
Satyendra Narayan Das Vs State Of Assam

Criminal Appeal No. 25 Of 2017

Court: Gauhati High Court

Date of Decision: Nov. 24, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 313#Indian Penal Code, 1860 " Section 34, 302, 304II, 323

Hon'ble Judges: Michael Zothankhuma, J; Malasri Nandi, J

Bench: Division Bench

Advocate: J. Roy, B. Bhuyan, N. Ahmed

Final Decision: Disposed Of

Judgement

1. Heard Mr. J. Roy, learned Senior Counsel for the appellants. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam for the

State/respondent No.1 and Mr. N. Ahmed, learned Amicus Curiae for the respondent No.2.

2. This appeal has been filed against the judgment dated 21.12.2016 passed by the Additional Sessions Judge, Bilasipara, Dhubri in Sessions Case

No.132/2006, by which the appellants Satyen Das @ Satyendra Narayan Das and Balen Das @ Bulen Das have been convicted under Sections

323/34 IPC and sentenced to undergo rigorous imprisonment for 1(one) year. The other two appellants, namely, Manoj Das and Khargeswar Das

have been convicted under Sections 302/34 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5,000/- (Rupees five

thousand) each, in default of payment of fine, they are to suffer rigorous imprisonment for 6(six) months. The appellants Manoj Das and Khargeswar

Das were also convicted under Sections 323/34 IPC and sentenced to undergo rigorous imprisonment for 1(one) year.

3. It may be mentioned here that the appellant Satyen Das is the father of the other appellants, i.e. Manoj Das, Khargeswar Das and Bulen Das.

4. The prosecution case, in brief, is that an FIR dated 16.05.2003 was submitted by the wife of the deceased, Prosecution Witness (PW) No.7 to the

In-charge of the Raniganj Police Out Post. The FIR stated that around 5 P.M. on 15.05.2003, the appellants who were their neighbours assaulted the

informant's husband in his house, making him unconscious. While fleeing from the place, they also assaulted the informant's relative, Shri

Pratap Das (PW-3) who worked in their house. The informant also stated that all the appellants were armed with lathis and spears. Her husband was

given medical treatment and as per doctor's advice, they were taking him to Dhubri for better treatment. However, the informant's husband

died on the way.

5. In pursuance to the FIR, Bilasipara P.S. Case No.76/2003 under Sections 302/323/34 IPC was registered on 17.05.2003. After investigation of the

case by the Investigating Officer, who found a prima-facie case against the appellants under Sections 323/302/34 IPC, he submitted the charge-sheet.

6. The learned Trial Court framed charges under Section 302 IPC read with Section 34 IPC and Section 323 IPC read with Section 34 IPC against all

the appellants, to which they all pleaded not guilty and claimed to be tried.

7. The learned Trial Court thereafter examined 9(nine) Prosecution Witnesses (PW) and after examining the appellants under Section 313 Cr.P.C.,

came to a finding that the prosecution had been able to bring home the guilt of the appellants Satyen Das @ Satyendra Narayan Das and Balen Das

@ Bulen Das under Sections 323 IPC read with Section 34 IPC. The learned Trial Court also came to a finding that Section 302 IPC had not been

proved against the above two appellants. However, in respect of the appellants Manoj Das and Khargeswar Das, the learned Trial Court came to a

finding that they were guilty of the offence under Sections 302/34 IPC and 323/34 IPC.

8. Subsequent to the conviction of the appellants in terms of the findings of the learned Trial Court, the appellants were sentenced, as reflected in the

foregoing paragraphs.

9. Being aggrieved by their conviction and sentence, the present appeal has been filed. Mr. J. Roy, the learned Senior Counsel for the appellants

submits that the evidence of the witnesses show that the assault made on the deceased had started with the cows of the appellants and the cows of

the deceased fighting one another. It was due to the owners of the cows joining the fray that the appellants had suddenly, in the heat of the moment,

assaulted the deceased. He submits that there was no premeditation or intention to kill the deceased and as such, the appellants should not have been

convicted under Section 302 IPC, but could have been convicted under Section 304 Part II IPC.

