

Sukhdeo Lohra Vs State of Bihar (Now Jharkhand)

Court: Jharkhand High Court

Date of Decision: June 15, 2005

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302

Citation: (2005) 2 BLJR 1604 : (2005) 3 JCR 300

Hon'ble Judges: S.J. Mukhopadhyaya, J; Hari Shankar Prasad, J

Bench: Division Bench

Advocate: B.K. Mishra, for the Appellant; Malti Chaurasia, APP, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhyaya, J.

1. This criminal appeal has been preferred by the appellant Sukhdeo Lohra against the judgment and order of conviction and sentence dated 28th

August, 1999 and 31st August, 1999 respectively, passed by the learned Additional Judicial Commissioner, Lohardaga in Sessions Trial Nos. 402

of 1996/44 of 1996, arising out of Lohardaga P.S. Case No. 41 of 1996, whereby and whereunder, he has been convicted for the offence u/s

302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, which is based on the fardbayan (Ext. 3) of one Baijnath Lohra (PW 8), brother of deceased Mangal Lohra, lodged on

29th March, 1996 at 11.30 am, is that on that very day in the morning hours, while he (Baijnath Lohra) was in his house, PW 3 Bhawra Mahto

came and informed that his brother Mangal Lohra had been killed, so proceed with water. Thereafter, he left his house along with water for the

house of Mangal Lohra, but having not found him there, he accompanied Sugain Devi, wife of Mangal Lohra, and proceeded towards the field,

where in the field of Jageshwar Lohra, father of accused Sukhdeo Lohra, he found the deed body of Mangal Lohra, having bleeding injuries on his

neck and temporal region, from where blood was oozing out. PW 3 Bhowra Mahto told them that accused Sukhdeo Lohra and his father

Jageshwar Lohra had assaulted Mangal with spade, resulting his death and the spade was lying in the field. It was further reported that there was a

land dispute, going on in between Jageshwar (father of accused) and Mangal (deceased) since long. On the fateful day, accused Sukhdeo Lohra

was ploughing field when Mangal went there and made protest, on which Jageshwar and Sukhdeo abused Mangal and caused his death by means

of spade, after chasing him. PW 1 Indradip Tigga and PW 2 Krishna Tigga are said to have witnessed the aforesaid occurrence.

On the basis of the aforesaid fardbayan, a formal First Information Report was drawn up against the appellant and his father Jageshwar Lohra.

However, after investigation while charge-sheet was submitted against the appellant Sukhdeo Lohra, his father Jageshwar Lohra was not sent up

for trial. Thereafter, charge was read over and explained to the accused in Hindi to which he denied and claimed to be tried.

3. To substantiate the charge, levelled against the appellant, the prosecution has examined altogether eight witnesses, out of whom PW 1 Indradip

Tigga, PW 2 Krishna Tigga and PW 3 Bhowra Mahto are independent eye-witnesses. PW 4 Dr. Kameshwar Thakur, Medical Officer, has

conducted autopsy on the person of the deceased. PW 5 Meghnath Bhagat is a seizure list witness whereas PW 6 Gandharv Nath Sahdeo,

mukhiya of the panchayat, PW 7 Sugain Devi and the informant PW 8 Baijnath Lohra (brother of the deceased) are the hearsay witnesses, who

came to know about the alleged occurrence from the eye-witnesses.

4. The learned Trial Court on appreciation of the evidence, came to a definite conclusion that accused Sukhdeo Lohra assaulted Mangal Lohra

with stone and spade, due to which Mangal Lohra died then and there.

5. Learned counsel for the appellant has referred to the ocular evidence of the witnesses. It has been submitted that PW 1 Indradip Tigga at

paragraph No. 16 of his evidence has stated that except him and his brother Krishna Tigga, there was none at the place of occurrence. PW 1 did

not inform about the alleged occurrence to anybody rather only told to Guddu and sent him to call the mukhiya. At paragraph No. 28, this witness

has stated that he had heard about the incident. As such, it has been suggested that PW 1 Indradip Tigga can not be held to be an eye-witness.

