Supreme Court of India
Kshudiram Majhi vs The State Of West Bengal on 11 February, 1972
Equivalent citations: AIR 1972 SC 1221, 1972 CriLJ 756, (1972) 3 SCC 479, 1972 (4) UJ 731 SC
Author: J Shelat
Bench: H Khanna, J Shelat
JUDGMENT J.M. Shelat, J.

1. This appeal, by special leave, impugns the judgment of the High Court of Calcutta by which the High Court dismissed the appellant's appeal and upheld the Trial Court's order of conviction under Section 326 of the Penal Code and a sentence of three years' rigorous imprisonment thereunder imposed upon him.

2. One Kumud Ranjan Roy and the appellant were at all material times neighbours residing in village Belgrarm in the District of Burdwan. The two were on hostile terms, partly on account of previous litigation and partly due to local elections.

3. On March 5, 1964 at about 11.30 A.M., Kumud Roy was working in his courtyard assisted by a workman by the name of Madhusudan Das. They both heard a row outside the front door of Kumud's house, whereupon Madhusudan, followed by Kumud, went to the front to door ascertain what that row was about. As soon as Mudhusudan Opened the front door the appellant, who was there with some other persons variously armed, gave a blow with a kencha which fell on Madhusudan's left thigh. On an alarm raised by Kumud some of the neighbours rushed there and found the appellant at the entrance of Kumud's house. On their inquiring as to what the matter was, some of the persons who had accompanied the appellant beat three of the neighbours. After the appellant and his association left, the neighbours found Madhusudan bleeding profusely near the entrance. They removed him in an inner room, bandaged his wound and then sent for an ambulance car. But before it could arrive Madhusudan succumbed to his injury and expired at about 12.15. p.m.

4. On these allegations the appellant and ten others were respectively charged Under Section 304 and Section 304 read with Section 149 of the Penal Code. Three of them were also charged under Section 323 individually, for causing injuries to those neighbours. The defence was that at the relevant time the appellant was not in his house and that owing to the hostility between him and the said Kumud, the latter accompanied by his brothers, the said Madhusudan and some others attacked the appellant's house with brickbats and stones where labourers engaged by the appellant were working. Some on these labourers were santhal adivasis and one of them shot an arrow which struck Madhusudan's left thigh resulting in the said fatal injury. In support of this theory reliance was placed by the defence on the discovery by the investigating officer of a few brickbats lying outside the appellant's house as also upon answer given by the Doctor, who performed the post mortem examination on Madhusud m's dead body, that the injury on Madhusudan could also be caused by an arrow.

5. The defence theory based on these two matters was rejected by the trial Judge who, accepting the prosecution case, convicted the appellant under Section 326 and eight other accused persons under Section 326 read with Section 149 of the Penal Code. Six of these eight persons were also convicted

under Section 323. Two of the appellant's alleged associates were acquitted. On an appeal to the High Court by the appellant and the other eight accused persons convicted as aforesaid, the High Court accepted the evidence of Kumud and the neighbours, namely, P W's. 3, 9, 10 and 12, and particularly of the last three, whose presence could not be questioned as each of them on being examined at the neighbouring Health center was found to have injuries. The evidence of P.W. 3, who had no injury was also accepted as he was the next door neighbous, and therefore, a natural witness. That evidence was that he had seen the appellant with a blood-stained kencha in his hand near the front door of Kumud immediately after the incident along with some of his associates. Acceptance of evidence of those witnesses obviously negatived the defence version that the incident took place not at the entrance of Kumud's house but outside the appellant's house, and that the injury on Madhusudan was caused by an arrow shot by one of the santhal workers of the appellant when Kumud and his men were said to have attacked the appellant's house. The High Court, however, was not satisfied that the appellants before it, other than the present appellant, could be said to have shared any common intention with the appellant it also found that there was no satisfactory evidence to attribute injuries caused to P.Ws. 9, 10, and 12 to any of the other appellants, and therefore, gave the benefit of doubt and acquitted them. The High Court, however, dismissed, as aforesaid, the appellant's appeal upholding his conviction under Section 326 and the sentence of three years rigorous imprisonment imposed upon him by the Trial Judge.

6. The argument urged before us in support of the appeal was that since the High Court gave the benefit of doubt to the other accused persons, such benefit on that very or similar ground ought also to have been extended to the appellant. The other argument was that the High Court had not been able to find any immediate motive for the assault by the appellant. The contention was that at the local election recently held and which was said to have motivated the incident, it was Kumud's brother who had lost the election, and that therefore, there was a greater likelihood of Kumud and his men attacking the appellant's house and his men and in the melee that must have resulted the deceased Madhusudan must have received the fatal injury.

