

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 179 of 1992

(Against the judgment and order of conviction and sentence dated 01.05.1992 (sentence passed on 04.05.1992) by Sri Pratap Singh, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 21 of 1988)

Tikka Soren ... Appellant
Versus
The State of Bihar (now Jharkhand) ... Respondent

**CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE SANJAY PRASAD**

For the Appellant : Mr. Vijay Shankar Jha, Amicus Curiae
For the State : Ms. Priya Shrestha, Spl.P.P.

R. Mukhopadhyay, J. Heard Mr. Vijay Shankar Jha, learned Amicus Curiae appearing on behalf of the appellant and Ms. Priya Shrestha, learned Spl.P.P. for the State.

2. This appeal is directed against the judgment and order of conviction and sentence dated 01.05.1992 (sentence passed on 04.05.1992) by Sri Pratap Singh, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 21 of 1988 whereby and whereunder, the appellant has been convicted for the offence under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life.

3. The prosecution case is that on 05.05.1982 the informant had gone to Pathara Hatia while his brother Khiru Yadav was in the village. It has been alleged that at about 04:00 p.m. Kusal Yadav had come on a bicycle to Pathara Hatia and informed him that his brother has been injured on account of the assault committed upon him by Sufal Soren, Ganai Soren, Tikka Soren and Raja Ram Soren by lathi and kudal (hoe) and he has become unconscious. On receiving such information, the informant took a ride on the bicycle of Kusal Yadav and came to Rasitola where he found a crowd having gathered. His brother Khiru Yadav was lying on the ground and a deep gash was detected over his head. His ear was found cut, right leg was fractured and blood was oozing out from his mouth and eyes. The eye-witnesses namely Kusal Yadav, Pran Yadav and Jata Yadav had disclosed that the brother of the informant was grazing cattle at which point of time, the accused persons armed with lathi and kudal had committed an assault upon him. The reason for the assault is that the calf belonging to his brother had entered into the paddy field of Sufal and Tikka

Soren.

Based on the aforesaid allegations Godda (T) P. S. Case No. 59 of 1982 was instituted against Sufal Soren, Ganai Soren, Tikka Soren and Rajaram Soren under Sections 325, 326, 307/34 of the Indian Penal Code. On conclusion of investigation, charge-sheet was submitted against these accused persons including the appellant for the offence punishable under Section 302/34 of the Indian Penal Code. After cognizance was taken, the case was committed to the Court of Sessions where initially it was registered in the court of learned Sessions Judge, Dumka and on creation of the Sessions Division, Godda before the learned Sessions Judge, Godda. Charge was framed against the accused persons under Section 302/34 of the Indian Penal Code which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as ten witnesses in support of its case.

P.W. 1 Md. Allauddin Khan is a formal witness who has stated that the FIR is in the handwriting of the then Officer In-charge of Godda (Town) Police Station Madan Mohan Sharma and bears his signature which is recognized by him and which has been marked as Exhibit – 1.

P.W. 2 Biju Yadav is the informant who has deposed that it was about seven years back at around 04:00 p.m. when he was at Pathara Hatia when Kusal Yadav came on a bicycle and disclosed that his brother Khiru Yadav was assaulted and made unconscious by Sufal, Tikka, Rajaram and Ganai and he is lying in the field of Munilal. This witness had gone to the field of Munilal where he found his brother unconscious and he had injuries on his left ear, right leg and head. When he asked the witnesses, they had disclosed the name of all four accused. His brother was brought to the police station and thereafter to Godda Hospital where he died at around 11:00 p.m. This witness had recorded his *fardbeyan* and on being read over he had put his thumb impression over the same.

In his cross-examination, he has stated that the calf of Khiru had entered into the field of Sufal and Tikka resulting in such assault which was disclosed to him by Kusal Yadav, Jata Yadav, Pran Yadav and Dasrath Yadav. From the market, he had straightway gone to the place of occurrence where he had met Dasrath. He has further stated that the others who were present were Pran Yadav, Ram Sunder Yadav, the wife of Khiru, Kusal Yadav, Jata Yadav, Sanatan Mandal amongst others. Dasrath

had disclosed that he had seen the occurrence. He has also stated that the assault had occurred because of the calf entering the field. There was no previous enmity between the informant family and the accused.

P.W. 3 is Kusal Yadav (wrongly mentioned in the deposition as P.W. - 2) who has stated that the incident is of seven years back in the evening at around 04:00 p.m. He was taking out earth from the well. Gunadhar was inside the well while he and Dasrath were outside. He has stated that the agriculture filed of Munilal is at a distance of about 100-40 hands from the well. Khiru after grazing his cattle in the field of Munilal was returning when Sufal Soren and Tikka Soren had come with lathi and started assaulting Khiru which resulted in Khiru falling down on the earth. Several persons including this witness, Pran and Dasrath rushed to the place of occurrence but by that time the accused persons had fled away. He has also stated that Khiru had become unconscious and he had suffered injuries on his ear, hand, eyes, head and leg. He had gone to Pathara Hatia to inform Bijali Yadav and both came to the place of occurrence on his bicycle. Khiru was taken to Godda (Town) Police Station and thereafter to the hospital where he died at around 11:00 p.m.

