Supreme Court of India
Kirtan Bhuyan And Others vs State Of Orissa on 31 March, 1992
Equivalent citations: AIR 1992 SC 1579, 1992 CriLJ 2325, 1993 Supp (1) SCC 558
Bench: M M Punchhi, M F Beevi, S Agrawal
JUDGMENT

1. These two appeals under Section 379 of the Cr.P.C. are against the judgment and order of the Orissa High Court whereby the judgment and order of the Additional Sessions Judge, Puri were upset and in place of acquittal convictions were recorded of seven accused including the five appellants.

2. To begin with, thirty three persons were arraigned before the Court of Session as accused for being members of an unlawful assembly, the common object of which was to cause rioting, simple hurts to Bachha Naik P.W. 3 and his wife Sushila Devi P.W. 8 and also causing the death of Smt. Nihali Bewa, the maternal grand-mother of P.W. 3. The incident is of a brief description. The accused persons suspected Bachha Naik P.W. 3 for having committed theft of paddy sheaves belonging to one Matia Patra. They went to the house of P.W. 3, dragged him out and took him to the house of P.W. 2. There they gave him some beating. When his wife Sushila Devi P.W. 8 intervened, they pushed her and some of them assaulted her and she got a blow. In the meantime, Nihali Bewa, the grand-mother of P.W. 3 arrived at the scene and protested. At that juncture Kirtan Bhuyan, one of the accused and the principal appellant herein gave a katri blow on her neck as a result of which she died. This happened in the morning of 22-1-1976. The matter was reported on that very day within a few hours at the Police Station. This led to the trial of the accused persons and the ultimate conviction of the appellants before us.

3. The accused persons entered defence to suggest that Nahali Bewa had perhaps been killed by her own grand-son i.e., Bachha Naik P.W. 3 in order to grab her property and that the accused persons had been named on account of party faction. Otherwise the case of the prosecution at the trial was supported not only by the two injured witnesses but others as well inclusive of P.W. 2 Uchhab Naik in whose house the occurrence took place. Evidently it was a story against a story before the trial Judge. The prosecution gave its version and supported it by evidence. The defence on the other hand put forth a suspicion but did not pointedly accused Bachha Naik P.W. 3 for having killed his grand-mother in the presence of any one. Neither any other substantial material to that effect was introduced. It was rather maintained that there was a suspicion against P.W. 3 for committing the murder of his grand-mother as it had commonly been said in the village to that effect. The trial Court was led to acquit the accused on the basis of the said suspicion extending to them the benefit of doubt. The High Court interfered in the appeal preferred by the State confined as it was to seven persons (sic). The High Court considered each and every statement of the prosecution witnesses and dispelled the doubt raised by the defence. Resultantly, the orders of the Sessions Court were upset against those seven including the five appellants herein. To get maintained the order of their acquittal on the grounds furnished by the learned trial Judge, the appellants are before us.

4. We have had a fresh look of the record and in particular to the course adopted by the trial Judge. It appears that the suspicion was entertained on a mere suggestion made by the defence to the

Investigating Officer who admitted that after the F.I.R. was recorded, Kirtan Bhuyan appellant along with two others appeared before him and told him that it was being said in the village that Bachha Naik P. W. 3 had killed his grand-mother. The trial Judge went on to assume that thereafter a duty was cast on the prosecution to disprove or demolish such suggestive defence and that neither during the investigation nor at the trial stage did the prosecution venture to do so. To this approach, the High Court did not agree and we tend to agree with the High Court. Each and every suggestion of the defence at the investigation need not lead the investigator to follow it. Had there been a counter version and the suggestion was that the Investigating Officer had wrongly not recorded a cross F.I.R. it might have been different matter. Various avenues were then open to Kirtan Bhuyan and his co-accused to approach the higher officers in the police hierarchy or to approach the District Magistrate for the purpose. Furthermore a criminal complaint could have been filed if the counter version had to be deployed. The suspicion entertained by the defence could thus be of no consequences for that alone could not lead to discredit the eye-witnesses to the crime. It was at best a rumour. Besides no material has been brought on record to show whether the deceased had any property which P.W. 3 must have got on her death and whether that property was otherwise slipping from his hands. The deceased was very old and would not have lived for very long. There was no reason for P.W. 3 to have got impatient to do away with her. There appears to us to be no basis for the defence's suspicion. The villagers may have been fraction ridden on caste lines as suggested but the motive for the crime was so small that there was no reason for the prosecution witnesses to falsely implicate the accused persons. Besides, Kirtan Bhuyan, the author of the injury on the deceased, must be presumed to have intended the consequences of his act. The sole injury caused to her on the neck cut the main artery. The death was immediate due to haemorrhage. There is therefore no escape from Section 302, I.P.C. being attracted. The High Court thus rightly singled Kirtan Bhuyan to be guilty under Section 302, I.P.C. and the remaining appellants under Section 147 read with Section 323/149, I.P.C. The conviction of the appellants in these circum stances appears to us to be well based requiring no interference.

5. As a result, we dismiss these two appeals. We confirm the conviction and sentence of Kirtan Bhuyan appellant. We also confirm the convictions of the remaining appellants but reduce their sentences to the period already undergone. Ordered accordingly.