

Hari Ram and ors. Vs. State of Bihar

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Court : Patna

Decided On : Feb-11-1999

Judge : Bisheshwar Prasad Singh and D.P.S. Choudhary, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 304 and 323

Appeal No. : Cri. Appeal No. 340 of 1986

Appellant : Hari Ram and ors.

Respondent : State of Bihar

Advocate for Def. : Kamta Prasad Gupta, Adv.

Advocate for Pet/Ap. : Angad Ojha, Adv.

Judgement :

1. All the three appellants in this appeal have been found guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code, and have been sentenced to undergo rigorous imprisonment for life by 2nd Additional Sessions Judge, Nalanda, in Sessions Trial No. 12 of 1985 by his judgment and order dated 11th July, 1986.

2. The occurrence giving rise to this appeal is said to have taken place at about 5 p.m. on 27-5-1984 in which Kishori Paswan, brother of the informant Bishundeo Das (P.W. 7) was killed by the appellants. The occurrence is said to have been

witnessed by several witnesses who have been examined at the trial as P.Ws. 1 to 7. P.W. 8 is the investigating Officer, while P.W. 9 conducted the post mortem examination on the dead body of the deceased. It also appears from the record that the fardbeyan was lodged by Bishundeo Das (P.W, 7), the informant, at the police station Biharsharif at 7-15 on the date of occurrence itself. The deceased was initially taken for medical treatment to the local doctor but since he expressed his inability to do anything in the matter, and while being moved to the Biharshariff hospital he breathed his last, the informant went to the police station and lodged the fardbeyan.

3. In his fardbeyan it has been stated by the informant that on the date of occurrence he along with his brother Kishori Paswan (deceased) was returning to his village Upraora from the Bazar at about 5 p.m. When they reached near the barrier, they met co-villager Jagdish Paswan (P.W. 4) and Chotan Paswan (not examined). He started talking to them while his brother Kishori Paswan (deceased) proceeded about 200 yards ahead. While his brother was near the Gul factory, the informant also proceeded ahead after talking to his co-villagers. He then saw that near the toddy shop of Hadu Choudhary four persons came and started scuffling with his brother. Seeing this the informant proceeded at a faster pace raising an alarm as to why they were misbehaving with his brother. In the meantime, one of them entered the house of Hadu Choudhary and brought a Samath (wooden pole with iron rings at the bottom used for pounding rice etc.), also known as Mushal. They caught hold of his brother and he was assaulted on his head with Samath. By that time the informant had come near to them and saw that, of the assailants, two belonged to village Muraoradih, namely, appellant Lallan Ram and appellant Bijendra Ram who ran towards the south. Several other villagers ran after them, and on the alarm raised by the informant his co-villagers also, who were near the barrier, namely, Jagdish Paswan (P.W. 4) and Chotan Paswan, chased the assailants. The assailants, however, succeeded in running away. With the help of villagers he took his brother in a rickshaw and proceeded towards Biharsharif. However, by the time they reached the Gumti his brother died and, therefore, he came straight to the police station.

In the fardbeyan there is no clear statement as to the motive for the occurrence, but the informant suspected that the accused, perhaps, wanted to snatch away money from his brother which he resisted, and thereafter he was assaulted by the accused.

4. On the basis of the fardbeyan a formal first information report (Ext. 3) was drawn up by the officer-in-charge, and the investigation of the case was taken up by P.W. 8, Alakh Nandan Choudhary, Officer-in-Charge. The Investigating Officer has deposed that he prepared the inquest report at the police station itself, which was witnessed by the informant Bishundeo Das (P. W. 7) and one Bhagwan Yadav. He proceeded to the place of occurrence on the same night and recorded the statement of Hadu Choudhary, Jagdish Paswan (P.W. 4), Chotan Paswan, Bisheshwar Paswan and Shekhar Chand (P.W. 6). He camped at village Muraura, the village of occurrence and on 28-5-1984 at zero hours he again started the investigation. On that day in the night he came to Biharsharif, at 7-45 p.m. On that night he could not meet witnesses at village Muraura. On 30th May, 1984 he recorded the statement of other witnesses, including Tanik Prasad Singh (P.W. 3) and Kailash Gope (P.W. 5), Shiv Kumar Roy and others. The body of the deceased was sent for postmortem examination, and after full investigation chargesheet was submitted against the appellants.

