

**SUPREME COURT OF INDIA**

Mukati Prasad Rai @ Mukti Rai

Vs.

State of Bihar (Now Jharkhand)

Crl.A.No.108 of 2004

(P. Venkatarama Reddi and P. P. Naolekar JJ.)

12.10.2004

**ORDER**

1. Six persons were charged and convicted by the First Additional Sessions Judge, Deoghar for offences under Sections 302/34, 307 and 302/114 I.P.C. for causing the death of one Kartik Prasad Rai and for attempting to murder his son on 13.11.1989 at about 4 p.m. in the village of More-Katta, Deoghar District.

2. There are four appellants. Appellant Nos. 1 and 2, namely, Mukati Prasad Rai @ Mukti Rai and Parmeshwar Prasad Rai @ Parmeshwar Rai were convicted under Section 302/114 I.P.C. and appellant Nos. 3 and 4, Manohar Prasad Rai and Bharat Prasad Rai were convicted under Section 302/34 and 307 I.P.C. for causing the death of Kartik Rai and attempting to cause the death of his son who is the informant and PW-6 in the case. All the accused were sentenced to life imprisonment. The first accused namely Shakti Prasad Rai died during the pendency of the appeal before the High Court. Another convicted accused namely Bhangi Prasad Rai who is the person who inflicted the fatal injury on the head of the deceased has not preferred any appeal.

3. It all started from the plucking of a pumpkin (kaddu) from the house of one Ram Prasad Rai - the brother of the informant by the daughter of accused No.1 - Shakti Prasad Rai (since deceased). The genesis of the quarrel was on account of information given by the wife of the informant naming the daughter of Shakti Prasad as the culprit. There was quarrel between the ladies for a short while. It is the case of the prosecution that the wife of the informant was abused by the wives of Shakti Prasad Rai and Bhangi Prasad Rai. The informant is alleged to have intervened and protested. Minutes later, the accused persons who are inter-related entered the house of Kartik Rai with lathis and an iron rod of a window. Amongst the accused, Bhangi Prasad Rai was having the iron rod. The accused then surrounded the informant and his father. According to the prosecution, the appellant Nos. 1 and 2 and the other accused Shakti Prasad Rai (since deceased) exhorted the remaining accused to kill them. Bhangi Prasad Rai inflicted injury with iron rod, on the head of Kartik Rai who was aged 70 years or so. Appellant Nos. 3 and 4 and thereafter assaulted him with lathi. An injury of 1 1/4" x 1/2" bone deep on left partial region of skull, which was caused by Bhangi Prasad

Rai with iron rod resulted in depressed fracture of the left partial bone. As per the medical evidence of PW-5 the other two injuries found on the body of the deceased were - two abrasions on the left hand and the third injury is a defused swelling of 2" x 1" on the right forearm. On dissection there was a fracture on right radius and ulna.

4. It is also the case of the prosecution that the informant Sikandar Prasad Rai was attacked by Bhangi Prasad Rai with the iron rod which caused a bruise on forehead, measuring 2"x 1/2" leading to semi conscious state. As deposed by PW8 Dr. Rajendra Prasad Singh there were also two other injuries on PW-6 i.e. one bruise on left eye-brow measuring 1" x 1/2" and one lacerated wound on the left shoulder joint measuring 1"x 3/4". These two injuries are stated to have been caused by appellants Nos. 3 and 4 wielding the lathis.

5. To continue the narrative, by the time the deceased was taken to the hospital at Deoghar he was pronounced dead. PW-6 was given first-aid for injuries at the Primary Health Centre, Sarath, which is closer to the village. He was examined by PW-8 Medical Officer on the next day. PW6 lodged the information to the Police Station at Sarath at about 9 p.m. Investigation, inquest and post-mortem followed and the charge-sheet was filed against the accused by PW-7, S.I. of Police Station, Sarath.

6. The first and foremost question which arises for consideration is whether the appellants had the common intention to cause the death of Kartik Rai or whether any one of them had the intention to kill P.W.6 the informant. We find it difficult to discern the element of common intention amongst the appellants. It is difficult to hold, on the basis of evidence on record that they were actuated by the design to kill Kartik Rai or his son (PW6). At the most it can be said that the appellants joined the other accused to trespass into the house of the victims with a view to threaten them by show of force or by using criminal force.

7. On a conspectus of various relevant features including the genesis and the nature of the quarrel, the absence of motive for taking the extreme step of killing the victims, the short time gap within which the entire incident occurred pursuant to the petty quarrel amongst the women, the nature of weapons carried by them, and the part played by the appellants at the scene of the offence, the conclusion of the High Court that the appellants were prompted by the common intention to kill or that they instigated the fellow accused to kill Kartik Rai and his son is not sustainable. There is practically no discussion by the High Court on the aspect of common intention. There was no critical evaluation at all by the High Court. Once the common intention or common object is ruled out, the accused are liable for the overt acts committed by them.

8. Coming to the role ascribed to appellant Nos. 1 and 2, the evidence on record does not support the prosecution case that these two appellants entertained the idea of killing Kartik Rai and his son and with that idea in mind they exhorted the other accused to kill one or both of them. The allegations in regard to exhortation are omnibus in nature. PW-3 and PW6, who are the main eye-witnesses did not depose to the fact that the call was given by these two appellants to kill Kartik Rai and / or his son. The exhortation was to beat them up, though PW6 had stated in the First Information Report that the appellant Nos. 1 and 2 and Shakti

Prasad Rai (since died) exhorted others to kill them. That allegation was not reiterated by PW-6 at the time of deposition in the Court. However, the fact that appellants Nos. 1 and 2 were also armed with lathis when they trespassed into the house of the deceased is a positive indicator that they did not enter the house as mere onlookers. Therefore, accepting the version of PW-3 and PW6 to the effect that appellants Nos. 1 and 2 instigated others to beat up, it would be safe and appropriate to convict them namely Mukti Prasad Rai and Parmeshwar Prasad Rai under Section 324 read with 114 IPC and sentence them to imprisonment for a period of one year and a fine of Rs. 500/- each. In default of payment of fine, they shall suffer simple imprisonment for a further period of two months. Accordingly, we do so.

9. We shall now take up the case against appellant No.3 - Manohar Prasad Rai and appellant No.4 - Bharat Prasad Rai. As per the evidence of PW-6 and the account of other eye-witnesses, it is clear that appellant Nos. 3 and 4 attacked Kartik Rai with lathis. There was one injury on Kartik Rai which could have been caused by lathi. That injury was on the right forearm and it was a grievous injury which had resulted in the fracture of a bone. PW-5 the Medical Officer categorically stated in the cross-examination that injury No.3 would not have been the cause of death. It is not clear from the account of eye-witnesses as to who amongst the two appellants Nos. 3 and 4 had caused the injury No. 3 with lathi. If so, both of them are liable to be exonerated of the 1st charge.

10. As far as attack on PW-6 is concerned, it is clear that Bharat Prasad Rai- Appellant No.4 caused the lathi injury on his left shoulder. The medical evidence furnished by PW8 also confirms this version. We are, therefore, of the view that the appellant No.4 is liable to be convicted under Section 324 IPC and he shall be sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs. 500/-. In default of payment of fine of Rs. 500/- he shall undergo simple imprisonment for a further period of two months. However, appellant No. 3- Manohar Prasad Rai has to be acquitted of the charge under Section 307 also as the alleged attack by him is not established, on an analysis of the evidence of PW-6.

11. It is stated by the learned counsel for the appellants that appellants Nos. 1 and 2 have already undergone imprisonment for more than one year. If so, they shall be released forthwith.

12. The appeal is thus partly allowed.