

Lakshmi Mukhiya Vs State of Bihar

Court: Patna High Court

Date of Decision: June 27, 2001

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302, 304, 323, 34, 341

Citation: (2002) 1 PLJR 105

Hon'ble Judges: R.N. Prasad, J; A.K. Sinha, J

Bench: Division Bench

Advocate: Anjana Prakash, for the Appellant; Lala Kailash Bihari Pd., for the Respondent

Final Decision: Dismissed

Judgement

R.N. Prasad and A.K. Sinha, JJ.

Both the appeals have been preferred by the sole Appellant Lakshmi Mukhiya against the order of

conviction and sentence passed by 1st Additional Sessions Judge, Darbhanga in Sessions Trial No. 246 of 1993 (T.R. No. 80 of 1993), whereby

and where under the Appellant was convicted u/s 302/34 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for life.

2. The case of the prosecution as per the F.I.R. (Ext. 5) is that on 2.11.89 at about 1.00 P.M. the Appellant along with Bhola Mukhiya and

Jiwachh Mukhiya and others started fixing pegs and Tatti on the land of the informant and at that time the Appellant was armed with a khanti,

whereas, accused Bhola Mukhiya had a Farsa, Jiwachh Mukhiya had a Parer and other accused were having lathi and Garasa. It is alleged that the

informant and his uncle, namely, Ghutar (deceased) protested to the illegal acts of the accused persons, whereupon, the Appellant ordered to

assault and he himself hurled a Khanti blow on the head of Ghutar who fell down followed by Jiwachh Mukhiya who assaulted the informant with

Parer and the informant's uncle was also assaulted. Accused Raju is said to have assaulted the informant with lathi. On hulla raised by the

informant the witnesses, namely, Ram Prasad, Ram Shreth and others came whereupon the accused persons fled away. Thereafter, the informant,

his uncle and Ghutar went to police station where the statement of the informant (Ext.-1) was recorded and a case under Sections 447, 341 and

323 of the I.P.C. was registered and all the three injured persons were referred to hospital at Kusheshwar Asthan where they were examined by

Dr. Mithilesh Jha who granted injury reports (Exts. 3, 3/1 and 3/ 2). Dr. Jha referred Ghutar Mukhiya to D.M.C.H. and informant took his brother

to Darbhanga but he died at the Bus Stand itself without receiving any treatment at D.M.C.H. The case was converted into one u/s 302 of the

I.P.C. and chargesheet was submitted against the accused persons. However, the Appellant alone faced the trial for the charge under Sections

302/34 of the I.P.C. The Appellant denied the charge and his defence was that he is innocent and has been falsely implicated in the case.

3. In order to prove the charge, the prosecution examined as many as ten witnesses in the case out of whom P.W. 9 B.K. Jha and P.W. 10 Ram

Deo Singh are witnesses of formal nature who proved Exts. 3 to 3/2 and 5. So there is nothing significant in their evidence. In this case there are

two I. Os. out of whom P.W. 6 Dharnidhar Singh only arrested the accused and submitted chargesheet and the main investigation was conducted

by P.W. 7 S.I. R.P. Singh. P.W. 8 Dr. A.R. Kishore conducted the postmortem examination on the dead body of the deceased and has proved

the postmortem report (Ext. 2). P.W. 1 Ram Prasad Mukhiya, P.W. 2 Ram Ashish Mukhiya, P.W. 3 Anti Devi, wife of deceased, P.W. 4

Choudhary Mukhiya (informant) and P.W. 5 Govind Mukhiya are all eye witnesses to the alleged occurrence out of whom P.W. 1 and P.W. 2 are

independent witnesses.

4. P.W. 4 Choudhary Mukhiya who is the informant in the case has fully supported the prosecution case by deposing that on the alleged date of

occurrence at about 1.00 P.M. the Appellant along with six more accused, whom he has named, were putting Tatti on his land and all of them

were variously armed and the Appellant was armed with Khanti. He further deposed that he (informant) along with his uncle Ghutar stopped them

from fixing Tatti, whereupon, the Appellant ordered to assault and he himself gave a khanti blow on the head of Ghutar who fell down. He has

stated that when he and his uncle tried to save the deceased, the accused, Jiwachh assaulted him with Parer and Anirudh assaulted his uncle with

lathi. He has also stated that occurrence was witnessed by Ram Prasad (P.W. 1), Ram Ashish (P.W. 2), Tara Singh, Ashok Singh and others.

