

Jagdish Kahar Vs State of Bihar

Court: Patna High Court

Date of Decision: Jan. 14, 2002

Acts Referred: Penal Code, 1860 (IPC) â€” Section 109, 307, 324, 341

Citation: (2002) 2 PLJR 32

Hon'ble Judges: I.P. Singh, J

Bench: Single Bench

Advocate: P.N. Pandey, Arbind Kumar Singh and Sanjay Kumar, for the Appellant; Chy. Shyam Nandan, for Informant and Ashwani Kumar Sinha, for the Respondent

Final Decision: Dismissed

Judgement

I.P. Singh, J.

Both the appeals arise out of the common judgment and being heard together and are being disposed of by this common

judgment. The Appellant Jagdish Kahar has been convicted u/s 307 I.P.C. and was sentenced to undergo rigorous imprisonment for five years and

he has been further convicted and sentenced to undergo rigorous imprisonment for one year u/s 324 of I.P.C. Appellant Madan Kahar has been

convicted u/s 307/109 I.P.C. and sentenced to undergo rigorous imprisonment for two years and he has been further convicted u/s 324 of the

I.P.C. and was sentenced to undergo R.I. for one year. However, both the sentences are directed to run concurrently.

2. The prosecution case in short is that at about 8 P.M. on the night of 23.10.1978 when the family members of Lakhan Tanti including himself, his

wife Radhiya Devi (informant) his sons and daughter were taking their meal and were about to go to their beds, Appellant Jagdish Kahar came and

called Lakhan's son Deonandan Tanti alias Devi Lal from out side. It is alleged that as soon as Devi Lal opened the door at the call of the

Appellant the other Appellant who was armed with his dagger put his towel around his neck and dragged him to a nearby banyan tree. The

Appellant Madan Kahar was also present near the tree and Deonandan Tanti @ Devi Lal was thrown down on the ground near the tree and

Appellant Jagdish started stabbing him. However, Deonandan Tanti raised alarm and his father Lakhan Tanti and brother Sarjug Tanti (P.Ws. 1

and 2) came there and tried to save him from the attack made by the two Appellants. The victim's father and brother were allegedly given few

dagger blows by the Appellant Jagdish Kahar. The mother of the victim Deonandan Tanti (P.W. 9), his other brother Basudeo Tanti (P.W. 4) and

sister. Sudama Devi (P.W. 7) and Karuna Devi (P.W. 8) also allegedly rushed to the place of occurrence and saw the assailant being inflicted

wound by the Appellants. Some other witnesses also came there and they also saw the occurrence. Thereafter it has been stated that P.W. 5 Ram

Sharan Mahto caught hold of the hand of Appellant Jagdish Kahar as a result of which he could not inflict any further blow to any one. Having seen

the witnesses both the Appellants fled away. As Deonandan Tanti received serious dagger injuries on his chest and his brother Sarjug Tanti also

received several dagger injuries and his father Lakhan Tanti, however, received simple injury at the hands of the accused Appellants as such they

were taken to Railway Hospital at Mokama Ghat and they were medically examined by Dr. S.D. Das (P.W. 11). Thereafter the injured

Deonandan Tanti and Sarjug Tanti were referred to Najarath Hospital Mokama for better treatment. There they were examined by P.W. 10 Dr.

B.K. Setty. After receiving the information regarding the injury the officer incharge of Hathidah P.S. Jagdish Pandey proceeded to the victims

house and recorded the fardbeyan of the mother of the injured Deonandan Tanti and on the basis of the fardbeyan on 25.10.1978 a formal first

information report was drawn and a case under Sections 341, 324 and 307 I.P.C. was instituted against both the Appellants. After completion of

investigation charge sheet was submitted against the Appellants. Accordingly cognizance was taken and the case was committed to the court of

session where the trial concluded in the result as indicated above. The Appellants pleaded not guilty and have stated that they have been falsely

implicated in this case out of enmity.