In his cross-examination, he has stated that his father and the father of Khiru are cousins. Pran Yadav is the uncle of Khiru and Dasrath Yadav is the younger brother of Khiru. There was no one near the well except he, Pran and Dasrath. He has stated that Pran had rushed to the place of occurrence with water while this witness rushed to the place of occurrence on hearing the cry of alarm from his brother Jata who was cutting grass. There were no other Santhals except these two. After he reached the place of occurrence, Pran and Jata had come. He has deposed that Pran and Jata had reached after the accused persons had fled away. Prior to hearing of the cry of alarm, he had not paid any attention to Khiru. The field of Sufal is visible from the well in which he was present. He has disclosed to the Investigating Officer that in the paddy field of Sufal the calf of Khiru had intruded.

P.W. 4 Pran Yadav has stated that it was Wednesday in the evening when he was going towards the field with water when he heard some commotion emanating from the field of Munilal. When he reached there, he had seen Tikka Soren and Sufal Soren assaulting Khiru Yadav with lathi and kudal. Khiru fell down while the accused persons fled away. He has further deposed that at the time of the assault, Kusal Yadav, Jata Yadav,

Ramsunder Yadav, Gopan Tuddu and Santlal and others were present. Khiru had become unconscious and he had injuries on his eyes, ears, head and legs. He was taken to the police station and thereafter to the hospital.

In his cross-examination, he has stated that he had gone to the place of occurrence when he was called by Kusal and Gopan Tuddu to come with water. When he had reached the place of occurrence, Kusal and Gopan Tuddu were already present. He had not seen Sufal, Genai and Rajaram assaulting the deceased with lathi. Before reaching the place of occurrence, the accused persons had already left through the road. This witness is the uncle of Khiru. He had not seen any cattle in the field of Sufal nor had he seen any injuries on the person of Sufal Soren. It has further been stated that Khiru was falsely implicated in a case of dacoity.

P.W. 5 Dasrath Yadav has deposed that it was Wednesday at around 04:00 p.m. about seven years back when the incident had taken place. He along with Kusal were engaged in taking out earth from the well. From a distance of 40-50 hands, he had seen Sufal and Tikka assaulting Khiru with the back portion of the kudal. They had thereafter fled away. When he and Kusal reached the place of occurrence, they found Khiru in an injured state. He has stated that Kusal had informed about the incident to the brother of Khiru. Khiru was taken to the police station and, thereafter, to the hospital where he died at around 11-12 p.m.

In his cross-examination, he has stated that when Jata started shouting, they had gone to the place of occurrence. Jata was grazing cattle at a distance of about 100 hands from the place of occurrence. He and Kusal had rushed to the place of occurrence and after them came Pran Yadav, Harit Yadav, Jata Yadav and some 25-30 Santhals. This witness has stated that he had seen the assault and when they had reached the place of occurrence, the accused persons had already fled away.

P.W. 6 Jata Mahato has deposed that on the date of the incident he was cutting grass at a distance of about 40-50 feet from the field of Munilal, when he had seen Khiru being assaulted with lathi by Tikka Soren and Sufal Soren as a result of which Khiru fell down. Several persons had assembled at the place of occurrence. He has further stated that Khiru had become unconscious and several injuries were found on his person.

In his cross-examination, this witness has stated that Khiru was assaulted with a lathi by Sufal which led to his leg being broken. Tikka had

given 5-6 lathi blows upon Khiru. He has further stated that prior to the occurrence he had seen Sufal and Tikka going with lathi towards the field of Munilal. This witness at that point of time did not raise any alarm. Khiru was trying to flee away while both the accused were chasing him. He has further deposed that Khiru was not shouting while running and he had also not raised any cry of alarm. The cattle of Khiru had consumed 5-6 bundles of paddy kept in the field of Sufal. He has stated that the quarrel had started near the field of Sufal and there itself the assault was also committed.

This witness has further deposed that the quarrel had started near the field of Sufal and it continued for two hours. During the quarrel, none had come from the house Kusal and Khiru. When Khiru had fallen down, this witness had started shouting. On hearing such cry of alarm, Kusal, Pran and Dasrath had come. He had not seen them prior to their reaching the place of occurrence. He has also stated that he had started raising alarm when the assault had commenced. He was raising alarm from a distance of 40 hands and he rushed to where Khiru was present. By the time, he had reached the place of occurrence, the accused persons had fled away. He had not seen any other persons committing assault except Sufal and Tikka. This witness has deposed that near the farmland of Sufal is the field of Bijali where he had seen the accused and the deceased scuffling. All the three persons were armed with lathi. He has not raised any alarm when the scuffling was going on. He has further stated that Pran, Kusal and Dasrath came within 30 minutes after raising the cry of alarm.

P.W. 7 Bijali Devi has been tendered by the prosecution.

