

(2003) 03 PAT CK 0114

Patna High Court

Case No: Criminal Appeal (DB) No. 327 of 1998

Basant Kumar and
Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: March 21, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 114, 302, 304, 34

Citation: (2003) 3 PLJR 483

Hon'ble Judges: P.K. Sinha, J; B.N.P. Singh, J

Bench: Division Bench

Advocate: Suraj Narain Prasad Sinha, Mahesh Prasad II and Rewati Kant Raman, for the Appellant; Ganesh Prasad Jaiswal, for the Respondent

Final Decision: Dismissed

Judgement

B.N.P. Singh, J.

A fortnight, preceding the fateful day of incident, Appellants Ram Chandra Prasad and Jai Prakash Choudhary, allegedly picked up a quarrel with Kiran Devi, Headmistress of Primary School, Jhargawan, for not distributing wheat to them which was meant for children reading in the school. When deceased Shri Chand Prasad, husband of Kiran Devi, who was posted as Block Agriculture Officer at Rajpur Block, came to his house, he was informed by his wife about the incident, pursuant to which the deceased, who met Ram Chandra Prasad, Jai Prakash Choudhary, Rakesh Kumar, while returning after visiting vegetable field, took them to task for abusing his wife. Shortly thereafter, Ram Chandra Prasad, while abusing the deceased, exhorted Jai Prakash Choudhary and Rakesh Kumar to kill him. After Kiran Devi and her son Bipin Kumar came out of her house, witnessed Ram Chandra Prasad and Jai Prakash Choudhary felling deceased on the ground, pursuant to which, while Jai Prakash Choudhary caught hold of the deceased, Ram Chandra Prasad, dealt blows with iron rod on temporal region of head and also near eyes.

Allegedly, Rakesh Kumar too dealt blows with wooden substance on head of the deceased, which was followed by blows given by Basant Kumar with wooden substance. Those who witnessed the incident of assault on the deceased were suggested to be Sanjay Kumar and Vijay Kumar who carried the injured to the clinic of Dr. Surendra Singh at Islampur where he was declared dead, and with these accusations fardbeyan of Kiran Devi (P.W. 8) was recorded at the clinic of Dr. Surendra Singh at Islampur at about 20.15 hours on 10th August, 1996, by Shri Shyam Nandan Sah, Officer Incharge of Islampur Police Station, pursuant to which investigation followed.

2. During investigation, the officer Incharge of Police Station having visited place of occurrence, recorded statement of witnesses, seized blood stained earth and wearing apparel of the deceased from the place of occurrence, held autopsy over the dead body of the deceased, sent the dead body to mortuary for post mortem examination and eventually made over charge of investigation of the case to his successor who laid charge sheet before the Court.

3. At trial that followed, the State examined altogether 12 witnesses, and some of them had claimed to be ocular witnesses to the incident. The State also examined other witnesses who stated to have received information about incident either from Kiran Devi or others. The State examined also two doctors including Dr. Surendra Singh to whose clinic, Shri Chand Prasad was carried and was found dead, and the other doctor examined by the State stated to have held autopsy over the dead body of the deceased. The Investigating Officer was too examined at trial defence too had chosen to examine four witnesses, obviously to counter allegations attributed to the Appellants, who were stating at trial about questionable relationship of Kiran Devi, wife of the deceased with one Sitaram Prasad, a teacher posted in the school, on deputation, where Kiran Devi too for some period had been on deputation. The witnesses were stating that Sitaram Prasad was on visiting terms with Kiran Devi and the husband suspecting fidelity of his wife, used to assault her.

