Prasad Rai on their persons. On these ground, it was submitted that the

judgment and order of conviction and sentence passed against the appellants can not be sustained and is, as such, liable to be set aside.

8. Refuting the arguments, advanced by the learned counsel appearing on behalf of the appellants, the learned APP has submitted that all the

witnesses and the appellants are neighbourers, having their houses adjacent to each other. Only due to trifling matter, regarding plucking the

pumpkin, belonging to Ram Prasad Rai, by the daughter of Shakti Prasad Rai, an

altercation took place in between the females, as a result of which the appellants armed with iron rod and lathi, threatening and instigating, entered into the courtyard of the informant. The eye-witnesses PW 1 Salo Rai, PW 3 Tiro Prasad Rai and PW 6 informant Sikandar Prasad Rai, who is injured witness, have deposed that Bhangi Prasad Rai assaulted on the head of Kartik Rai with iron rod whereas the other appellants, namely, Manohar Rai and Bharat Rai assaulted him with lathi. When the informant tried to rescue his father, he was also assaulted by Bhangi Rai with iron rod and by Bharat Rai with lathi, causing injury on his person. The anti mortem injuries found on the person of the deceased by PW 5, the medical witness, as well as the injuries found on the person of PW 6, the informant, by PW 8, the medical witness, corroborate the manner of occurrence as deposed by the said ocular witnesses as well as averred in the FIR. The defence has examined DW 2 Dr. A.K. Chatterjee, who has been examined as PW 5 by the prosecution. At the time of his cross-examination, the defence has not cross-examined him on the point that he has also examined Injured appellants Bhangi Prasad Rai and Bharat Prasad Rai and issued injury report (Exts. A and A/1 respectively). DW 1 Dindayal Choudhary and DW 3 appellant Bharat Prasad Rai have deposed that in course of scuffle in the courtyard, informant Sikandar Prasad Rai and his father Kartik Rai assaulted Bhangi Rai and Bharat Rai, causing injuries on their persons and in course of scuffle, Kartik Rai fell down and received injury on his head, resulting his death. But DW 3 appellant Bharat Rai had not informed the police for institution of any case about the alleged occurrence. The injured appellants were also not examined on the day when the occurrence took place rather they have been examined by DW 2 Dr. A.K. Chatterjee in his private clinic on 14.4.1989, showing that they sustained simple injuries, caused by hard and blunt substance when the injuries are simple and injury reports were produced subsequent, in such a situation the prosecution is not bound to explain the injuries sustained on the persons of the appellants. On these grounds the learned APP has submitted that the learned 1st Additional Sessions Judge has considered all the pros and cons of the evidence, adduced by both the parties and has rightly convicted and sentenced the appellants to undergo imprisonment for life.

9. The genesis of the occurrence, as alleged in the First Information Report, is that Rambha Kumari, daughter of Shakti Prasad Rai (since dead)

plucked the pumpkin of Ram Prasad Rai. When there was search as to who plucked the pumpkin, the wife of the informant Sikandar Prasad Rai,

who had seen Rambha Kumari plucking the pumpkin, revealed her name which annoyed the wife of Shakti Prasad Rai and Bhangi Prasad Rai and

they started abusing her in filthy languages. When Sikandar Prasad Rai and his father Kartik Prasad Rai objected to, appellants assaulted Kartik

Prasad Rai and his son Sikandar Prasad Rai (informant). Sikandar Prasad Rai sustained injuries on his person whereas his father on being injured

with iron rod and lathi on his head became unconscious and thereafter the informant and his father both were taken to police station where First

Information Report of Sikandar Prasad Rai was recorded and his father was shifted to Deoghar Hospital for treatment where he died. The alleged

occurrence took place in the courtyard of the informant. The defence by examining the defence witness has taken a plea that it was Sikandar

(informant) and his father Kartik Rai, who assaulted appellants Bhangi Prasad Rai and Bharat Prasad Rai, who sustained injuries on their persons.

Thus, the genesis of the alleged occurrence, the place of the alleged occurrence and presence of appellants Bhangi Prasad Rai and Bharat Prasad

Rai, injured informant Sikandar Prasad Rai and his father Kartik Prasad Rai at the place of occurrence is not in dispute.

10. PW 6 Sikandar Prasad Rai (informant) and his father Kartik Prasad Rai had gone to make protest to the females, who were hurling filthy

abuses, whereupon the appellants Bhangi Prasad Rai having iron rod in his hand and other five having lathi in their hands, entered into the courtyard

of the informant. Shakti Prasad Rai (since dead) along with appellant Mukti Prasad Rai and Parmeshwar Prasad Rai instigated and abetted to

assault both the informant Sikandar Prasad Rai and his father Kartik Prasad Rai to cause their death. PW 6 Sikandar Prasad Rai has deposed that

all the appellants along with Shakti Prasad Rai surrounded him and his father. Appellant Bhangi Prasad Rai assaulted with iron rod on the head of

his father, resulting bleeding injury. Appellant Manohar Rai and Bharat Prasad Rai assaulted Kartik Rai with lathi, as a result of which Kartik Rai

fell down and became unconscious. When Sikandar Prasad Rai went to save his father, appellant Bhangi Prasad Rai assaulted him with iron rod on

his forehead, causing bleeding injury and appellant Bharat Prasad Rai assaulted him with lathi on his shoulder. On being injured, he also fell down.