10. Mr. Roy also submits that the appellant Satyen Das is 82 years of age, while Manoj Das is 42 years, Khargeswar Das is 38 years and Bulen Das

is 33 years. He submits that keeping in view the fact that there was no intention to kill the deceased, coupled with the ages of the appellants, some

leniency should be shown to the appellants.

11. Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam, on the other hand, submits that PW-2, PW-3 and PW-4 are eye-witnesses to the

appellants assaulting the deceased. She submits that in terms of the judgment of the Supreme Court in the case of State of Madhya Pradesh Vs. Jad

Bai, reported in (2023) 6 SCC 552, prior meeting of mind/premeditation is not required to prove the charge of murder, as the common intention to kill

had arisen during the course of the occurrence on the spot.

12. Ms. Bhuyan also submits that the blows which were inflicted upon the deceased shows that it was on the vital part of the body, i.e. head. The

evidence also shows that the brain matter of the deceased had come out, which showed the intensity of the blows inflicted upon the head of the

deceased. As such, it cannot be said that there was no intention to kill the deceased.

13. Ms. Bhuyan also submits that the deceased was a 37 year old person. As such, this Court should keep in view the fact that the family has lost a

strong young man who would have looked after the family. She thus submits that Section 304 Part II IPC is not attracted in the present case.

14. Mr. N. Ahmed, learned Amicus Curiae submits that the evidence of PW-2, PW-3 and PW-4 proved that the appellants Manoj Das and

Khargeswar Das had intentionally killed the deceased and that Satyen Das and Bulen Das had assaulted the deceased with bamboo sticks. As such,

there being no infirmity with the decision of the learned Trial Court, the same should not be interfered with.

15. We have heard the learned counsels for the parties.

16. The evidence of PW-1, who is the Doctor who had examined PW-3, i.e. the neighbor of the deceased and who had also been assaulted by the

appellants, is to the effect that there was pain, tenderness and swelling over the right shoulder joint of PW-3. There was tenderness over the neck

region. There was also tenderness over left scapular region. In the opinion of PW-1, the nature of the injuries was simple and caused by a blunt

object.

17. The evidence of PW-2, who is the neighbor of the appellants and the mother of the deceased, is to the effect that at about 5:30 P.M., about 3

years ago, while she was in the courtyard of her house, she saw an altercation and scuffle between PW-3 and the appellant Manoj Das, over some

cow related issue. Appellant Manoj Das was beating the cow of PW-2 with a bamboo pole. She then saw the appellant Satyen Das assaulting PW-3

with a bamboo pole. The other three appellants also assaulted PW-3. On raising a hue and cry, the deceased came out of the house and stood near

her. As soon as the deceased stood near PW-2, the appellant Khargeswar brought a yoke from their cow shed and hit the head of the deceased with

it. The deceased then sat down. While being in that position, the appellant Manoj Das hit the head of Hitesh with a wooden batten, due to which his

head cracked and brain flowed out. Thereafter her nephew Arun came and drove away the appellants. As the deceased fell to the ground, they

carried him into the house. The doctor came and gave him treatment. Later he was taken to Dhubri for treatment, but he expired.

In her cross-examination, PW-2 stated that her ploughman (PW-3) was bringing home the cows from the paddy field. When the cows of PW-2 were

near the cows of the appellants, their cows got into a fight. Then the appellant Manoj Das tried to drive away the cows of PW-2 by hitting them.

When PW-3 questioned Manoj Das as to why he was hitting their cows, a quarrel ensued. Thereafter, PW-2 stated that she asked PW-3 to bring

home the cows. As she was shouting, the deceased came out. At the time of the assault on the deceased, the deceased was preparing "khoini" (a

mixture of tobacco and lime). PW-2 in her cross-examination also stated that the yoke was taken/seized by the police.