Similarly, with regard to PW 2 Krishna Tigga, while referring to his deposition, made at paragraph No. 6, learned counsel for the appellant

submitted that the said witness has stated that he had not met the police and had not said anybody about the occurrence and that he was making

the statement in the Court for the first time about the occurrence. Thereby, it has been suggested not to rely on the evidence of PW 2, as he cannot

be stated to be an eye-witness. With regard to PW 3 Bhowra Mahto, it has been submitted that PWs 1 and 2 having said that there was no other

person present at the place of occurrence, except them, the evidence of PW 3 should not be relied upon. Learned counsel has submitted that PW

2 can not be said to be the eye-witness. Further, while referring to paragraph No. 17 of the evidence of PW 3, it has been submitted that the said

witness (PW 3) had not seen any spade near Mangal Lohra rather he had seen only one Chadar (clothe) near the dead body. Therefore, the

statement of PW 1 that the accused was holding spade cannot be accepted. Learned counsel while referring to the injuries, as disclosed by PW 4

Dr. Kameshwar Thakur, submitted that three incised injuries having been found on the person of the deceased, caused by sharp cutting weapon,

the finding of the learned trial Court that the accused also had given stone blow, can not be upheld. So far as PW 6 Gandharv Nath Sahdeo, PW 7

Sugain Devi and PW 8 Baijnath Lohra are concerned, all of them being hearsay witnesses and their statement being based on the information,

given by PW 3, learned counsel for the appellant has requested to discard their evidence being not reliable. It has also been submitted that PW 7

Sugain Devi and PW 8 Baijnath Lohra, being wife and brother of the deceased respectively, are interested witnesses.

6. To decide the issue, it is necessary to notice the statements of the witnesses particularly that of PW 1 Indradip Tigga, PW 2 Krishna Tigga and

PW 3 Bhowra Mahto, all eye-witnesses. It is also necessary to notice the injury report, as shown in the evidence of PW 4 Dr. Kameshwar

Thakur, who conducted post-mortem examination on the person of the deceased. PW 1 has stated that on 29th March, 1996 at about 7.30 a.m.

while he was ploughing his field, he saw accused Sukhdeo Lohra and Mangal Lohra (since dead) coming from western side, quarreling and

abusing each other. When they came near him (PW 1), he tried to pacify the matter. Accused Sukhdeo Lohra suddenly picked up a piece of stone

and hit on the head of Mangal Lohra, due to which Mangal Lohra fell down. Thereafter, accused Sukhdeo Lohra inflicted spade blows four to five

time on the person of Mangal Lohra. This witness along with his brother PW 2 Krishna Tigga rushed to the place, where Mangal Lohra was lying

dead. Having seen that, accused Sukhdeo Lohra fled away from that place, saying that he was going to the police station. Thereafter, the villagers

assembled at the place of occurrence. This witness identified accused Sukhdeo Lohra in the dock and stood to the test of cross-examination.

There are minor contradictions in the statement of PW 1 Indradip Tigga but being not vital and having not affected the testimony of PW 1, they can

be ignored. This witness has specifically stated that he has seen the accused Sukhdeo Lohra, hitting Mangal by piece of stone, which caused head

injury to him. He has also seen the blood oozing out due to the injuries. He has further seen that the accused Sukhdeo gave number of spade blows

on the neck of Mangal Lohra. PW 2 Krishna Tigga has stated that at about half past 7.00 a.m. on the day of occurrence, he and his brother

Indradip Tigga (PW 1) were ploughing their field when they saw accused Sukhdeo Lohra quarreling with Mangal Lohra, who caused injuries to

Mangal Lohra with a piece of stone in his hand. When Mangal Lohra fell down on the ground, accused Sukhdeo Lohra inflicted three to five spade

blows on his neck, due to which Mangal died at the spot. Accused Sukhdeo Lohra, thereafter, left the place of occurrence. PW 3 Bhowra Mahto,

in his testimony, has deposed that he had seen accused Sukhdeo Lohra assaulting Mangal Lohra on his head with a piece of stone, due to which

Mangal fell down on the ground. Thereafter, accused Sukhdeo Lohra inflicted four to five spade blows on Mangal Lohra, who died at the spot. He

has stated that immediately after the occurrence, he went to the house of PW 8 Baijnath Lohra (informant) and informed him that accused

Sukhdeo Lohra had killed his brother Mangal Lohra. This fact also finds mention in the fardbeyan (Ext. 3). Nothing could be found during the

cross-examination of this witness (PW 3) to discredit his testimony, who identified the accused Sukhdeo Lohra in the dock. It has already been

mentioned that the aforesaid three eye-witnesses are independent witnesses and had no relationship with the deceased.

7. To find out the reasons of death of Mangal Lohra, it is necessary to examine the medical evidence of PW 4 Dr. Kameshwar Thakur, who in his

examination-in-chief, has stated that on 29th March, 1996 (wrongly mentioned as "9th March, 1996") at about 4.45 p.m. he conducted the

autopsy on the dead body of Mangal Lohra at Sadar Hospital, Lohardaga, and found the following injuries :--

(i) One incised wound with clotted blood around the wound size 2.5"" x 1.2"" x brain deep, cutting the underneath bone, maninges and brain up to a

depth of about 2"" on the right lateral side of the scalp.

(ii) One incised wound with clotted blood around the wound 1.8"" x 1.2"" x brain deep, cutting the underneath bone and maninges and brain up to a

depth of 1.5"" on the back of scalp.