3. The prosecution in support of its case has examined altogether eleven witnesses. P.W. 1 is Lakhan Tanti father of, the injured Deonandan Tanti,

P.W. 3. P.W. 2 is Sarjug Tanti injured. P.W. 4 is Basudeo Tanti, P.W. 5 is Ram Sharan Mahto, P.W. 6 Fagu Sao is a tendered witness. P.W. 7

is Sudamia Devi, P.W. 8 is Karuna Devi and P.W. 9 is the informant Radhia Devi. P.W. 10 is Dr. B.K. Setty who has examined the injured

persons. P.W. 11 is Sri S.R. Das who had examined the injured in Railway Hospital Mokama Ghat. P.W. 9 the informant has fully supported the

case as recorded in her first information report. According to her on 25.10.1978 when the family members were going to take their meals they

heard the sound of the Appellant Jagdish. She has stated that as soon as his son Deonandan opened the door, his son was dragged out from the

house and he was taken near a banyan tree. According to her the other Appellant Madan Kahar was also present near the tree and her son

Deonandan Tanti was thrown on the ground and the Appellant Jagdish Kahar started stabbing him. When he raised alarm his father (P.W. 1) and

his brother and sisters went there and saw the occurrence. She has stated that when her husband (P.W. 1). and her son P.W. 2 went to save him

they were also given Chura blows. According to her witnesses came there and having seen them the Appellants fled away. The injured were taken

to Railway Hospital Mokama Ghat and from there they were, referred to Najrath Hospital, Mokama The, officer incharge of Hathidah came at her

house and her fardbeyan was recorded, P.W. 1 Lakhan Tanti, P.W. 2 Sarjug Tanti and P.W. 3 Deonandan Tanti all the injured have fully

supported the case of the prosecution. According to them when the family members were inside their room the Appellant Jagdish Kahar called

Deonandan Tanti from his darwaza and when he opened the door after putting towel around his neck he was forcibly dragged from his house and

was taken near a banyan tree. They have consistently stated that the Appellant Madan Kahar was also present near the tree and both the

Appellants threw Deonandan down and Jagdish Kahar inflicted Chura blow on the person of Deonandan Tanti when they went to save him they

were also assaulted by the Appellant Jagdish Kahar. Thereafter they were taken to Railway Hospital to Mokama Ghat and from there they were

referred to Najarath Hospital where they were treated by R.W. 10. P.W. 10 Dr. B.K. Setty, was a Surgeon of Mokama Najarath Hospital and

he examined two injured namely Deonandan Tanti and his brother Sarjug Tanti at about 10 P.M. in the night of the occurrence on 25.2.1978 and

thereafter they were referred to the Najarath Hospital Mokama. According to him he found a penetrating wound on the left lower chest of size

3/4" x 1/2" which had entered on the left chest cavity and into the peritoneal cavity besides a simple injury caused by some sharp object on the right

chest of the victim. In his opinion the aforesaid first injury was caused by some long sharp metallic object like dagger and it was dangerous to life.

P.W. 11 is Dr. S.R. Das. According to him he was posted as medical officer Railway Hospital, Mokama Ghat and he examined the injured

Deonandan Tanti and found the following injury on his person:

(i) Incised wound 1" x 1/2" on the left side of chest 6" below axilla.

(ii) Incised wound of 1" x 1/2" on the right side of chest four inches below the collar bone.

On the same day and at about the same time he examined Lakhan Tanti and found the following injuries on his person:

(a) Incised wound 1/2" x 1/4" at the left side of abdomen 3" away from umbicus.

(b) Incised wound 1/4" x 1/4" on the left side of chest below the 12 rib, 4" away from the vertebra column. According to him both the injuries

were skin deep and they were simple in nature and were caused by sharp cutting weapon like knife.

On the same day he examined the injured Sarjug Tanti and found the following injuries on his person:

(i) Incised wound of 1" x 1/2" on the left side of chest on back side 8" below the scapula and 4" away from the vertebra. Depth of the injury could

not be assessed.

(ii) Abrasion 2" long below the 7th chhical bone.

(iii) Abrasion 4" long on the left scapular region.

(iv) Abrasion 11" long on the left side of collar bone near the shoulder joint.