18. The evidence of PW-3 is to the effect that he knew the deceased. While working as a domestic help in the house of the deceased about 3 years

ago, he was bringing home the cows from the paddy field, at around 5:30/6:00 P.M. While bringing home the cows, two cows of the appellants got into

a fight with the cows of the PW-2. When he tried to separate the cows, the appellant Manoj Das beat their cows with a bamboo. PW-3 then told him

not to beat the cows. When he started leaving with the cows, the appellant Khargeswar Das grabbed him from behind and the other 3 appellants

caught him and started assaulting him with bamboo sticks on his head, back and legs. The deceased then came out from his house and tried to

separate PW-3 from the appellants. The appellants then pushed away PW-3 and started assaulting the deceased. He saw the deceased lying on the

ground with bleeding injuries on his head and ears.

In his cross-examination, PW-3 stated that he did not witness the deceased being assaulted. He also denied the suggestion that he did not sustain

injury.

19. The evidence of PW-4, who is a school teacher, is to the effect that he knew the appellants and the deceased. While he was at home, on

15.05.2003, at 5:30 P.M., he heard the sound of quarrel. When he arrived at the place of occurrence, he saw the appellant Khargeswar Das assaulting

the deceased on his head with a yoke. He also saw the appellant Manoj Das assaulting Hitesh on his head with a batten. The appellants Satyen and

Bulen Das also struck the deceased once or twice with split bamboo sticks and they went home thereafter. PW-4 stated that he saw the deceased

lying on the ground smeared all over with blood. He tried to stop the bleeding by pressing a gamocha (hand woven Assamese towel) on the head of

the deceased. The villagers gathered there. They called the doctor. After giving first aid, the doctor referred the deceased to Dhubri. However, the

deceased died on the way.

In his cross-examination, PW-4 denied the suggestion that Khargeswar and Manoj Das had not hit the head of the deceased with a yoke and batten.

He also denied the suggestion that he did not state before the police that the appellants Satyen and Bulen had struck the deceased with split bamboo

sticks.

20. The evidence of PW-5, who is a school teacher, is to the effect that he knew the appellants and the deceased. Around 5:30 P.M., about 3 years

ago, he heard a hue and cry in the house of the deceased and on rushing there, he found the deceased lying injured on the ground and his mother was

holding him. PW-5 stated that on arrival at the place of occurrence, he saw the appellants Manoj Das and Khargeswar Das, Satyen Das and Bulen

Das going out from the compound of the house of the deceased. He came to learn from PW-2 that the appellants had assaulted the deceased.

21. The evidence of PW-6, who is a cultivator, is to the effect that he knew the appellants and the deceased. Around 5:30 P.M., on 15.05.2003, he

heard a hue and cry in the house of the deceased. On rushing there, he saw the deceased with injury on his head. On his arrival at the place of

occurrence, he saw the appellants Manoj Das, Khargeswar Das, Bulen Das and Satyen Das going out from the house of the deceased.

22. The evidence of PW-7, who is the wife of the deceased, is to the effect that she knew the appellants and the deceased. After visiting a temple

and coming home, she saw her husband lying injured in the inner courtyard of their house. She thereafter came to learn from PW-4 that Khargeswar

Das and Manoj Das had assaulted her husband with a yoke and batten respectively.

23. The evidence of PW-8, who is the doctor posted at Dhubri Civil Hospital as Senior Medical and Health Officer, is to the effect that he conducted

autopsy over the dead body of the deceased on 16.05.2003 and he found the following injuries:

“External Appearance: - (1) Eyes were closed, mouth half open.

Injuries :- (1) One lacerated injury measuring 2 1/2" X 2" found over the right side of fore-head.

(2) Lacerated injury measuring 2 1/2" X 1 1/2" found over the left fore-head.

(3) One lacerated injury measuring 2 1/2" X 1 1/2" over the right elbow.

Clotted blood seen over the fore-head and face.

Cranium:- 1. Scalp-lacerated over the fore-head.

2. Membrane :- lacerated over the frontal region.

3. Brain and spinal cord :- Haematoma, measuring 2 1/2" X 1 1/2" and 1 1/2" X 1 1/2" over the both frontal lobes.

PW-8 in his evidence stated that in his opinion, death was caused due to shock and haemorrhage, resulting from head injuries sustained by the

deceased and all the injuries were ante mortem in nature.

