Supreme Court of India
Kirti Mahto vs State Of Bihar on 13 April, 1993
Equivalent citations: 1994 SCC, Supl. (2) 569
Author: K J Reddy
Bench: Reddy, K. Jayachandra (J)

PETITIONER:
KIRTI MAHTO

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT13/04/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
SINGH N.P. (J)

CITATION:
1994 SCC Supl. (2) 569

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. There are five appellants. All of them are convicted under Section 302 read with Section 149 IPC and sentenced to undergo imprisonment for life for causing the death of one Ram Lakhan Prajapati. Two others Bina Mahto and Kaushalaya Devi were also tried with them but Bina Mahto died during the trial whereas Kaushalaya Devi was acquitted by the trial court. The appeal filed by the five accused was dismissed by the High Court. Hence the present appeal.

2. The prosecution case is as follows:

The deceased and the material witnesses belong to the same village. On August 25, 1983 at about midday the deceased was going towards Devi Mandap for grazing his buffalo. When he reached near the Devi Mandap, accused Kaushalaya Devi raised alarm and called her father, brothers and husband and told them that the deceased was going from there and he should be killed. On her

alarm Kirti Mahto, Bhagwan Mahto and Sarju Mahto came there armed with garasa in their hands, Dasrath Mahto and son-in-law of Bina Mahto of Barasatia Amarika Mahto came there armed with barchha. Bina Mahto was armed with lathi. He also came there running and all of them started beating the deceased indiscriminately. Kaushalaya Devi was also present with a lathi in her hand. She raised an alarm thereupon PW 2 who also witnessed the occurrence, along with PW 1 and PW 4 came to the place of occurrence. PW 2 went to the police station having noticed that the deceased was dead on the same day and he gave a report at about 5.00 p.m. The A.S.I. recorded the FIR and registered the case. He came to the scene of occurrence, held the inquest and sent the dead body for postmortem. The doctor found five injuries and he opined that the death was due to shock and hemorrhage. After completion of investigation charge-sheet was filed in the court.

3. The prosecution mainly relied upon the evidence of PW 1, PW 2, PW 4 and PW 7, the eyewitnesses. The accused when examined under Section 313 CrPC denied the offence and pleaded that the persons belonged to the group of PW 11 killed one Sukan Bhuian and persons of Sukan Bhuian in turn murdered the deceased. The trial court rejected the plea of defence and accepted the evidence of the eyewitnesses but acquitted Kaushalaya Devi since she did not take part in the occurrence. Bina Mahto died during the trial. The remaining five accused were thus convicted.

4. The learned counsel for the appellants submits that the medical evidence does not corroborate the prosecution version in the sense that only five injuries were found on the deceased and if 5 or 6 persons have participated in the occurrence, there should have been more number of injuries and that the name of Amarika Mahto is not mentioned in the FIR and PW 1, independent witness, also did not mention about him and, therefore, he is entitled to the benefit of doubt. His further submission is that a common intention or a common object to commit the murder is not established and the medical evidence does not show that the assailants with the common object of committing the murder inflicted injuries which are all on non-vital parts and therefore, the offence of murder is not made out.

5. PW 1 is an independent witness. He has mentioned the names of six accused who were in the dock and also added that he knew only those six. Therefore, the non-mentioning of Amarika Mahto's name does not in any manner affect his evidence much less the prosecution case. In the FIR it is categorically stated that the second son-in-law, whose name was not known, armed with barchha participated in the occurrence. It may be noted that the FIR was lodged at the earliest possible moment. There is the evidence of PW 4 and PW 7 who spoke about the presence and participation of Amarika Mahto also. Therefore, the submission regarding non-participation of Amarika Mahto cannot be accepted.

6. The doctor found five injuries on the dead body. One incised wound 1 " x 1/2" x 1/2" on the lateral side of the left arm; one lacerated wound 1/2" x 6" skin deep on the front of the right shoulder; one incised wound 4" x 2 1/2" bone deep in front of the right elbow and the lower part of the arm (cutting skin, muscle), one incised wound in front of the lower part of the thigh, knee and upper part of the leg of the left side (cutting skin, muscles neurovascular bundle and partially cutting the upper part of the tibia 13" x 3" x 2") and one lacerated wound 2" x 1/2" skin deep on the frontal region of the skull. The doctor opined that the shock and hemorrhage were caused particularly due to injuries

Nos. 3 and 4. From the postmortem certificate we find that no internal organ was damaged nor was there any fracture. Having regard to the nature of the injuries caused it is difficult to hold that the common object of the unlawful assembly was to commit murder. If really the common object of the unlawful assembly was to commit murder one would expect them to inflict one or two injuries on the vital parts of the body but except injuries Nos. 3 and 4 the other three injuries are simple and even injuries Nos. 3 and 4 are on non-vital parts like arm and the thigh. It is unfortunate that the deceased died perhaps due to lack of medical attention. Common object has to be gathered from the circumstances, namely, the nature of the weapons used and more particularly from the nature of the injuries. From the above-mentioned injuries it is difficult to infer that the common object of the unlawful assembly was to commit murder. Therefore, the offence committed by the members of the unlawful assembly does not amount to murder. However, the injuries resulted in shock and hemorrhage causing the death of the deceased and the appellants must be attributed knowledge that by inflicting such injuries they were likely to cause death. In the result the offence would be one amounting to culpable homicide and not murder. Accordingly the conviction of the appellants under Section 302 read with Section 149 IPC and sentence of life imprisonment awarded thereunder are set aside. Instead all of them are convicted under Section 304 Part It read with Section 149 IPC and each of them is sentenced to undergo five years' R.I. The appeal is partly allowed in the manner indicated above.