

Jaleshwar Singh Vs State of Bihar

Court: Supreme Court of India

Date of Decision: May 6, 2009

Acts Referred: Penal Code, 1860 (IPC) â€” Section 109, 110, 149, 302, 307

Citation: (2009) 3 ACR 2757 : (2009) CriLJ 3995 : (2009) 7 JT 572 : (2009) 3 PLJR 149 : (2009) 7 SCALE 219 : (2009) 15 SCC 251 : (2009) 8 SCR 130

Hon'ble Judges: P. Sathasivam, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Ambhoj Kumar Singh and Ratan Kumar Choudhuri, for the Appellant; Anukul Raj and Gopal Singh, for the Respondent

Final Decision: Disposed Of

Judgement

Arijit Pasayat, J.

Challenge in this appeal is by Accused No. 1 who alongwith two others faced trial before learned Sessions Judge.

Present appellant was convicted u/s 302 read with Section 109 of the Indian Penal Code, 1860 (in short the `IPC").
Accused No. 3-Bir Bahadur

Singh was convicted u/s 302 IPC. Both A-1 and A-3 were sentenced to imprisonment for life. A-3 was additionally convicted u/s 324 IPC. The

two appellants before the High Court were acquitted of the charge u/s 307 read with Section 149 IPC and Section 307 IPC respectively. The trial

Court however held the third accused Hari Shankar Singh @ Timal Singh guilty in terms of Section 324 IPC. But taking into consideration the

young age instead of sentencing him directed him to be released on bail on executing interim bail bonds of Rs. 2,000/- or two sureties of like

amount. Only A-1 and A-3 preferred an appeal before the high Court.

2. Prosecution version in a nutshell is as follows:

A case was registered in Taraiya Police Station in the district of Chapra on 22nd July, 1987 on the basis of fard beyan (Ext-3) recorded by S. I.

Dashrath Singh of Marhawrah P.S on 21st July, 1987 at 10.30 p.m. in the State Dispensary on the statement of one Sharda Devi (P.W.4) wife of

late Chintamani Singh of village Sarai, P.S. Taraya in the district of Saran. The informant had gone to Marhaura State Dispensary along with body

of her husband who was seriously injured in an incident and there her husband was declared dead by the doctor and on information, Police arrived

and recorded her statement. She stated before the Police that on the same day at about 5.30 p.m. when she was in her house, she heard hulla.

Thereafter, she came out and saw Bir Bahadur Singh Jaleshwar Singh and Timal Singh of the same village (Sarala) present holding Bhala in their

hands and her husband Chitamani Singh was also there. According to her, Jaleshwar Singh told the accused ""Maro"" (assault) on which Bir

Bahadur Singh inflicted a bhala blow in the abdomen of her husband. Then the informant rushed to the rescue of her husband and Bir Bahadur

Singh also inflicted a bhala blow which hit her in the finger of her right hand. However, her father-in-law Ram Nigahi Singh and her son Sanjay

Singh also came to her rescue but all the three accused persons attacked them with bhala. The bhala which had pierced the abdomen of her

husband was pulled out at that time and her husband died instantaneously. According to her apart from her husband, she herself, her son Sanjay

and her father-in-law Ram Nigahi Singh had also received injuries in this occurrence and some persons had collected at the place of occurrence.

They included, Abhay Kumar Singh (P.W.1), Raghunath Singh and one Yogendra Singh. She however, stated that the other two injured persons

who were taken to Hospital at Chapra, would give further details about the assailants in this case. According to her, the cause of occurrence was

some dispute between the two parties regarding a piece of land. On the information received by the local Police from the Chapra Hospital, a

Police Officer who happened to be the ASI. of Bhagwan Bazar P.S. had reached the Sadar Hospital, Chapra at 10.00 a.m. on 22nd July, 1987

and he had also recorded the statement of Ram Nigahi Singh (PW-3) in the form of a fard beyan (Ext-3/1). However, since the case was

registered on the basis of the earlier statement of Sharda Devi, this fardbeyan when received by the I.O. of Taraya Police Station was kept on the

record. While P.W.3 was admitted in injured condition in the Surgical ward of Chapra Hospital, he stated before the Police Officer of Bhagwan