24. PW-9, who was on duty as In-Charge of Raniganj Police Out Post stated that on 16.05.2003, PW-7 lodged an FIR due to which GD Entry was

made. Thereafter, a police case was registered in the Bilasipara Police Station. On taking charge of the investigation, he visited the place of

occurrence and examined the witnesses. He also seized a yoke during the investigation. He prepared a sketch-map of the place of occurrence and an

inquest report. After the inquest, the dead body was sent for post-mortem examination. The appellants were arrested and on completion of the

investigation, charge-sheet was submitted against the appellants under Sections 323/302/34 IPC.

In his cross-examination, PW-9 denied the suggestion that he had submitted the charge-sheet without conducting a proper investigation or that the

witnesses did not tell him that the accused persons had caused injuries to the deceased by assaulting him.

25. Subsequent to the testimony of the Prosecution Witnesses recorded by the learned Trial Court, the learned Trial Court examined the appellants

under Section 313 Cr.P.C.

The appellants, in their examination under Section 313 Cr.P.C., gave a blanket denial with regard to the questions put to them, by stating that the

evidence adduced were false evidence.

26. As can be seen from the evidence of PW-2 and PW-4, they were the eye-witnesses to the fact that the appellant Khargeswar Das had hit the

deceased on his head with a yoke, while the appellant Manoj Das had hit the head of the deceased with a wooden batten.

27. On considering whether the action of the appellants Khargeswar Das and Manoj Das was due to sudden provocation, we find that the assault on

the deceased has been made by deadly weapons, on a vital part of the body with deadly affect. In fact, the testimony of PW-2 is to the effect that the

head of the deceased cracked and brain matter came out. Further, the evidence of the witnesses is to the effect that the appellants came to the place

of occurrence with lathis and spears. They had also used a yoke and a wooden batten.

28. Besides the above, the evidence of the doctor (PW-8) shows that there was lacerated injuries on the right and left side of the forehead of the

deceased. There was also lacerated injury over the right elbow. There was clotted blood seen over the forehead and face of the deceased and there

was hematoma over both the frontal lobes. Death was due to shock and haemorrhage, resulting from head injuries and all the injuries were ante

mortem in nature.

29. Keeping in view the above facts, we are unable to accept the submissions made by the learned counsel for the appellants that the appellants

Khargeswar and Manoj did not have the intention to kill the deceased.

In the case of Singapagu Anjaiah Vs. State of Andhra Pradesh, reported in (2010) 9 SCC 799, the Supreme Court has held that the intention of the

accused has to be gathered from factors such as, the weapons used, the part of the body chosen for assault, the nature of injuries caused and the

intensity of the assault.

In the case of Jad Bai (supra), the Supreme Court by observing the decision of the Supreme Court in the case of State of Rajasthan Vs. Gurbachan

Singh, reported in (2022) 15 SCC 817, has held that common intention can be formed at the spur of the moment and during the occurrence of the

offence itself.

In view of the multiple injuries sustained by the deceased, on being assaulted on a vital part of the body, resulting in the skull being cracked and the

brain matter coming out, due to the impact with the weapons used, we are of the view that the provisions of Section 304 Part II IPC cannot be

attracted to the facts of the case. Though there might not have been any premeditation of common intention to kill the deceased at the start of the

incident, when the cows were being brought home by the PW-3, the atmosphere changed during the course of events, when the appellants attacked

the deceased, who did not fight back.

30. The Supreme Court in the case of Gurbachan Singh (supra) has held that common intention can be formed at the spur of the moment and during

the occurrence itself. Thus, the question that arises is, whether a common intention was formed on the basis of the facts/evidence recorded by the

learned Trial Court.

In the case of Gurbachan Singh (supra), it has been held that whether or not, there exists a common intention, has to be determined by drawing an

inference from the proved facts.

31. As stated earlier, in Gurbachan Singh (supra), it was held by Supreme Court that common intention can be formed at the spur of the moment

during the occurrence itself.

It was further held that constructive intention can be arrived at, only when the Court can hold that the accused must have preconceived the result that

ensued in furtherance of the common intention.

