

**Abdul Rahim and ors. Vs. State of Bihar (Now Jharkhand)**

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**Court :** Jharkhand

**Decided On :** Mar-21-2006

**Reported in :** [2006(2)JCR233(Jhr)]

**Judge :** N. Dhinakar, C.J. and; R.R. Prasad, J.

**Acts :** Indian Penal Code (IPC) - Sections 149, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Criminal Appeal No. 81 of 1990 (P)

**Appellant :** Abdul Rahim and ors.

**Respondent :** State of Bihar (Now Jharkhand)

**Advocate for Def. :** Banani Verma, APP

**Advocate for Pet/Ap. :** Anil Kumar Sinha, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

1. The appellants, therein number, were arrayed as A-I, A-2 and A-3 and three other accused, who were arrayed as A-4 to A-6, were acquitted by the trial Judge.
2. The appellants and the other acquitted accused will be referred as A-1 to A-6 in the judgment for the sake of convenience.

3. Accused A-1 to A-6 were charged for an offence under Section 302 read with Section 149 IPC on the allegation that they were members of unlawful assembly and that in furtherance of the common object of the said unlawful assembly, they slapped and fisted Pahalu Mina and the said Pahalu Mina thereafter died. The trial Judge, while acquitting A-4 to A-6, found the accused A-1 to A-3 (appellants) guilty under Section 302 IPC, for which each of them was sentenced to imprisonment for life. The said conviction and sentence are being challenged in this appeal.

4. Idrish Mian, PW 12, is the nephew of the deceased and Dukhi Mian, Pahalu Mian (deceased) and Sahib Mian are the brothers. The grandfather of Idrish Mian had taken a land from Mirza Sahib and was cultivating the said land. This was objected by A-1 Abdul Rahim, A-2 Aziz Mian and A-3 Wahid Mian went to the place and protested. They asked the deceased not to plough the land. Thereafter they started fisting and slapping. The deceased Pahalu Mian fell down. Three other accused, who were acquitted, were standing by the side with Lathis in their hands. On hearing the cries of the deceased, PW 12 was at a nearby field, reached to the place and found all the appellants (A-1 to A-3) sitting on the chest of the deceased, who was on the ground. The villagers also gathered. Thereafter all the accused ran away from the place. A fardbeyan was laid at the police station. A formal FIR, Ext. 3, was registered at 2.00 a.m. on 4/5.6.1987. Investigation was taken up by PW 13, Ramadhar Singh, who conducted inquest and prepared the inquest report, Ext. 5.

5. After the inquest, the dead body was sent to the hospital for post-mortem. On receipt of the requisition and the dead body, PW 5, the Medical Officer attached to the hospital, conducted autopsy and he found the following injuries:

1. Lower central incisor, lower lateral incisor were broken from socket with laceration of gum. Mandible was broken at two places.

2. Lacerated wound-about-3' x 1/2' x 1/2' present over occipital area.

On opening the skull--No fracture of skull seen. Brain-pale meninges nothing abnormal detected.

On opening the chest--Lungs-pale, Heart-Empty fracture rib (left 7, 8, 9 and 10) was seen.

On opening the abdomen--about 6 oz. of blood and blood clot was seen in the peritoneal cavity, Spleen-raptured, liver, Kidney-pale, Bladder-empty, Stomach-about 2 oz. of fluid present, Small and large gut-full of gas and faeces. External-genetalia-nothing abnormal detected.

The Doctor issued Ext. 1, post-mortem certificate, with his opinion that the deceased would have died on account of the injuries suffered by him and that injury No. 1 could have been suffered on account of fall on hard substance.

6. After completion of the investigation, during which witnesses were examined, the final report was filed.

7. The accused denied all the incriminating circumstances appearing against them, when questioned under Section 313, Cr PC.

8. Learned Counsel appearing for the appellants submits that even if the entire facts are taken to be true, the offence committed by the appellant will not attract the penal provision of Section 302 IPC and that the appellants had no intention of causing the death of the deceased, Pahal Mian. On the above contention, we have heard Mrs. Banani Verma, learned Counsel appearing for the State.

9. There can be no doubt and in fact, it is not disputed that Pahal Mian died on account of the injuries. The said fact also stands proved through the evidence of the Doctor, PW 5, who conducted autopsy and issued Ext. 1, the post-mortem certificate.

10. The prosecution, in order to establish that the deceased suffered injuries at the hands of the appellants, examined PW 12 as witness to the occurrence. According to PW 12, on the date of incident, he was at a nearby field and saw the appellants, A-1 to A-3, fisting and slapping the deceased, after protesting that they should not plough the land. According to him, seeing the appellants (A-1 to A-3) slapping and fisting the deceased, he rushed to the place and found the deceased on the ground and all the three appellants were seen sitting on the chest of the deceased.

He further deposed that after the villagers gathered, the appellants went away and a complaint was given.

11. We have perused the evidence of PW 12 and found no infirmity so as to come to the conclusion that his evidence cannot be accepted. He is a natural witness as he was present at a nearby field and engaged in agricultural operation and therefore, he saw the occurrence. He also lodged a complaint at the police station which was registered as a crime. His evidence is also supported by the medical evidence brought out through Ext. 1, the post-mortem certificate issued by PW 5. We, therefore, accept the evidence of PW 12 and hold that appellants (A-1 to A-3) caused injuries to the deceased Pahal Mian by fisting and slapping.

12. The final question that is to be decided by us is the nature of offence committed by the appellants. We, on the facts of this case, feel that the appellants cannot be held guilty for an offence punishable under Section 302 IPC. It is to be remembered that even, according to the prosecution, the deceased was ploughing the field and at that time, the appellants A-1 to A-3 protested and asked the deceased not to plough. When the deceased continued to plough, they slapped and fisted him with bare hands. The deceased fell down and later died. The evidence of the Doctor is that the injury No. (1) could have been caused on account of fall on hard substance. If the appellants had the intention of causing death of the deceased Pahal Mian, they would have attacked him with weapons or on vital parts. There is no evidence that the deceased was attacked on the vital parts. But on the contrary, the evidence of PW 12 is only to the effect that the deceased was fisted and slapped. It is, therefore, clear that the appellants could not have had any intention of causing the death of Pahal Mian and at best it can only be stated that they must have known that by fisting and slapping, Pahal Mian is likely to die. We, therefore, set aside the conviction of the appellants under Section 302 IPC and instead we find them guilty under Section 304 Part II IPC, for which each of them is sentenced to imprisonment for five years. It is reported that the appellants are on bail. Their bail bonds stand cancelled. The Session Judge is directed to take steps to commit the appellants to prison for serving the remaining part of the sentence.

With the above modification in conviction and sentence, this appeal is dismissed.

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