(v) Incised wound 2" x 1/2" scalp deep on the left temporal region, 4" above the left ear.

(vi) Incised wound 1/2" x 1/4" skin deep on the right hand above the elbow joint.

(vii) Incised wound 1" x 1/2" x 1/4" below the right elbow joint.

(viii) Incised wound 1/2" x 1/2" x skin deep near elbow joint. The cause of the aforesaid injuries Nos. (i), (v), (vi), (vii) and (viii) was some sharp

cutting weapon such as a knife. The abrasion could be caused by a fall. All the injuries were simple in nature excepting injury No. (1).

4. Learned Counsel appearing on behalf of the Appellants submitted that in this case all the witnesses are interested and no independent witness

has been examined. It has been submitted that the person who had given the grievous injury on the persons of the injured is not known as there

were two Appellants and there is allegation that at a time they inflicted the knife blows. So far the submission of the learned Counsel that all the

witnesses are interested and no independent witness has been examined but only on this, ground of interested witnesses the case of the prosecution

cannot be discarded. These witnesses are natural and therefore they are trustworthy and reliable as they have seen the occurrence So far the

submission of the learned Counsel that the person who assaulted the injured is not known, in this regard the evidence of the doctor P.Ws. 10 and

11 is that Deonandan Tanti P.W. 3 and Sarjug Tanti P.W. 2 were having grievous injuries on their person. The grievous injury on the chest of

Deonandan was on the vital part of body. The injury on P.W. 2 Sarjug was also on his left lower chest. From the deposition of P.W. 10 it is

evident that injuries inflicted on Deonandan Tanti was caused by long sharp metallic object like dagger. It is also apparent from the deposition of

Deonandan Tanti; P.W. 3 in paragraph 13 that he saw the dagger in the hand of Appellant Jagdish. From the evidence of P.W. 3 in paragraph 13

it is also clear that Jagdish had thrown the injured Deonandan on the ground and inflicted several Chura blows on his person. It has also been

stated in paragraph, 14 of R.W. 3 that though Madan kahar was having Chura but he did not inflict any injury to any one. It was also in the

deposition of P.W. 2 that Appellant Jagdish was having Chura in his hand which was about 2 bitias in length and he inflicted injuries from that

dagger. In view of the above it is evidently clear that the submission of the learned Counsel is not supported by the fact. It is the Appellant Jagdish

who inflicted Chura blows which caused grievous injury on the injured person P.Ws. 2 and 3. The other witnesses have consistently stated that the

Appellant Jagdish came and he dragged his son putting a towel around his neck and took him near a tree and assaulted with dagger on his chest

which is vital part of the body.

5. From the above discussion it is clear that the Appellants have rightly been convicted and punished u/s 307 I.P.C. and also u/s 324 I.P.C.

However, the alternative submission of the learned Counsel is that the occurrence took place In the year 1979 about 22 years ago and the

Appellants have been all along harassed during the prolonged litigation. It has also been stated that a compromise petition has been also filed. Since

Section 307 I.P.C. is not compoundable the same will not be accepted. It has been stated that the matter has been settled out side the court but

since Section 307 I.P.C. is not compoundable the same could not be considered and accepted. As such the compromise petition is rejected. It has

also been submitted that the occurrence took place in the year 1979 i.e. about 23 years ago the Appellants have been amply harassed due to

prolonged litigation as such it requires consideration on the point of sentence.

6. Having regard to the submission aised on behalf of the Appellants, I am of he view that it Will be expedient in the nterest of justice that if the

Appellants Madan Kahar is sentenced to pay a fine of Rs. 2000/- and Appellant Jagdish Kahar is entenced to pay a fine of Rs. 5000/- to be

eposited by them within three months om the date of receipt of a copy of this order and in default the Appellant Madan Kahar will undergo R.I. for

one year and Apellant Jagdish Kahar will under go R.I. two years. Out of the amount fined if it realised the same will be equally distribed amongst

the injured P.W. 1 Lakhan Tanti, P.W. Sarjug Tanti and P.W.3 onandan Tanti.

7. With the aforesaid modification in sentence this appeal is dismissed.