4. Explicit defence of the Appellants before the court below and this Court too, apart from simplicity denial of allegations attributed to them, was also that since Kiran Devi had questionable relation with Sitaram Prasad, a school teacher, she got killing of her husband executed with aid of her paramour. The trial court, however, on evaluation of probative value of the testimony of witnesses, while rejecting plea of innocence of the Appellants, and placing implicit reliance on the witnesses, who claimed to be either ocular to the incident or claimed to have seen the dead body of the deceased on the place of occurrence with bleeding wounds on his person, recorded verdict of guilt u/s 302/34 of the Indian Penal Code (IPC) against Ram Chandra Prasad, Rakesh Kumar and Basant Kumar. The trial court found Jai Prakash Choudhary and Munna Kumar too guilty u/s 302/114 IPC and sentenced all these Appellants convicting them on these different counts, to undergo imprisonment for life.

5. A good deal of argument was addressed to the Court to assail the findings recorded by the court below and It was sought to be urged that on own showing P.Ws. 1 to 5, 7 and 8 were closely (sic)fed to the deceased and highly interned in the affairs of the prosecution, and the State had examined only these witnesses, entirely to the exclusion of those to mere independent witnesses and were aggressed to have thronged at the place of occurrence, and possibly no eye brow could have been raised against their impartiality. Referring to the testimony of P.Ws. 1 and learned Counsel would urge that though in the vicinity of the place of occurrence, a number of houses situate including that of Sanjay Kumar, Chamari Choudhary, Kailash Choudhary, Suresh Choudhary etc., person of none of these houses were witnesses to the incident, and hence narrations rendered by the eye witnesses who were none else but the partisan witnesses and to be discarded, on this score. Learned Counsel with his lucid submission would age that though name of Munna Kumar was conspicuously wanting in the earliest session of Kiran Devi, which she rendered before the Police shortly after the incident, endeavours were made at trial to implicate Munna Kumar also who was arraigned as accused, and due regard being had to the artiest version, complicity of Munna Kumar had to be excluded from consideration and other limb of argument was that regard being had to the positive finding recorded by the doctor who held autopsy over the dead body of the deceased, and here being variance between evidence of he doctor and testimony of eye witnesses bout time of death of the deceased, ocular account given by the witness had to be discarded. Other argument which has been noticed by us was that assuming prosecution case to be true on face value about deceased having died homicidal death, in view of attending circumstances of the case and also number of injury sustained by the deceased and also weapon held by the assailants, the overt act attributed to the Appellants did not attract mischief of Section 302/34 IPC, more so, when neither positive finding of the doctor nor testimony of witnesses would explicitly suggest as to who was the author of the fatal injury of the deceased, and hence overt act attributed to them would squarely fall within mischief of Section 304 Part II of the Code.

6. At the outset, we may mention that Appellant Ramchandra Prasad, to whom six numbers of injuries were attributed, was reported to be dead, and hence appeal as against him has abated. Now, complicity of remaining Appellants has to be judged in the backdrop of testimony of witnesses. At this juncture, before adverting to appreciation of contentions raised at Bar, we consider it proper to discuss with brevity, the testimony of witnesses which have been fairly spelt out in the judgment of the court below also.

7. Reiterating her earliest narration, which she rendered before the Police, Kiran Devi (P.W. 8) states to have seen Ram Chandra Prasad, Jai Prakash Choudhary, Rakesh Kumar, Munna Kumar and Basant Kumar indulging in altercation with her husband, when he questioned them for abusing his wife for not distributing wheat to them, pursuant to which on exhortation made by Ram Chandra Prasad, Jai

Prakash Choudhary, pulling his leg read him fall on the ground and pressed his chest. About others, witness states that Munna had caught his leg followed by assault by Ram Chandra Prasad on temporal region of head, and also near eyes with iron rod. Rakesh Kumar was attributed to have dealt blows on his head with wooden substance, and similar allegation about assault with wooden object was attributed also to Basant Kumar, when Shri Chand Prasad on receipt of those injuries dropped unconscious. The witness reiterates about her husband having been taken to the clinic of Dr. Surendra Singh near Islampur, where he was declared dead.