Paragraph 17 and 18 of the judgment of Supreme Court in Gurbachan Singh (supra) has also been reproduced by the Supreme Court in the case of

State of Madhya Pradesh Vs. Jad Bhai, reported in (2023) 6 SCC 552, which is as follows:-

“17. Given the aforesaid position, we are of the view that Section 34 IPC i.e. common intention, is clearly attracted in the case of Gurbachan Singh,

whose case cannot be distinguished, so as to exclude him as one who did not share common intention with Darshan Singh, Balvir Singh and Manjit

Singh. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 IPC

to apply, there should be common intention among the co-perpetrators, which means that there should be community of purpose and common design.

Common intention can be formed at the spur of the moment and during the occurrence itself.

18. Common intention is necessarily a psychological fact and as such, direct evidence normally will not be available. Therefore, in most cases, whether

or not there exists a common intention, has to be determined by drawing inference from the facts proved. Constructive intention, can be arrived at only

when the court can hold that the accused must have preconceived the result that ensued in furtherance of the common intention.Ã¢â¬â¸

32. Looking into the facts of the case, we find that PW-3 had been bringing home the cows from the paddy field and in the process, the cows

belonging to the deceased and the cows belonging to the appellants started fighting. It was the spark that lit the assault on the deceased. There is

nothing in the evidence to suggest that the deceased or PW-3 had any weapon with which there was a reciprocal assault made on the appellants. The

evidence of PW-2, who is the mother of the deceased, is to the effect that due to the hue and cry, the deceased had come out of the house and was

standing near PW-2. The appellant Khargeswar Das hit the deceased on the head with the yoke, due to which the deceased sat down. While being in

that position, the appellant Manoj Das hit the head of Hitesh with a wooden batten, resulting in the head of the deceased getting cracked and brain

matter coming out.

33. The evidence also shows that the other appellants, i.e. Satyen Das and Bulen Das assaulted the deceased with bamboo sticks. However, the

weapons used by them were bamboo sticks. On the other hand, the acts of the appellants Khargeswar and Manoj on an unarmed helpless person,

who had not threatened them in any manner, does not give any reason to us to have a view that the above two appellants did not have the common

intention or premeditation to kill the deceased, which must have formed at the spur of the moment, if not earlier, when the argument started between

PW3 and the appellant Manoj Das.

34. The evidence of the Prosecution Witnesses also shows that the domestic help of PW-2, i.e. PW-3 had been held onto by the appellant

Khargeswar Das, while being beaten up by the three remaining appellants.

The evidence of PW-1 who is the doctor who attended upon PW-3 shows that the nature of injuries inflicted upon the PW-3 was simple and caused

by a blunt object.

35. Thus, on a perusal of the testimony of the witnesses and keeping in view the fact that there were two eye witnesses to the crime, we are also of

the view that the appellants Khargeswar and Manoj had the common intention to kill the deceased. Plus the other two appellants had the common

intention to cause injury to the deceased and PW-3.

36. In view of the above reasons, we do not find any reason to interfere with the impugned judgment dated 21.12.2016 passed by the learned Trial

Court in Sessions Case No.132/2006, in convicting the appellants.

However, keeping in view of the fact that the weapons used by the appellants, Satyen Das and Bulen Das on the deceased and PW-3 were only

bamboo sticks, we are of the view that the sentence to be undergone by the appellants Satyen Das and Bulen Das should be reduced.

37. Further, Satyen Das is stated to be around 82 years of age as on date, while Bulen Das being apparently around 33 years of age, he would be

needed to look after his father, Satyen Das.

38. Accordingly, we modify the sentence imposed upon the appellants Satyen Das and Bulen Das, to the effect that they shall be sentenced to

undergo rigorous imprisonment for 2(two) months with the fine of Rs.1,000/- (Rupees One thousand) each, in default of payment of fine, they would

have to undergo rigorous imprisonment for a further period of 2(two) months.

39. Thus, the impugned judgment convicting all the appellants, is not interfered with. However, the sentence awarded to the appellants Satyen Das and

Bulen Das by the learned Trial Court is modified to the extent indicated above.

40. The appeal is accordingly disposed of.

41. Send back the LCR.

42. The fee to be paid to Mr. N. Ahmed, learned Amicus Curiae by the Assam State Legal Services Authority stands at Rs.5,000/-.