5. Dr. Anil Kumar, who was posted as Civil Assistant Surgeon at Sadar Hospital, Biharsharif conducted the post mortem examination, on the dead body of the deceased at 9-30 a.m. on 28-5-1984. He found the following antemortem injuries on the person of the deceased:

(i) Incised wound $2\frac{1}{2} \times 1'$ x bone deep over the scalp in the middle with fracture of the parietal bones underneath and brain matter coming out. There was massive amount of clot underneath the scalp.

(ii) Swelling 6' diameter over the right temporal region with fracture of parietal temporal bone on the right side.

2. On dissection -- There was clotted blood over the brain surface. Lungs and heart were pale. The heart was empty. Liver, spleen and kidney were also pale.

Stomach contained aspirated air and blood along with rice and dal. Large intestine contained faecal matter. The bladder was empty and genitalia intact. Rigor mortis were present in all four limbs. Time elapsed since death -- 12 to 24 hours.

In the opinion of the doctor the death was due to haemorrhage and shock caused by the aforesaid injuries. In his opinion, the injury No. (i) was caused by sharp cutting weapon, such as iron portion of the Samath, and injury No. (ii) was caused by hard and blunt substance, such as Samath. The injuries were sufficient to cause death in the ordinary course of nature. In his opinion, the two injuries were caused by two separate blows.

6. The prosecution examined as many as seven eye-witnesses at the trial, but P.W. 1 (Harendra Gope) and P.W. 2 (Karan Choudhary alias Haddu Choudhary) were declared hostile. They feigned ignorance about the occurrence. Tanik Prasad Singh (P.W. 3), however, supported the prosecution case. According to this witness, he was near the P.W.D. road where there is a barrier and he heard Hulla and found people running towards the Pasi Khana (toddy shop). From that direction the hulla came. He also ran to see as to what happened. He saw that the appellant, all three of them, were scuffling with Kishori Paswan. Thereafter appellant Lallan Ram went to the house of the Pasi thaddu Choudhary) and brought Samat. He assaulted Kishori Paswan (deceased) with the Samath on his head. Kishori Paswan fell down, whereafter there was a pandemonium. Kishori Paswan was brought to the village dispensary where the doctor expressed his inability to do anything. Thereafter, Kishori Paswan was taken away by the persons there and later he came to know that he had died. This witness stated that he was examined at the police station on the day after the occurrence and on that day some other witnesses were also examined. He was informed by the informant that he had to give statement in the case and it was the informant who took him to the police station. He could not say whether the deceased was taken to Biharsharif, because this witness claimed that after the occurrence he returned to his village. After the occurrence he had no talk with the informant, but on the following day he had talked to him when he had come to his house and had told him to give evidence in this case. This witness identified the assailants. He also claimed to know the deceased. He further stated that the informant was studying

with him in the village school and, therefore, he knew him also. He further deposed that from the barrier the toddy shop can be seen. When his attention was first attracted to the place from where the noise emanated, he saw that Kishori Paswan was being assaulted. By then Kishori Paswan had not fallen on the ground. When he was being assaulted his hands were held by appellant Hari Ram, and his waist was held by appellant Bijendra Ram, so that he could not run away. He further deposed that the samath had rings and it was about four hands long and 2' to 3' in diameter.

So far as this witness is concerned, he appears to be an independent witness and does-not have any special connection either with the accused or with the informant. It was submitted that he was studying in the same school as the informant and, therefore, he was known to him. That is but natural because there are not many schools in the rural areas and persons from nearby villages attend the same school. There is, however, nothing to show that apart from the fact that they were students of the same school, or they were either very intimate or on visiting terms. The mere fact that during school days they were students of the same school without anything more, would not persuade us to hold that the witness is not an independent witness.

7. Jagdish Paswan (P.W. 4) was a co-villager of the deceased and the informant. According to him also the occurrence took place at about 5 p.m. when he was going to Biharsharif and was near the barrier new village Muraura, the village of occurrence. According to this witness, when he proceeded beyond the barrier, he heard hullah coming from the north. He came running and came to the toddy shop of Huddu Pasi. He saw appellant Lallan Ram armed with Samat. While appellant Bijendra Ram and appellant Hari Ram had caught hold of Kishori Paswan, Lallan Ram assaulied Kishori Paswan on his head with Samath as a result of which he fell down. They chased the appellants but they were successful in running away. Kishori Paswan had become unconscious and people took him to the doctor, but the doctor told them that he was dead. He stated that he along with Tanik Prasad Singh (P.W. 3), Chotan and Kailash Gope (P.W. 5) took Kishori Paswan, who was injured, to the doctor, who had a dispensary in village Muraura itself. After the doctor declared him dead, Laxmi Ratwal, Choukidar had come. Thereafter he

