

SUPREME COURT OF INDIA

Bechara Kora Modi

Vs.

State of W.B.

CrI.A.No.1119 of 2003

(H.K.Sema and G.P.Mathur JJ.)

20.09.2005

JUDGMENT

H.K. Sema, J.

1. Five appellants before us, namely, Bechara Kora Modi, Patiram & Pokia, Sitaram Modi, Hariram Modi and Lakshmiram Modi were convicted by the Trial Court under section 302/34 IPC and were sentenced to undergo RI for life and fine of Rs.1000/-, in default to undergo RI for one year. Their appeal has been dismissed by the impugned order of the High Court, hence this appeal by special leave.

2. The only eye witness on the sole basis of which appellants have been convicted by the Trial Court and confirmed by the High Court is PW-6, Labanu Barmen & Labanu. The evidence on record shows that when the witness heard halla, he came out from the house of Akshay Barman (dead) and found that Bechara, Sita Ram, Lakhiram, Hariram and Patiram surrounded the deceased Saifur Rahamen in the paddy field of Rabi Modi with shouting when Lakhiram, the accused, struck spade blow on the head of Saifur Rahmen from his behind and all of them ran away to the west of the field. PW-10, who appears to be material witness corroborated the statement of PW-6 and stated that when he was at home, his grand father shouted with loud voice that the aforementioned accused were assaulting Saifur Rahamen and the Lakhiram struck a spade blow on his head. No prosecution witnesses has stated that the other accused also had weapon in their hands and assaulted Saifur Rahamen. No injury said to have been inflicted on the body of the deceased Saifur Rahamen has been attributed to the other accused, except accused Lakhiram. PW-15, Dr. D.P. Chatterjee conducted the post-mortem and found the following eight injuries:-

“1. Three sharp cut wounds behind the left ear $1/2" \times 1/2" \times 1/4$, $2" \times 1/2" \times 1"$ and $1" \times 1/2" \times 1"$ on the scalp.

2. One lacerated wound $1 1/2" \times 1" \times 1/2"$

3. One lacerated wound $1 1/2" \times 1" \times 1/2" \times 1 1/2"$ *on the occipital region of the scalp.*

4. *One sharp cut wound 1"× 1/2"× 1 1/2" * on the left shoulder.*

5. One abrasion on left illiac creast 1"× 3/4"

6. One severely lacerated wound 13"× 4"× 5" from left temporal region to right temporal region across vertex of the scalp resulting laceration of brain matter.

7. One lacerated wound on the pina of the left year 1"× 1/2"× 1/4.

8. Fractures present on all the crenial bones, brain crashed and punched out some portion.”

3. Injuries Nos. 3 and 6 corresponds to the blow inflicted by accused Lakhiram with spade on the scalp of deceased.

4. So far as with regard to the accused Lakhiram is concerned, we found sufficient evidence on record. The evidence of PW-6 has been corroborated by PW-10 and PW-15, the medical evidence. In our view, therefore this appeal in respect of Accused Lakhiram deserves to be dismissed. The High Court judgment in respect of accused Lakhiram does not suffer from any infirmity and therefore it is affirmed.

5. So far as with regard to other accused, namely, Bechara Kora Modi, Patiram & Pokia, Sitaram Modi, Hariram Modi are concerned there is no sufficient evidence on record to show that they participated in the assault of Saifur Rahamen. There is also no evidence to show that they were carrying incriminating materials with them or that they had prior meeting of the mind. The prosecution failed to prove that the commission of criminal act was done in furtherance to common intention. We are, therefore, of the view that they are entitled to the benefit of doubt. This appeal filed by them is, accordingly, allowed and the conviction and sentence passed by the Trial Court and confirmed by the High Court are set aside in respect of the accused Bechara Kora Modi, Patiram alias Pokia, Sitaram Modi and Hariram Modi.

6. This appeal is partly allowed. The conviction of the Accused Lakhiram is converted to one under Section 302 simplicitor.

7. Having regard to the assistance rendered by the learned amicus curiae we fix his fees at Rs.750/-.