8. Now, advertent to the other witnesses, we notice Bipin Kumar (P.W. 2) stating at trial that while he was at his house, he saw Appellants altercating with his father when his father questioned them for abusing Kiran Devi for not distributing wheat to them. Then on exhortation made by Ram Chandra Prasad, Jai Prakash Choudhary pulled his leg and made him fall on the ground, and then Munna Kumar caught his leg. Attribution of similar nature was made by this witness too about Ram Chandra Prasad assaulting on head and temporal region of the deceased with iron rod followed by assault by Rakesh Kumar with wooden substance on head and Basant Kumar too assaulting on head. Seeing the incident, his mother raised alarm loudly and then Awadhesh, Vinay and others came, pursuant to which deceased was taken to the clinic of Dr. Surendra Singh, Islampur, where he was declared dead. Sukhdeo Prasad (P.W. 1) stated to be present in the house of Ramdhani Prasad when noticed Appellants altercating with the deceased when he questioned them for abusing his wife, and then on exhortation made by Ram Chandra Prasad, while Jai Prakash Choudhary having pulled his leg, felled him on the ground, he along with Munna, pressed him. Similar narration about Ramchandra Prasad assaulting the deceased with iron rod on head and Basant and Munna assaulting him with wooden substance was made by this witness too. Though all endeavors were made for medical assistance to the deceased, by the time he was taken to the clinic of Surendra Singh, he was declared dead.

9. Now we may notice narrations made by Bijay Kumar (P.W.3) and other witness who too claimed to be ocular to the incident. He states to have run to the house of Ramdhani Prasad on alarms where Appellants were indulging in altercation with deceased Shri Chand Prasad, when he questioned them for abusing his wife for not distributing wheat to them. Then on exhortation made by Ram Chandra Prasad, Jai Prakash Choudhary pulled his leg, and while he along with Munna pressed him, Ram Chandra Prasad, Basant Kumar and Rakesh Kumar assaulted Shri Chand Prasad with wooden substance on temporal region of head and also near eyes. Though the deceased was taken to the clinic of Dr. Surendra Singh, Islampur, he was declared dead.

10. Advertent to the positive findings recorded by the doctor, who held autopsy over the dead body of the deceased, Dr. Ravi Ranjan Rajesh (P.W.9) stated to have found following ante mortem injuries on dead body of the deceased:

- (1) An incised wound measuring 3" x 1-1/2" x cutting of bone on right frontal region of scalp placed longitudinally starting from right parietal region to upper border of forehead with bleeding clot and exposed brain tissues and cutting of bones.
- (2) An incised wound measuring 1" x 1/4" x scalp deep on right temporal region of scalp placed transversely with blood clot.
- (3) An incised wound measuring 1- 1/2" x 1/2" x muscle deep on right cheek placed longitudinally with blood clot.
- (4) An incised wound measuring 3-1/2" x 1-1/2" x Bone deep on right parietal region of scalp placed transversely with blood clot.
- (5) An incised wound measuring 2" x 1" x Bone deep on chin placed transversely with clotted blood.
- (6) An incised wound measuring 1-1/2" x 1/4" skin deep on upper part of external ear on right side.
- (7) One lacerated wound measuring 2-1/4" x 1-1/2" x bone deep on right infraorbital region of face with collar eye ball and fracture of nasal bone, and right maxillary bone with blood clot.
- (8) One depressed lacerated wound measuring 3-1/2" x 2-1/2" bone deep on right supra orbital region of lower part of forehead with clotted blood and fracture of forehead bone and orbital bone.
- (9) Lacerated wound measuring 2-1/2" x 1"x bone deep on right side of face and close to right tigers of the ear with bleeding clot and fracture of right zeugmatic bone.
- (10) Abrasion measuring 1-1/2" x 1", on right knee and multiple bruises measuring 4" x 1", 3-1/2" x 1", and 2" x 1" on right forearm and on back, and bleeding clot on right nostril and right ear.

On dissection, doctor stated to have noticed fracture of right frontal, parietal, maxillary and zeugmatic bones as well as nasal and right orbital bones. Injuries Nos. (1) to (6) in opinion of the doctor were caused by sharp cutting weapon and sharp and of rod. The rest injuries were caused by hard and blunt substance and death of the deceased in his estimation was due to the chock and hemorrhage as a result of all cheese injuries within 24 to 36 hrs. preceding the post mortem examination.