Thereafter he was also given two to three lathi blows on his back. Tiro Rai (PW 3) and Saligram- Rai (PW 1) were also in the courtyard, who

have witnessed the alleged occurrence. Later on Dhananjay Prasad Rai (PW 2), elder brother of the informant, and Kailash Rai (PW 4) along with

Bishun Rai and Shakti Rai went there, who were informed by the informant about the alleged occurrence. The evidence of injured informant (PW

6) has been corroborated by the eye-witnesses, namely, Saligram Rai (PW 1) and Tiro Prasad Rai (PW 3), without any contradiction. They have

narrated the manner of the alleged occurrence to PW 2 Dhananjay Prasad Rai and PW 4 Kailash Prasad Rai. PW 2 Dhananjay Prasad Rai saw

the informant and his father in injured condition, who took them to Sarath Police Station where in his presence, First Information Report of

Sikandar Prasad Rai was recorded on which he signed as a witness (Ext. 1). PW 4 Kailash Prasad Rai also saw the injuries on the head of Kartik

Rai, who was also informed by the informant and Tiro Rai that Bhangi Rai assaulted him with iron rod on his head on other two, namely, Manohar

Rai and Bharat Rai assaulted with lathi. Kartik Rai was sent to Deoghar Hospital where he died. Dr. A.K. Chatterjee (PW 5) on 14.11.1989 at

11.10 a.m. held autopsy on the dead body of Kartik Prasad Rai and found the following injuries on his person :

(i) One lacerated injury 1-1/4" x 1/2" x bone deep on left perital region of skull. He found blood clot below the scalp and there was depressed

fracture of the left perital bone.

(ii) Two abrasions on left hand each 1/2" x 1/3" on the left hand dorsum near thumb.

(iii) One defused swelling 2" x 1" on right forearm.

On further dissection he found fracture of right radius and ulna.

Time elapsed since death was found 24 hours from the time of post mortem examination. The cause of death in his opinion was due to shock and

haemorrhage, as a result of injury Nos. 1 and 3. Ext. 1 is the post mortem report in the pen and signature of this witness. In his cross-examination,

PW 5 has deposed injury No. 1 was caused by a single blow, which may be possible by fall on stone. Injury No. 2 is possible by scratch by nail

and injury No. 3 is not on the vital part of the body, which is not the cause of death.

11. The I.Q. Randhir Singh (PW 7) found the place of occurrence to be the courtyard of the informant Sikandar Prasad Rai. He found blood

stained soil which he seized and prepared seizure list. He prepared the inquest report (Ext. 2) of the dead body of Kartik Prasad Rai and sent the

same for post mortem examination. PW 8 Dr. Rajendra Prasad Singh on 14.11.1989 examined injured informant Sikandar Prasad Rai and found

the following injuries :

(i) One bruise on forehead, measuring 2" x 1/2" leading to most probably semi unconsciousness.

(ii) One bruise on left eye-brow measuring 1" x 1/2".

(iii) One lacerated wound on the left shoulder joint measuring 1" x 3/4".

In his opinion, injuries were caused within 24 hours. He further opined that injury No. 1 was dangerous to life without proper treatment. Injury

Nos. 1 and 3 were simple in nature, all caused by hard and blunt substance. Ext. 3 is the injury report, issued in his pen and signature.

12. The evidence of PW 6, the informant, stands corroborated in material particulars by PW 1 and PW 3 who are the ocular witnesses of the

occurrence in question. The evidence of PW 2 and PW 4, though hearsay witnesses, regarding the actual commission of the occurrence, has its

relevancy as immediately soon after the occurrence they had come to the place of occurrence and found Kartik and the informant fallen on ground

in the courtyard having injuries on their persons PW 5 Dr. A.K. Chatterjee found anti mortem injury on the left parietal region of skull of Kartik

Prasad Rai, which was fracture and two injuries; one abrasion on the left hand and one defused swelling on the right forearm, which corroborates

the ocular evidence of the eye-witnesses and the informant that Kartik Prasad Rai was given one iron rod blow by appellant Bhangi Prasad Rai

whereas the other two appellants Manohar Rai and Bharat Prasad Rai assaulted him with lathi corroborates the ocular evidence of the witnesses.

PW 8 Dr. Rajendra Prasad Singh, who examined the injured informant Sikandar Prasad Rai, found three injuries on his person i.e. One bruise on

forehead, which was dangerous to life, caused by hard and blunt substance and appellant No. 2 Bhangi Prasad Rai was the author of his injury and

the other two injuries were caused by appellant Manohar Rai and Bharat Prasad Rai on his person. Thus, the ocular evidence regarding manner of

the alleged occurrence on the injured informant also finds corroborated by the medical evidence of Dr. Rajendra Prasad Singh (PW 8).