Bazar P.S. that on the previous day, i.e., on 21st July, 1987 at about 5.30 p.m. while he was sitting at his Bathan he saw that Jaleshwar Singh, Bir

Bahadur Singh and Hari Shankar Singh, were trying to transplant paddy in a chunk of field of this witness by encroaching upon his land. He

intervened and prohibited them from doing so and there was some altercation between the two parties. However, he returned to his Darwaja after

asking them not to do so and they also went away making some utterances but, subsequently, they came to the Darwaja of the informant. There,

Jaleshwar Singh is said to have instigated his two sons, the other two accused, to assault and kill and the other two accused., i.e., Bir Bahadur

Singh and Hari Shankar Singh brought Bhala from the house and Jaleshwar also brought Bhala. His further case is that Bir Bahadur inflicted a

Bhala blow on his grandson Sanjay Singh who fell down and at that moment the son of this witness namely, Chintamani Singh came and Bir

Bahadur Singh also inflicted a bhala blow in his abdomen and Chintamani Singh fell down.

When this witness proceeded to save his son, he was also attacked and assaulted with bhala. He also sustained some injuries. Thereafter, Sanjay

was again assaulted by accused persons with bhala. However, the female members of his family also came on hulla and when the daughter in-law

of this witness, namely, Sharda Devi, intervened, she was also assaulted and she sustained injuries. According to him, on hearing his cries for help

several persons of his village, including Raghunath Singh, Jay Narayan Singh, Jogindra Singh and Parmeshwar Singh also came and they intervened

and the assailants then left the place. However, the son of this witness died on the spot as a result of sustaining injuries by bhala on his abdomen

and this witness was taken to the hospital where he was undergoing treatment. The Police officer who was entrusted with investigation Shyam Deo

Singh (PW-9) recorded the statements of witnesses and inspected the place of occurrence and after procuring the post mortem report and on

completing the investigation submitted charge sheet in the case against the three accused persons under various sections of IPC including Sections

302, 307, 324, 302/34 and also u/s 109 IPC. Accordingly, cognizance of the case was taken and the case was committed to the Court of

Session. Charges were framed separately against three accused persons of this case by the learned Sessions Judge, Chapra.

The accused persons were held to be guilty as noted above. Since the accused persons pleaded innocence, trial was held. The High Court on

appeal held that so far as conviction of appellant No. 1 is concerned, he was the person who gave the order and after that a fatal blow was

inflicted by appellant No. 2 on the deceased. He has been rightly convicted u/s 302 read with Section 109 IPC and so far as appellant No. 2 is

concerned he was convicted u/s 302 IPC.

SLP by accused No. 2 has been dismissed by order dated 2.3.1998. the present appeal is by A-1.

3. In support of the appeal, learned Counsel for the appellant submitted that the evidence of PW-1, the eye witness clearly shows that case of

Section 302 read with Section 109 IPC is not made out. PW-4 is the informant i.e. wife of the deceased and PW-3 is the father of the deceased.

From the evidence of PWs 3 and 4 it is clear that there were physical fights abuses. At the time of abuses except PWs 3 and 4 nobody else was

there. The other persons came there just to stop the fight hearing noise on the road. On a close reading of the evidence is seen that the accused

persons were armed. There was really no direct exhortation to kill but the same was to the effect that the deceased and others should not be

permitted to run away and should be attacked. On hearing the exhortation accused No. 2 pierced the spear to the chest of the deceased. The

evidence of PWs 3 and 4 are different as to the manner of exhortation. One says ""Maro Sale Chintamani Ko"" while the other said ""Maro Sale Ko

Jaan Se"". The words ""Jaan Se"" appears to be entered later in the records.

4. That being so, the appropriate conviction would be u/s 307 read with Section 110 IPC. Custodial sentence of 7 years would meet the ends of

justice. The appeal is allowed to the aforesaid extent. The appellant shall surrender to custody to serve the remainder of sentence.