accompanied them to the Thana. His statement was also recorded at the police station along with two or three other witnesses. This witness stated that Kishori Paswan and informant were his brothers. Chotan was his cousin while Bisheshwar was his Bhagina. It does not appear from the record that this witness is the real brother of the deceased or the informant because, his parentage is different. It is just possible that he may be related to the informant being his collateral. This witness, however, stated that he had seen the informant near the barrier. He had not talked to him because the informant was then talking to Nago Babu. He further claimed that from near the barrier itself one could see the scuffle going on.

Apart from the fact that this witness claims to be the brother of the informant, though he does not appear to be the real brother, there is nothing in the testimony of this witness to suspect his veracity and truthfulness.

8. Kailash Gope (P.W. 5) has also given the same version as Jagdish Paswan (P.W. 4). His evidence fully supports the prosecution case and all that was said against him was that he was a milkman and he used to supply milk to the informant as well. There is nothing in his cross-examination which may persuade us to doubt the truthfulness of this witness.

9. Shekhar Chand (P.W. 6) is another eyewitness who appears to be completely independent, as he belongs to a different village. He has also given substantially the same version of the occurrence as other eye-witnesses, and this witness was examined by the investigating officer on the date of occurrence itself. From his cross-examination it appears that he was not very well-known to the deceased or the informant, and it was only on account of the occurrence that he came to know them. He denied the suggestion that the informant was his tenant.

10. P.W. 7 is the informant Bishundeo Das. He has disclosed the same version in course of his deposition as was stated by him in the fardbeyan, except for the fact that in the fardbeyan he had not mentioned the name of appellant Hari Ram, though he had mentioned that four persons were scuffling with his brother. There is nothing in particular in his cross-examination which may arouse our suspicion as to the truthfulness of this witness. Barring a few minor discrepancies here and there, the witness is consistent, and has fully supported the prosecution case.

Nothing in particular is said against this witness except that he is the brother of the deceased and, therefore, interested in the success of the prosecution.

11. Having considered the testimony of the eye-witnesses, we are satisfied that the prosecution has been able to prove that an occurrence took place on the date and time alleged in which Kishori Paswan was badly assaulted as a result of which he died soon thereafter.

12. Sri Angad Ojha, counsel appearing on behalf of the appellants, submitted that so far as appellant Hari Ram is concerned, he has not been named in the first information report and, therefore, there is considerable doubt about the complicity of this accused in the commission of the crime. This accused was known to the informant. In fact, the informant has categorically named him in course of his deposition. He submitted that the false implication of this appellant cannot be ruled out, and it may be that after the occurrence the witness may have thought of implicating him. No particular reason has been advanced as to why this appellant should be falsely implicated. While we are satisfied that the witnesses have spoken the truth and have not tried to falsely implicate any person, and without casting any reflection on their testimony by way of abundant caution we feel that appellant Hari Ram should be given the benefit of doubt, on account of the fact that he has not been named in the first information report by the informant.

13. Mr. Ojha then submitted that so far as appellant Lallan Ram is concerned, having regard to the facts and circumstances of the case, he cannot be held guilty of the offence under Sections 302 or 302/34 of the Indian Penal Code. He submitted that the remaining two appellants have been wrongly held guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code. He submitted that having regard to the facts 'of the case, the act of Lallan Ram is his individual act and was not in furtherance of the common intention of all the three appellants. We find substance in the submission urged on behalf of the appellants. We find that the assault on the deceased was not a pre-planned assault. It so happened that the deceased was passing by and was noticed by the appellants. It is not very clear as to whether there was any particular motive for the commission of the crime. The witnesses were watching the proceedings from a distance and,