13. On the other hand, the defence has taken a plea that Kartik Prasad Rai and Sikandar Prasad Rai assaulted Bhangi Prasad Rai and Bharat

Prasad Rai (appellants) , causing injuries on their person. They were examined in the private clinic of Dr. A.K. Chatterjee (DW 2), who has been

examined as PW 5 and who conducted the post mortem examination on the dead body of Kartik Prasad Rai on 14.11.1989. On the same day, he

examined Bhangi Prasad Rai and Bharat Prasad Rai at about 12.30 p.m. and 12.40 p.m. respectively and found three bruises on the person of

appellant Bhangi Prasad Rai and three bruises and one swelling with lacerated wound on the person of appellant Bharat Prasad Rai. The alleged

occurrence took place on 13.11.1989. On that day these injured appellants were not examined anywhere but in a private clinic of Dr. A.K.

Chatterjee, they got themselves examined and the injuries are simple in nature. DW 3 appellant Bharat Prasad Rai has deposed that he had not

informed the police about the alleged occurrence rather he admitted that having heard altercation of the females in filthy languages in between the

wives of Sikandar, Dhananjay and Bhangi Rai as also his mother, when he tried to pacify, Sikandar Rai, as alleged by him, assaulted him and

Bhangi Prasad Rai with lathi. In course of snatching the lathi, Kartik Rai fell down on the stone and sustained injury on his head. He did not inform

the police about the alleged occurrence. He even did not go to the Primary Health Centre, Sarath, where doctor is available. Sarath Primary

Health Centre is at a distance of 3 kosh and Deoghar is situated at a distance of 25 kosh. However, the injured appellants preferred to go to

Deoghar for treatment by Dr. A.K. Chatterjee (DW 2) on 14.11.1989, which creates doubt in the defence version itself. The learned 1st

Additional Sessions Judge has rightly brushed aside the defence version and has relied on the evidence of the eyewitnesses i.e. PW 1, PW 3 and

PW 6. corroborated by the evidence of the doctors (PWs 5 and 8) and has convicted the appellants accordingly.

14. All the appellants having armed with iron rod and lathi entered into the courtyard of the informant and surrounded the informant Sikandar

Prasad Rai and his father Kartik Prasad Rai. Shakti Prasad Rai (since dead), appellants Mukti Prasad Rai and Parmeshwar Prasad Rai instigated and abetted the other appellants, namely, Bhangi Prasad Rai, Manohar Prasad Rai and Bharat Prasad Rai, to cause murder of the informant and his father Kartik Prasad Rai both. On their abetment and instigation, appellants Bhangi Prasad Rai assaulted with iron rod once to Kartik Rai and appellants Manohar Prasad Rai and Bharat Prasad Rai assaulted with lathi on the person of Kartik Prasad Rai. On being injured Kartik Prasad Rai sustained bleeding injuries on his head who became unconscious and fell down. When Sikandar Prasad Rai (PW 6) went to save his father, Bhangi Prasad Rai assaulted on his head with iron rod, causing bleeding injury which was found to be dangerous for life by Dr. Rajendra Prasad Singh (PW 8). He was also assaulted with lathi by appellants Bharat Prasad Rai and Manohar Prasad Rai these injuries stood corroborated by the evidence of PW 8. Considering all the pros and cons of the prosecution case, I am of the conformed opinion that all the appellants entered into the courtyard of the informant and on being abetted by Shakti Prasad Rai (since dead) appellants Mukti Prasad Rai and Parmeshwar Prasad Rai, appellants Bhangi Prasad Rai, Manohar Prasad Rai and Bharat Prasad Rai assaulted the informant and his father with iron rod and lathi. All the appellants had entered into the courtyard of the informant, forming an unlawful assembly. Thus, their intention was clear to cause murder of both the informant and his father, being members of an unlawful assembly in furtherance of their common object. The learned Court below has meticulously considered all the pros and cons of the prosecution case and the plea taken by the defence and has rightly convicted the appellants for the charges, framed against them. As such, I do not find any infirmity in the impugned judgment and order of conviction and sentence, passed by the learned Court below. The witnesses i.e. PW 1, PW 3, and PW 6 are the eye-witnesses of the alleged occurrence. They have corroborated the prosecution case without any contradiction, corroborated by the medical evidence. Hence their evidence can not be brushed aside only on the ground that they are interested witnesses and are closely related with each other. On the other hand, the defence version is not found natural and probable, in the facts and circumstances of the case, as discussed above.

15. Viewed thus, I do not find any infirmity in the impugned judgment and order of conviction and sentence, passed by the learned Court below.

As such, I find that there is no merit in this criminal appeal, which accordingly, fails and is hereby dismissed and the impugned judgment and order

of conviction and sentence, passed against the appellants under Sections 302/34, 302/114 and 307 of the Indian Penal Code respectively is

hereby affirmed. All the, appellants, namely, Manohar Prasad Rai, Bharat Prasad Rai, Mukti Prasad Rai and Parmeshwar Prasad Rai are on bail,

whose bail bonds are cancelled and they are directed to surrender in the Court below to serve out their sentence. The learned Court below is also

directed to take all coercive steps to apprehend these appellants who are on bail, to serve out their sentences.

Vishnudeo Narayan, J.

16. I agree.