(iii) One incised wound with clotted blood around the wound size 1.5"" x 1.2"" x .5"" in front of right ear.

In his opinion, the aforesaid injuries were caused by sharp cutting weapon and heavy substance like kudal (spade) and were homicidal in nature.

The cause of death was due to injury Nos. 1 and 2, causing injuries to brain and haemorrhage. Time elapsed since death was 12 hours from the

post-mortem examination. He (PW 4) has proved the post-mortem report (Ext. 1).

8. The aforesaid medical evidence fully corroborates the ocular evidence of PWs 1, 2 and 3, the eye-witnesses, who have alleged that the injuries

were caused by accused Sukhdeo Lohra. PW 5 Meghnath Bhagat is a witness on the seizure of spade with which Mangal was killed. He has

stated that the police seized the spade from the place of occurrence (field) and prepared the seizure list in his presence, on which he put his

signature (Ext. 2). He has further stated that the spade, which was seized, was blood stained and thereby, corroborated the evidence of the eye-

witnesses.

9. PW 6 Gandharv Nath Sahdeo, who is mukhiya of the panchayat, has stated that on 29th March, 1996, Jogeshwar Lohra, father of accused

Sukhdeo Lohra, came to his house and informed him that his son Sukhdeo Lohra has committed murder of Mangal Lohra. Thereafter, he went to

the place of occurrence and saw the dead body of Mangal Lohra. He has further stated that he saw PW 1 Indradip Tigga near the place of

occurrence, who, on enquiry, told him that accused Sukhdeo Lohra had killed Mangal with spade and had escaped. The police, thereafter, came

there and prepared inquest report of the dead body of Mangal Lohra, on which he put his signature (Ext. 2/1). He has further stated that the police

seized the spade from the place of occurrence and prepared the seizure list in his presence, on which he also put his signature (Ext. 2/2). He has

stated that the police recorded the fardbayan (Ext. 3) of Baijnath Lohra (PW 8) in his presence and he also put his signature (Ext. 2/3) on the

fardbayan.

10. The aforesaid evidence of PW 6 Gandharv Nath Sahdeo fully corroborates the evidence of the eye-witnesses. This witness is mukhiya of the

gram panchayat and is an independent witness. Nothing could be found during his cross-examination to discard the testimony of this witness. PW 7

Sugain Devi is the wife of the deceased. Admittedly, she is not an eye-witness of the occurrence rather a hearsay witness. In her testimony, she has

deposed that she was informed by PW 8 Baijnath Lohra (informant) that her husband Mangal Lohra had been killed. Her husband Mangal Lohra

had earlier told her that he was going to forbid accused Sukhdeo Lohra from ploughing the field. On receipt of information of murder of her

husband, this witness (PW 7) went towards the place of occurrence (field) and found her husband lying dead on the ground with injuries on his

person. She has stated that PW 1 Indradip Tigga told her that accused Sukhdeo had killed her husband Mangal Lohra with stone and spade. She

identified the accused in the dock and stood to her statement during her cross-examination at length. PW 8 Baijnath Lohra (informant) is the

brother of the deceased. He is also not an eye-witness of the occurrence rather a hearsay witness. He has stated in his examination-in-chief that

PW 3 Bhowra Mahto informed him that accused Sukhdeo Lohra had killed his brother Mangal Lohra. Thereafter he went to the house of Mangal

Lohra and informed about the incident to PW 7 Sugain Devi. Thereafter he along with Sugain Devi went to the place of occurrence and saw the

dead body of Mangal Lohra having injuries on his head and neck. He has further stated that PW 1 Indradip Tigga, who was ploughing the adjacent

field, told them that accused Sukhdeo Lohra had killed Mangal Lohra with spade. He has further stated that there was a dispute between the

accused and the deceased with regard to land, which is the place of occurrence. He has further stated that the police came there, recorded his

farmyard and obtained his signature thereon (Ext. 2/4). He also identified the accused Sukhdeo Lohra in the dock.

11. Having appreciated the aforesaid evidence on record, the learned trial Court came to a definite conclusion that the prosecution has been able

to prove the charge u/s 302 of the Indian Penal Code regarding murder of Mangal Lohra against accused Sukhdeo Lohra beyond all reasonable

doubts. On appreciation of the evidence, I also find no ground to be made out to differ with the findings, recorded by the learned trial Court and

being fully in agreement with the aforesaid finding, I hold the accused guilty of the offence u/s 302 of the Indian Penal Code for committing murder

of the deceased Mangal Lohra, which has been proved beyond all shadow of reasonable doubts. In the result, there being no merit, the appeal is

hereto dismissed.

Hari Shankar Prasad, J.

12. I agree.