P.W. 4 has stated that he went to the police station along with his brother and uncle and gave his statement which was recorded by A.S.I. of

police and they were sent to hospital where the doctor referred his brother Ghutar to D.M.C.H. So, he along with his brother went to Darbhanga

but Ghutar died at the Bus Stand itself. P.W. 4 claimed that the land on which the accused persons were trying to fix pegs belonged to him.

5. The evidence of the informant (P.W. 4) has been corroborated by P.W. 1, P.W. 2 who are independent witnesses and had gone to the place of

occurrence on hearing hulla. Both of them stated that when the informant and Ghutar (deceased) stopped the accused persons from putting Tatti

on their land, the Appellant assaulted Ghutar with Khanti on his head followed by other accused who assaulted the informant and his uncle.

6. P.W. 3 Anti Devi who is wife of the deceased has also made similar statement that when she was in the Angan, the alleged occurrence took

place and Appellant gave a khanti blow on the head of her husband when he (deceased) and her Bhaishur Choudhary Mukhiya (informant)

stopped the accused persons from fixing Tatti.

7. P.W. 5 Govind Mukhiya is uncle of the informant and is also one of the injured in the alleged occurrence and he has also corroborated the

evidence of P.Ws. 1, 2, 3 and 4 on all material points and has specifically deposed that when Choudhary Mukhiya and deceased Ghutar raised

objection, this Appellant gave a khanti blow on the head of Ghutar who fell down and thereafter Jiwachh assaulted Choudhary Mukhiya

(informant) with Phatha. He has also assaulted by accused Anirudh and Raj Kishore. This witness has also stated that he along with the deceased

and the informant went to the police station where the informant gave his statement and they were referred to the hospital. So, they went to the

doctor who referred Ghutar to D.M.C.H. and all of them proceeded to Darbhanga but Ghutar died at the Bus Stand itself. According to this

witness also the occurrence was witnessed by Ram Prasad, Ram Ashish and others.

8. The defence cross-examined the above named eye witnesses at great length but nothing has been elicited to render their version as unworthy of

placing credence to. On the point of assault by the Appellant, the testimony of the aforesaid P.Ws. has virtually remained unchallenged.

9. P.W. 8 Dr. Akhauri Rabindra Kishore conducted the postmortem examination on the dead body of the deceased on 3.11.89 at 2.30 P.M. and

he has deposed that he found the following ante mortem injury on the person of the deceased:

1. One bruise 3" x 2" over right side of head near parietal eminence. The whole right side of skull tissues was found infiltrated with blood and

blood clots. The upper and lower eye lid of the right eye was also found infiltrated with blood clots. On removal of the soft tissues a depressed

fracture was detected over right side of skull. The right parietal right side of frontal and right temporal bone were found fractured into multiple

pieces. On opening the skull cap meninges were found torn and pierced by fractured bone. A big extra dural and sub-dural haematoma was

detected over right side of brain.

In the opinion of the doctor the aforesaid injury was caused by hard blunt substance and death was due to concussion, haemorrhage and shock as

a result of the aforesaid injury which was sufficient in ordinary course to cause death. The time elapsed since death was within four to twelve hours.

10. It would, therefore, appear that the medical evidence of P.W. 8 is also in conformity with the prosecution version, inasmuch as the doctor found

injury on the head of the deceased caused by hard and blunt substance which may be khanti also and as a result of the alleged assault attributed to

the Appellant the injury found by the doctor is quite possible.