therefore, it was not known as to whether the appellants may have felt offended by any act of the deceased or vice-versa. The possibility that something might have happened then and there which gave rise to the scuffle cannot be ruled out. All the appellants were at that stage unarmed, and all that is there on the record is that they were scuffling with the deceased. Some of the witnesses have stated that the deceased was assaulted with fists and slaps by appellant Hari Ram and Bijendra Ram. It appears that while this scuffle was going on, suddenly Lallan Ram entered the house of Hadu Choudhary and brought a Samath and assaulted the deceased on his head. In these circumstances, we are of the view that the three appellants did not share the common intention of committing the murder of the deceased. At best, the common intention may have been to assault him and that too with slaps and fists because they were unarmed. We, therefore, uphold the contention of counsel for the appellants that the remaining two appellants, apart from Lallan Ram, cannot be held guilty of the offence under Section 302/34 of the Indian Penal Code. Since we have already given the benefit of doubt to appellant Hari Ram, only appellant Bijendra Ram can be held guilty of the offence under Section 323 of the Indian Penal Code. The question then arises as to the offence made out against appellant Lallan Ram. We have noticed above that there was no premeditation nor was there any pre-existing motive for the commission of the offence. For reasons unknown there was a sudden scuffle between the appellants and the deceased. While appellants Bijendra Ram and Hari Ram were scuffling with the deceased, appellant Lallan Ram suddenly rushed inside the house of Hadu Choudhary and brought a Samath on which he could lay his hands. Having found the Samath, which is not really a weapon, he assaulted the deceased with that Samath. Having regard to the fact that Samath is a heavy object and also having regard to the fact that if a blow is given on the head of any person with such object it may cause such injury as is likely to cause death, it cannot be said that appellant Lallan Ram had no knowledge that the injury caused by the Samath was likely to cause death. However, we find that Lallan Ram may not have intended to cause the death of Kishori Paswan since it appears that on a trivial issue the deceased and the appellants had scuffled. There is no material on record which may lead us to infer that appellant Lallan Ram entertained the intention of killing the deceased. It appears that at the heat of moment he rushed

inside the house of Hadu Choudhary and brought a Samath and assaulted the deceased. This happened without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and it also appears that appellant Lallan Ram did not take undue advantage or acted in a cruel or unusual manner. We are, therefore, satisfied that the offence proved against appellant Lallan Ram is one under Section 304, Part II of the Indian Penal Code, as we hold that though Lallan Ram knew that the injury caused on the head of the deceased with a Samath was likely to cause death, he did not intend to cause the death of the deceased. The act was committed without premeditation in a sudden fight upon a sudden quarrel without accused Lallan Ram taking undue advantage or acting in an unusual or cruel manner.

14. Counsel for the appellants, however, submitted that the ocular testimony is not corroborated by the medical evidence on record because two injuries were found on the head of the deceased caused by two separate blows. One of them was incised injury while the other was caused by a heavy blunt weapon. It was submitted that it is no one's case that two blows were given on the head of the deceased.

We have carefully perused the evidence on record and we find that the witnesses have stated that the deceased was assaulted with a Samath on his head, but none of the witnesses has stated anything about number of blows given by the Samath nor does it appear that in cross-examination any question was put to them on this aspect of the matter. Moreover, the existence of an injury appearing to be an incised wound over the scalp does not necessarily lead to the conclusion that the injury was caused by sharp pointed weapon. No doubt, the doctor has stated that iron portion of the Samath may cause such injury. However, it is well-known that an injury caused by hard and blunt substance on the scalp may some times give the appearance of an incised injury because of the hard substance below the skin. Many cases have been noticed where the injury caused on the scalp by hard and blunt substance have given the appearance of incised injury. Having regard to the consistent evidence of the prosecution witnesses, which we have no reason to discard, we are of the opinion that the injury which appeared to be an incised wound may also have been caused by Samath.

15. Coming to the question of sentence, we find that appellant Bijendra Ram whom we have found guilty of the offence under Section 323 of the Indian Penal Code assaulted the deceased with fists and slaps. We, therefore, feel that six months' rigorous imprisonment will meet the ends of justice, and we sentence him accordingly.

Appellant Lallan Ram has been found guilty of the offence under Section 304, Part II of the Indian Penal Code. In the facts and circumstances of the case, we sentence him to undergo rigorous imprisonment for seven years. All the appellants are acquitted of the charge under Section 302/34 of the Indian Penal Code. Appellant Hari Ram is given the benefit of doubt and is acquitted of all the charges. The judgment and order of the trial Court is modified accordingly.

16. Appellants Bijendra Ram and Lallan Ram are on bail. If they have not already served out the sentence imposed above, they shall be taken into custody to serve out the remaining part of the sentence. This appeal is allowed to the extent indicated above.

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