7. As against these arguments, there was, however, the evidence of Kumud himself, corroborated by the evidence of four of the neighbours, of whom three had received injuries during the incident. Their presence immediately after Madhusudan had been injured could not therefore, be disputed. Both the Trial Court and the High Court found no reason to doubt the veracity of their statements that: on hearing the alarm raised by Kumud they had rushed to the spot and found (a) Madhusudcm lying near the entrance of Kumud's house, and (b) the appellant standing there with a blood-stained kencha in his hand. These two facts concurrently found by the Trial Court and the High Court obviously nullified the deft nee that the appellant was not present at the time of the incident or that the incident took place just outside his house and not at or near the front door or Kumud.

8. It is true that the High Court acquitted the rest of the accused. It is also true that in a cross-case filed by the appellant's wife, P.Ws. 3, 9, 10 and 12 were made co-accused along with Kumud. But the High Court acquitted the rest of the accused not because it disbelieved the prosecution evidence but because in spite of it, could not satisfactorily conclude that the persons charged along with the appellant had shared his intention to cause grievous injury to Madhusudan. The appellant and another accused persons had rushed at Kumud's house to injure Kumud or the inmates of his house

and not Madhusudan, a workman working in the house for Kumud. Neither the appellant nor those who accompanied him had any particular animus against Madhusudan. Obviously, the appellant struck at the very first person who opened the door and that was how the unfortunate man came to receive the injury. In these circumstances, the High Court rightly declined to hold that those others who came along with the appellant were guilty of any vicarious liability for the appellant's assault on Madhusudan. On the lesser charge under Section 323, the High Court gave them the benefit of doubt because the evidence was not up to the standard so as to attribute any particular injury to any particular person. But giving such benefit of doubt did not mean that the High Court doubted the presence of Kumud and his version or the presence of the other witnesses, three of whom unquestionably had suffered injuries.

9. Apart from the fact that they were the neighbours, and the fact that they had received injuries during the incident, their version also found support in the fact that the investigating officer found blood near the front door of Kumud's house and a trail of blood-stains from there upto an inner room, supporting the version that immediately after the appellant and his man left the place these witnesses and Kumud had removed Madhusudan from near the entrance, where he had fallen, into an inner room where his wound was bandaged. Further, there was the fact that the appellant had remained absent on that day from the school where he was a teacher. He had made no leave application for being so absent, a fact suggesting that he had remained absent, that day because of the incident taking place that morning. He did not also explain where else he was that morning except making a bare allegation that he was absent.

10. The theory of an attack on his house which according to the appellant resulted in a santhal worlser shooting an arrow causing Madhusudan's injury was sought to be rested on an altogether flimsy data. Firstly no damage Was found on the appellant's house. Secondly there was not a little of evidence to support the case that Kumud and his men had indulged in throwing brickbats at the appellant's house. The investigating officer found a few brickbats lying outside his house. But that is a phenomenon common in several villages, from which it cannot follow that those were the brickbats hurled by Kumud and his men at the appellant's house. The theory of a santhal worker shooting an arrow was equally flimsy, for, such workers do not go to work inside a house armed with bows and arrows, although those might be the usual or customary weapons carried by them when moving about places outside habitation. Assuming, however that a santhal had with him a bow and an arrow, it is impossible to conceive how an arrow shot from within the appellant's house could possibly have hit Madhusudan in his left thigh while he was opening from the front door of Kumud's house.

If, as the defence suggested, Madhusudan was injured near the appellant's house, he would have fallen there and even if he had been removed by Kumud and his men, there would have been blood near the appellant's house which he was bound to show to the investigating officer and make full use of it for his defence. Furthermore, if Madhusudan had been in juried by an arrow, that arrow, would have been there when the investigating officer arrived and would surely have been pointed out by the appellant. As aforesaid, the entire defence rested on the solitary fact that when the investigating officer inspected the appellant's house he noticed ten pieces of brickbats lying on the road between his house and the house of one Abhimanyu Ghoudhary and four broken pieces of bricks in the west

varandah of the appellant's house Curiously, the investigating officer did not notice any damage to any part of the appellant's house nor was any such damage shown to him by the appellant or by any one on his behalf which would have been the consequence if his house had been attacked by Kumud and his men. The defence theory had thus no tangible facts to support it and was therefore rightly rejected both by the Trial Court as well as by the High Court. Once such theory was eliminated there was nothing to support the defence pleas of innocence. The fact of blood at the entrance of Kumud's house and the trail of blood within the house, coupled with the evidence of the neighbours, on the other hand, clinched the prosecution version that it was the appellant who came there with his men to attack Kumud's house and when the deceased Madhusudan opened the door, the appellant struck the first man who came out of that house.

11. The appellant was, therefore, rightly convicted by the Trial Court and that conviction was equally rightly upheld by the High Court. There is, thus, no substance in the appeal, which must be rejected.