11. Shyam Nandan Sah (P.W. 12) Officer Incharge, stated to have rushed to the clinic of Dr. Surendra Singh, Islampur, shortly on receipt of O.D. slip from the factor, after recording sanha entry at the police Station. He stated to have prepared quest report over dead body of the desisted, pursuant to which dead body was (sic)ent to mortuary for post mortem examination. The Investigating Officer had found the place of occurrence to be a place near the house of Ramdhani Prasad from where

he stated to have seized blood stained earth and also blood stained wearing apparels. Fardbeyan of Kiran Devi (P.W. 8) was recorded at clinic itself, by him, pursuant to which statement of Awadh Prasad and others was recorded. The Police Officer state to have taken steps for apprehension of the Appellants and made over charge to his successor who eventually laid charge sheet before the court.

12. Evidence of some witness, which were not of oculars nature, too, needs to be appreciated, and firstly we may advert to evidence of Vinay Kumar (P.W. 4) who stated to have noticed Shri Chand Prasad smeared with blood and without senses. He stated to have noticed Kiran Devi, Bipin Kumar and Bijay Kumar too there where Kiran Devi was screaming loudly and was stating about Appellants having assaulted the deceased with iron rod and wooden substance. A cot was brought on which the injured was carried to the clinic of doctor where he was declared dead. He states to have appended his signature on fardbeyan of Kiran Devi, and Awadhesh Kumar too had appended his signature thereon. This witness was a witness also to preparation of the inquest report by the Police Officer. We may now notice narration made by Awadhesh Kumar (P.W. 5), who was a witness not only to the fardbeyan and inquest report, but also to seizure memo prepared by the Police. He was at his shop, and on receipt of information about assault on Shri Chand Prasad, he ran to his house and noticed him dropped senseless. Blood was oozing from head and his wife was weeping loudly who informed him about Appellants having assaulted her husband with hard and blunt substance. Tunni Singh (P.W. 6) too stated to have ran to the place of occurrence on hearing alarms, and noticed Shri Chand fallen with pool of blood, and Awadhesh, Vijay and Sukhdeo too were there and it was the wife of the deceased who disclosed complicity of the Appellants about assaulting her husband with hard and blunt substance. Similar narrations were made also by Bhagirath Choudhary (P.W. 7) for receipt of information about Appellants having assaulted the deceased with iron rod and hard blunt object, pursuant to which he succumbed to them.

13. Evidence of Dr. Surendra Singh (P.W. 10) too needs to be noticed who stated about injured having been brought to his clinic where he was declared dead, and shortly thereafter, he issued O.D. slip to Islampur Police Station. Rameshwar Singh (P.W. 11) simply states to have brought to Courts blood stained earth and wearing apparel from Islampur malkhana.

14. We have noticed that defence too has chosen to examine four witnesses and testimony of these witnesses too deserves consideration. Rajendra Prasad (D.W. 1) while refuting the incident, as alleged by the State, states that since Sitaram Prasad was on visiting terms with Kiran Devi, there had been differences between husband and wife and Nonce, there was rumour in the village that Kiran Devi with the aid of her paramour had executed killing of her husband. Arbind Choudhary (D.W. 2) was simply stating that Kiran Devi was on deputation in Tnekwaha school where Sitaram Prasad too was posted who used to go to the house of Kiran Devi. This witness,

however, did not make explicit attribution about questionable relationship of Kiran Devi with said Sitaram Prasad. Though Ajay Kumar (D.W. 3) states about questionable relationship of Kiran Devi with Sitaram Prasad, he did not have personal knowledge about it and his information was based only on rumours. Jai Prakash Choudhary (D.W. 4) was Appellant himself whose both sons Rakesh Kumar and Basant Kumar too were Appellants, and without placing any document of credible nature, witness states about said Basant to be a juvenile. This witness too states about questionable relationship of Kiran Devi with Sitaram Prasad, but barring all rumors, he had no credible knowledge about questionable relationship between them. No information, however, was ever lodged before any public authority on that count.