11. P.W. 7 R.P. Singh is the main I.O. of this case who has proved the F.I.R. which was recorded on 2.11.89 at 5.30 P.M. i.e. after four and half

hours of the occurrence. The I.O. has stated that he recorded the statement of the deceased Ghutar Mukhiya, Govind Mukhiya and the informant

who were all in injured condition, so, he referred them for treatment to hospital. He further stated that he visited the place of occurrence on the

same day at 6.30 P.M. and according to him the place of occurrence is the Angan of the informant where he found the holes had been dug for

fixing poles. He has also stated that the house of the informant is situated adjacent to the Angan. The I.O. has. stated that he got information that

Ghutar died and he obtained the inquest report from Beta O.P. which fact was noted by him in the case diary. He also received the postmortem

report and since he was transferred, he handed over the charge of the case on 7.9.90. The objective finding of the I.O. which he noticed during the

inspection of the P.O. land also supports the prosecution case inasmuch, as the I.O. found the holes dug for fixing poles in the Angan of the

informant and that is the genesis of the occurrence that the occurrence took place because the Appellant and his associates were trying to fix pegs

and Tatti which was objected by the informant, his uncle and the deceased on account of which quarrel took place and the Appellant assaulted the

deceased on head with khanti whereas the other accused assaulted the informant and his uncle as referred to above.

12. After carefully examining the evidence of the witnesses which has been supported by the evidence of the doctor and the I.O., we are of the

view that the prosecution has fully proved its case.

13. The learned Counsel for the Appellant, however, submitted that P.Ws. 3, 4 and 5 are closely related to the deceased and as such they are

highly interested witnesses and hence their testimonies cannot be relied upon. But, it is evident from the prosecution case that the occurrence

actually took place in the Angan of the informant. So, the presence of the aforesaid witnesses was quite natural. Only because they happened to be

closely related to each other or with the deceased, their testimonies cannot be disbelieved on that score alone. That apart, the evidence of P.Ws. 3

to 5 has been supported by P.Ws. 1 and 2 who are independent witnesses residing close to the house of the informant and both of them have

supported the evidence of P.Ws. 3 to 5. The medical evidence as also the evidence of the I.O. also corroborates the prosecution version. As such,

it would appear that P.W. 3, P.W. 4 and P.W. 5 who may be related to each other are the real and trustworthy witnesses and their testimonies

appear to be reliable and trustworthy which cannot be discarded merely on the ground that they are related to each other.

14. The learned Counsel for the Appellant submitted that the alleged occurrence took place at the spur of moment and there was no pre plan on

the part of the accused persons to commit murder of the deceased and as a matter of fact when the deceased and the informant protested and

tried to stop the accused persons from putting pegs, a quarrel took place and the Appellant is alleged to have given a single blow of Khanti on the

head of Ghutar and there was no repetition of the blow by him which would show that the Appellant had actually no intention to kill the deceased

and in heat of passion when the prosecution party started quarrelling, he gave a single khanti blow to the deceased which unfortunately proved fatal

after lapse of some time. It was, therefore, submitted that the Appellant can at best be convicted u/s 304 Part II of the I.P.C. and his conviction u/s

302/34 of the I.P.C. is unwarranted. The learned Counsel further submitted that the Appellant has already remained in jail for a period of about

nine years. Hence, the sentence awarded to him should be reduced to the period he has already undergone in custody.

15. The learned Addl. P.P. fairly admitted that the Appellant had not repeated the blow of khanti on the head of the deceased: But, it was his

submission that since the death took place on account of khanti blow, it would not attract Section 304 Part II of the I.P.C. The submission of the

learned Addl. P.P. does not bear any force in it.

16. Having regard to the facts and circumstances of the case and giving due consideration to the submission which has been advanced by the

learned Counsel for the Appellant, we are of the view that the case of the Appellant would fall under the purview of Section 304 Part II of the

I.P.C. and not under Sections 302/34 of the I.P.C. Accordingly we hold the Appellant guilty of the offence u/s 304 Part II of the I.P.C. and his

conviction is altered from Section 302/34 of the I.P.C. to Section 304 Part II of the I.P.C. In view of the fact that the Appellant has remained in

custody for a period of nine years, we are of the view that the ends of justice would be met if the sentence awarded to the Appellant is reduced to

the extent he has already undergone in custody.

17. In the result, therefore, both the appeals are dismissed with modification in the order of conviction and sentence as indicated above. The

Appellant is ordered to be set at liberty forthwith if not wanted in any other case.