

## Rakhal Gope and Another Vs The State of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** March 27, 2012

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 149, 302, 304, 307, 324

**Citation:** (2012) 4 JCR 509 : (2012) 3 JLJR 18

**Hon'ble Judges:** R.K. Merathia, J; Dhruv Narayan Upadhyay, J

**Bench:** Division Bench

**Advocate:** A.S. Dayal, for the Appellant; Amaresh Kumar for the State, for the Respondent

### Judgement

1. This appeal is directed against the judgment of conviction and order of sentence dated 8.1.2002 and 11.1.2002 respectively, passed by learned

1st Additional District & Sessions Judge, Bokaro at Chas in Sessions Trial No. 9 of 1988, convicting the appellants under Sections 302/34 I.P.C.

and Sections 307/149 I.P.C. and sentencing them to undergo imprisonment for life for the offence u/s 302 I.P.C. They are further sentenced to

undergo imprisonment for life for the offence u/s 307 I.P.C. both the sentences shall run concurrently. The prosecution case in short is that the

Jaideo Gope-informant (P.W. 10) lodged a fardbeyan on 10.6.1986 at about 9 P.M. in his house before the police that at about 6 P.M. the cow

of- his brother Bishun Gope (P.W. 6) while grazing, started eating straw of appellant No. 1 Rakhal Gope on which he assaulted the cow with

Lathi. The cow fell on the ground. On this, father of the informant Raghu Gope (deceased) made protest. Then there was altercation and quarrel

between the appellant No. 1-Rakhal and the father of the informant. On Hulla, the brother of the informant Bishun Gope and Gobardhan Gope

(P.W. 7) came to lift the cow. In the meantime, appellant Rakhal brought Tangi (Axe) from his house and appellant-Buchu brought Tabla; accused

Tinkal Gope brought Ballam and Mrityunjay Gope brought Tabla and they started beating the informant party. Mrityunjay and Tinkal assaulted the

brother of the informant, Gobardhan (P.W. 7) with Ballam, due to which he fell. Appellant Buchu assaulted Bishun (P.W. 6) by Tabla due to

which he also fell. Appellant Rakhal assaulted informant's father Raghu with Tangi and when he fell, appellant Buchu also assaulted him by Tabla,

due to which his father died. Thereafter the accused persons fled away. The informant due to fear did not intervene. The occurrence was witnessed

by the female members, namely, Arti Devi (P.W. 8) and Namoni Devi (P.W. 8).

2. The prosecution has examined 10 witnesses. P.W. 1 is the Doctor who examined injured P.W. 7-Gobardhan Gope. P.W. 2 is the Doctor who

examined injured P.W. 6-Bishun Gope. P.W. 3 is the Doctor who conducted post mortem on the deceased Raghu Gope. P.Ws. 4 and 5 are

hearsay witnesses. P.Ws. 6 to 10 are the eye witnesses.

3. Mr. A.S. Dayal, learned counsel, appearing for the appellants, assailed the impugned judgment on various grounds. He submitted that at best

appellant No. 1-Rakhal Gope could be convicted u/s 304 I.P.C. and appellant No. 2 Buchu Gope could be convicted u/s 324 I.P.C.

4. On the other hand, Mr. Amaresh Kumar, learned counsel, appearing for the State, supported the impugned judgment.

5. We are inclined to accept the submission of Mr. Dayal. It appears that the alleged occurrence took place when the appellant Rakhal gave blow

by Lathi on the cow of P.W. 6 when she started eating the straw of Rakhal. Thereafter there was altercation and quarrel between the deceased

and Rakhal on which the informant party and the accused persons assembled there. It is then alleged that the accused persons brought weapons

from their house and started assaulting the members of the informant party causing them injuries.

So far as injured Gobardhan (P.W. 7) is concerned, it is alleged that Mrityunjay (said to be dead) and Tinkal (declared juvenile) assaulted him. As

per the prosecution case, appellant Buchu assaulted Bishun (P.W. 6) by Tabla but the Doctor found simple injuries on him. Appellant Rakhal is

said to have assaulted the deceased by Tangi. As per the Doctor (P.W. 3) there was one fatal blow caused by Tangi on the back of neck of

deceased. The alleged occurrence took place during quarrel and on sudden provocation. Though the judgment of the counter case has not been

brought on record, but Mr. Dayal submitted that he has got certified copy of the same to show that the informant party were convicted for causing

injury to two of the persons of the accused party, but they were released on probation. Since the said judgment is not on record, we are not in a

position to refer or rely on the same. However, P.Ws. 6 and 10 admitted that there was a counter case with regard to the same incident.

6. From the facts and circumstances, it appears that there was no intention to kill the deceased. The accused persons caused injuries to different

persons. It is not possible to hold that the appellants had common intention or they formed unlawful assembly for killing or attempting to kill the

members of the informant party. The ingredients of the sections under which the appellants have been convicted are not made out. It may be noted

that no charge u/s 149 I.P.C. was framed and moreover only four accused persons were put on trial. In our opinion the prosecution has not been

able to prove its case against the appellants beyond all reasonable doubts. However offence u/s 304 I.P.C. is made out against the appellant No.

1-Rakhal Gope; Accordingly he is convicted u/s 304 I.P.C.

Regarding the sentence, it is submitted by Mr. Dayal that he has remained in jail for 12 years. Accordingly he is sentenced to the period

undergone. He may be released from custody, if not wanted in any other case.

So far appellant No. 2-Buchu Gope is concerned, he is convicted u/s 324 I.P.C. Regarding sentence it was submitted that he has remained in jail

for about 5 months and moreover the alleged occurrence took place far back in the year 1986 and therefore he can be sentenced to the period

already undergone by him.

We are not inclined to accept the said submission so far as sentence of Buchu Gope is concerned. He is sentenced to undergo R.I. for 2 years. He

is also sentenced to pay a fine of Rs. 20,000/-. In default of payment of fine he will undergo R.I. for further 3 months. If the amount of fine is

deposited the same will be paid to the informant/his wife/his sons.

The bail bonds of appellant No. 2-Buchu Gope is cancelled. He is directed to surrender before the court below within one month to serve out the

sentence.

With these observations, this appeal stands disposed of.