15. Though trial court had placed reliance on testimony of prosecution witnesses, some of whom had claimed to be ocular, and evidence of others was of ancillary nature, corroborating to their testimony, disbelieved P.W. 6, he having not been examined by the Police Officer during investigation. We too have noticed that Bipin Kumar (P.W. 2), Bijay Kumar (P.W. 3) and Kiran Devi (P.W. 8) had stated with sustained consistencies about witnessing assault on the deceased. Narration made by these witnesses would manifestly suggest that after Jai Prakash Choudhary pulled leg of Shri Chand Prasad, he dropped to the ground pursuant to which Munna abused him and then assault on him was made by Ram Chandra Prasad, Rakesh Kumar and Basant Kumar. The doctor who held autopsy over the dead body, had noticed six incised wound on vital part of the person of the deceased. We have noticed P.Ws. 1 and 2 stating at trial about Ram Chandra Prasad assaulting deceased with wooden substance, lower part of which was like khanti, a pointed weapon and, if narrations made by these witnesses are to be given due consideration, positive finding recorded by the doctor about presence of six incised wounds on the deceased appears to be quite in conformity with the narrations made by them. But these injuries were attributed to Ram Chandra Prasad, who was dead. Positive findings recorded by the doctor also suggest injuries caused by hard and blunt substance, four in number and all these injuries on the region of head. The witnesses were quite emphatic in their depositions which we have noticed that the injuries received by the deceased were on head and there had been positive finding of the doctor too to lend assurance to the narrations made by the witnesses. Our attention had been drawn by the learned Counsel for the Appellant about P.Ws. 1, 2 and 3 narrating at trial about there being (sic) a pool of blood while the injured was carried to the clinic of the doctor but admittedly here has been no such finding by the Police Officer who visited place of occurrence, though he found blood at the place of occurrence which was eventually seized from him. The seizure of blood from the place of occurrence of course, without there being any finding by the expert, did not bear much value, as on own showing of the Police Officer blood stained earth was not sent for chemical examination. Be that as it may, presence of blood on the place of occurrence was noticed by witnesses and also by the Police Officer who visited

the place of occurrence shortly after the accident. Even those witnesses, who were not ocular, were stating at trial about blood (sic)ozing out from wounds of the deceased.

16. True it is that Bipin Kumar (P.W. 2) is none else but son of the deceased who was prosecuting his studies at Patna. he usually happens to go to his house at sport intervals, and there was no such evidence of mitigating nature to exclude witnesses of Bipin Kumar from the place of occurrence for his exclusion as eye witnesses. Bijay Kumar (P.W. 3) too was closely dated to the deceased's family and similar was the case with Awadhesh Kumar (P.W. 5). Our attention has been drawn by the learned Counsel for the Appellants to the evidence of P.W.3 and it was urged with all stress that if evidence of this witnesses was given due consideration, possibly of Kiran Devi to be present at the material time of incident was extremely remote, but we notice that simply because P.W. 3 stated that after Kiran Devi came, she took dead body of the deceased in her lap, that did not necessarily warrant rejection of her evidence. We have noticed Bipin Kumar too stating with stress that he along with his mother was present at the place of occurrence right from the beginning, when altercation took place between deceased and the Appellants. Referring to Sukhdeo Prasad (P.W. 1), it is urged, that barring informant and Appellants, none was available on the place of occurrence at material time of incident, but barring such stray statement, if evidence of other witnesses were taken into consideration in totality, that would not exclude possibility of either Bipin Kumar or Bijay Kumar or Kiran Devi to be eye witness, to the incident.

