

**Tarapada and ors. Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/135811](http://sooperkanoon.com/135811)

**Court :** Guwahati

**Decided On :** Mar-28-1961

**Judge :** G. Mehrotra and S.K. Dutta, JJ.

**Appellant :** Tarapada and ors.

**Respondent :** The State

**Judgement :**

**G. Mehrotra, J.**

1. These two appeals arise out of the same Judgment and can be disposed of by one common judgment. Accused Tarapada Shihi has been convicted under Section 304 read with Section 113, Indian Penal Code and has been sentenced to five years' rigorous imprisonment. The other six appellants in Criminal Appeal No. 22 of 1960 have been convicted under Section 304, Part II read with Section 34 of the Indian Penal Code, and, Ura Koya and Irma Koya have been sentenced to eight years' rigorous imprisonment each and the other four appellants Budhu Koya, Lakhan Koya, Dewa Koya and Prem Bahadur have been awarded a sentence of five years' rigorous imprisonment each,

2. The appellant Tarapada Shihi is the manager of The Chikanmati Tea Estate. The prosecution case is that the deceased Amulya Ratan Ganguli was occupying a portion of the garden land without any authority and he had constructed a brick house on that land. On or about 3rd of December 1958 he had made that

unauthorised construction. The manager reported the matter to the Police but the Police asked him to file a civil suit.

The manager then instigated the other accused and at his instigation on 4th of December, 1958 the other accused persons, who were nine in number before the court below but some of them have been acquitted, went to the house of Amulya Ratan Ganguly, dragged him out of his new house, took him towards his old house and assaulted him. Amulya Ratan Ganguly succumbed to his injuries. Next morning P. W. Ramful came and saw Amulya lying dead in his old house. He lodged a first information report in Dalgaon Police station. Investigation was started. The Sub-inspector of Police visited the Place of occurrence and made an inquest report. Thereafter the case was started against all these accused persons.

3. The evidence against the garden manager tarapada Shihi is of the prosecution witnesses Nos. 2, 11 and 12. P. W. 2 Dr. Sukesh Chandra Dasgupta has stated in his deposition that he was [he medical officer of Chikanmati Tea Estate. Accused Shihi was the manager. In November 27, 1958, he was called to see the manager as he was suffering from heart trouble. He recommended him for a week's rest till 3rd December, 1958. He reported this matter to the Director.

He again went to the house of the accused Shihi on 4th of December, 1958 to examine his wife and there the manager told him that one Ganguli had erected a house on the garden land, and, thereupon the doctor advised him to take legal help. This happened on the morning of 4th December, 1958. In the afternoon he saw a car passing in front of his house and he saw that the Circle Inspector had come there. At about 8 P.M. he was again informed that the manager was feeling unwell.

He examined him but found that there was nothing wrong with the manager. Then he left for the office and thereafter went to his residence. He then saw eight persons including Ura Sardar and Budhu armed with lathi, spear and torches fust in front of the manager's house. He heard the manager telling them from inside his house to drive Ganguli out of that house. He has further deposed that he heard the manager telling the persons not to hurt Ganguly grievously.

The next witness is P-W. 11 Hara Mohan Ghose. He has stated that he knew the accused as the manager of Chikanmati Tea Estate. He himself was working as Hazira Moharer in the garden for the last five years. On being asked by the head clerk, he went to the Police Station on 4th December, 1958 to lodge the first information report that Amulya raised a hut in the brick field of the garden. He returned from the Police Station and reported the matter to the manager.

The manager asked him to call Irma Chaukidar to call Biswanath Mistri. He then sent Irma jhaukidar and Biswanath came. He saw Biswanath and his men in the verandah of the office in the evening. Thereafter he returned from the office at about 8 P.M. and saw some people standing just in front of the manager's house. They were armed with lathis. The manager asked them to oust Ganguly from the shed and to put Biswanath Mistri there. He recognised some of the appellants among the persons who were standing here.

The next witness is P. W. 12, Manoranjan He has stated that on 3rd December, 1958 Amulya raised a thatched house in the brick field of the garden. Next morning when he went to the bungalow of the manager, the latter told him that Amulya had raised a house and that he should inform the Police accordingly. He then went to the Dalgaon Police Station but he was asked to file a suit in the civil court. Then Biswanath Mistri was sent for. He was brought and the manager told Biswanath that he should be ready with his labourers for manufacture of bricks.

At about 9 P.M. he heard a hulla in the house of Amulya Ganguly. Shortly after he saw Ura, Irma, Budhu and Lakhan coming hurriedly from the side of the house of Ganguly. He asked them and Irma said that they had gone to oust Ganguly. They had small lathis in their hands and the witness had a lamp with him.

The conviction of the manager rests upon the statement of these three witnesses. We have carefully examined the statement of these witnesses, and, in our opinion, no reliance can be placed on the testimony of P.W, 2. He was the doctor in the garden, and, as suggested by the defence, his services were terminated on the recommendation of the manager. Apart from that he has stated that he was never examined by the Police. There is contradiction in his statement, and, in our opinion, no reliance can be placed on his testimony. It cannot be believed that he

actually heard the manager instructing the labourers to go and oust the deceased by force.

The statement of P-W. 11 cannot be believed at all. Before the Police he made an entirely contradictory statement. The Sessions Judge has brushed aside the contradictions in the statement on the ground that they were not material contradictions. Apart from that the Sessions Judge seems to be of the view that he could examine the statement made before the Police and could come to the conclusion whether the omission made in the statement before the Police was deliberate or due to confusion.

We think that it is not open to the Sessions Judge to examine the statement made before the Police and come to his own conclusion whether the omissions were deliberately made or otherwise done. The only purpose of the statement made before the Police is to use it for contradicting the statement of the witness given in court, and, if a certain omission amounts to contradiction, it is open to the defence to put that portion of the statement made before the Police which contradicts the statement of the witness made in court to the witness, and, thus to impeach the credit of the witness.

We have carefully examined the statement of these witnesses and they do not inspire any confidence. We see no reason as to why the manager should have instigated these labourers to go and forcibly drive out the deceased. Even the doctor has tried to minimise the offence committed by the manager by saying that the manager had definitely asked these persons not to inflict grievous injuries on the deceased. No case against the manager is, therefore, made out.

4. The conviction of the other appellants rests upon the testimony of the two eye-witnesses - P.W. 3 Biswanath Mistri and P.W. 7 Budhu Koya.

After going through the evidence of the P.Ws., His Lordship continued as under: In Our opinion, no case is made out against any of these appellants.

5. In the result, both the appeals are allowed. The bail bond of Tarapada Shihi will be cancelled and the other accused-appellants will be set at liberty forthwith

unless required in any other case.

**S.K. Dutta, J.**

6. I agree.

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