17. We have noticed evidence of other witnesses too, who though not ocular, stated to have noticed Shri Chand Prasad dropped injured on the ground in pool of blood, and these witnesses too had lent assurance to the prosecution allegation about injuries sustained by the deceased near the house of Ramdhani Prasad. Though complicity of Munna Kumar had been conspicuously wanting in the earliest version of Kiran Devi (P.W. 8) which she rendered before the police, the trial court has assigned good reason for acceptance of testimony of this witness also about Munna Kumar, as shortly within 1-1/2 hours of recording of the first information report, further statement of Kiran Devi was recorded by the Police and in that statement complicity of Munna Kumar had well surfaced and we too endorse the reasoning assigned by the court below about acceptance of evidence of the witnesses also about complicity of Munna Kumar.

18. Now we may notice last limb of argument canvassed at Bar about finding recorded by the trial court against three Appellants u/s 302/34 IPC. Admitted facts are that Ram Chandra Prasad who was the assailant of the deceased with sharp edged weapon is no more and the appeal had abated against him and as we have discussed, six number of injuries, which were incised in nature, were attributed to said Ram Chandra Prasad. Rest injuries which were lacerated wounds are attributable to rest of the two Appellants who are Rakesh Kumar and Basant Kumar.

Though the doctor has noticed four lacerated wounds on the person of the deceased, there has been no explicit evidence as to who was the author of the particular injury. Even though Ram Chandra Prasad was attributed to have dealt blows on the skull of the deceased with lethal weapon, there has been no finding of the doctor about particular injury to be the cause of death of the deceased, as in opinion of the doctor, cause of death was shock and hemorrhage, and all the injuries found on the person. The circumstance in which Shri Chand met his tragic end cannot be lost sight of. A fortnight preceding the incident, some of the Appellants had taken Kiran Devi to task for not distributing wheat to them and the incident had followed thereafter as a fall out of the previous incident of abuses. None of the remaining assailants were suggested to have visited the place of occurrence with any lethal weapon, as accusation attributed to both Rakesh Kumar and Basant Kumar was that they held wooden substance with them with which the deceased was assaulted on the day of the incident. The evidence placed on the record would show that it was the deceased who took the Appellants to task for abusing his wife, pursuant to which while two of them caught the deceased, three assaulted him and hence, both circumstances of the case, and also nature of evidences do suggest that it was all on provocation and in spur of moment, that the Appellants took recourse to violence and assaulted the deceased, and hence, regard being had to the attending circumstances of the case, while setting aside conviction of Rakesh Kumar and Basant Kumar u/s 302/34 IPC, we find them guilty u/s 304 Part II of the Code. As for Jai Prakash Choudhary and Munna Kumar, they had suffered conviction u/s 302/114 IPC but evidences placed on the record fail to suggest these two Appellants to be abettor, as accusations attributed to them only suggest that they having pulled the deceased, had pressed him. If at all any exhortation was made to set the ball in motion that was made by Ram Chandra Prasad, who is dead. Though Jai Prakash Choudhary and Munna Kumar were not suggested to be the assailant of the deceased, evidences did not rule out their participation, as these two Appellants had pulled the deceased and pressed him to facilitate assault on him by rest Appellants. Though Rakesh Kumar and Basant Kumar, we may notice, had assaulted only with wooden substance, finding of the doctor would manifestly suggest three fractured bones on the scalp. The doctor had noticed as many as ten injuries for which besides Ram Chandra Prasad (since dead), Rakesh Kumar and Basant Kumar were suggested to be authors, but by legal fiction, not only Rakesh Kumar and Basant Kumar but Jai Prakash Choudhary and Munna too in view of overt act committed by them in furtherance of common intention of all, would be liable to suffer conviction u/s 304 Part 11/34 IPC hence while converting conviction of Appellants Jai Prakash Choudhary and Munna, too u/s 304 Part (sic) IPC, we sentence all the four Appellants suffer rigorous imprisonment for a term (sic) seven years and with this modification, both the appeals are dismissed. Since all the four Appellants are on bail, their bail bonds are cancelled and steps be taken to commit them to custody forthwith.

P.K. Sinha, J.

19. I agree.