P.W. 8 Dr. B. K. Bhagat had conducted autopsy on the dead body of Khiru Yadav on 06.05.1982 and had found the following anti-mortem injuries:-

- (i) Lacerated wound 2"X 1"X upto bone deep transversely on the left parietal part of skull midway with underlying fracture of bone.
- (ii) Lacerated wound 4"X1"X upto bone deep vertical on the left parietal part of skull midway with underlying fracture of bone.
- (iii) Lacerated wound 3"X1"X upto bone deep obliquely over the left frontal part of skull with underlying fracture of bone.
- (iv) Lacerated wound 1"X1/2" X upto bone deep obliquely $\frac{1}{2}$ " above injury No. III.

(v) Lacerated wound 1"X1/4"X upto cartilage deep obliquely midway on the left pinna of ear.

(vi) Swelling with ecchymosis round the left eye matching the upper and lower eyelids.

(vii) Fracture of right leg lower part.

As per his opinion, the cause of death was due to circulatory and respiratory failure as a result of shock and haemorrhage due to the above injuries. The post mortem report is in his hand writing and bears his signature and which has been marked as Exhibit – 2.

In his cross-examination, he has stated that on 06.05.1982 he had examined Sufal Soren and had found the following injuries on his person:-

1. Lacerated wound 1"X1/2"X soft tissue deep vertical on the back of the lower part of the left forearm.
2. Bruise 4"X1" transversely on the back of the upper part of the left leg over a swelling.
3. Bruise 3"X1" transversely on the back of the upper part of the right leg over a swelling.
4. Bruise $\frac{1}{2}$ "X1/4" transversely over left eye brow laterally.

All the injuries were opined to be simple in nature caused by hard and blunt substance. The injury report was prepared by him and marked as Exhibit – A.

P.W. 9 Chaitanya Prasad Sah is a formal witness who has proved the forwarding report of the accused which has been marked as Exhibit – 3.

P.W. 10 Mohan Lal Gupta has stated that on 05.05.1982 he was posted as Officer In-charge of Godda (Town) Police Station. On that day, Biju Yadav had brought his brother Khiru Yadav who was in an injured condition in a cot at about 08-08:30 p.m. He had recorded the *fardbeyan* which was read over to Biju Yadav and he had also put his thumb impression upon the same. The *fardbeyan* was written by Sub-Inspector Indradeo Gope as per the direction of this witness. He drew the attention of the Court to the evidence of P.W. 1 and has deposed that P.W. 1 had wrongly mentioned his name as Madan Mohan Sharma. He has further stated that the injured Khiru Yadav was sent to the hospital and to record his dying declaration before a Magistrate and an application was given to

the Chief Judicial Magistrate, Godda. On the same night, Sufal Soren, Genai Soren and Tikka Soren were arrested. In the night, information was received that Khiru Yadav has died and accordingly, a station diary entry was made and Section 302 of the Indian Penal Code was added to the case. This witness has stated that he had gone to the hospital and prepared the inquest report and thereafter had recorded the statements of Pran Yadav, Kusal Yadav and Dasrath Yadav. On 06.05.1982 he had inspected the place of occurrence which is the field of Munilal Soren. In the North West side of the field at five places blood stains were detected. The blood stained earth was seized in presence of Pran Yadav and Ramsunder Yadav. The seizure list has been proved and marked as Exhibit – 5. On 06.05.1982, he had arrested Raj Ram Soren and had also recorded the statement of the other witnesses. This witness has proved the outdoor slip of the hospital which has been marked as Exhibit – 6. On the direction of his superior, he had submitted charge-sheet.

In his cross-examination, this witness has stated that Dasrath in his statement had disclosed that he was in his house and on receiving information, he had gone to the village where he found his brother lying unconscious in an injured condition. He has not disclosed that at the time of the incident, he was taking water from the well.

5. The accused was examined under Section 313 CrPC in which he had denied to have participated in the commission of murder of Khiru Yadav.

6. It has been submitted by Mr. Vijay Shankar Jha, learned Amicus Curiae that there are major contradictions in the evidence of the prosecution witnesses. He has submitted that the conduct of P.W. – 6 appears to be unnatural as even in spite of the scuffle between the deceased and the accused persons and the impending assault when the deceased was chased by the accused with lathi as witnessed by him he had kept silent and had not taken any preventive measures.

7. Mr. Jha, further submits that P.W. – 6 has categorically stated that Pran, Kusal and Dasrath were not seen prior to their reaching the place of occurrence. He has further stated that P.W. – 5 has claimed to have reached the place of occurrence along with Kusal Yadav and they had witnessed the occurrence but P.W. – 10 (Investigating Officer) has stated that P.W. – 5 was in his house when the incident had taken place. Mr. Jha, adds that though P.W. – 3 has claimed that Jata Mahato (P.W. – 6) had

reached the place the occurrence after him but on the contrary, P.W. – 6 claims that on his alarm the others had reached.

8. Ms. Priya Shrestha, learned Spl.P.P. for the State has submitted that minor contradiction in the case of the prosecution cannot overwhelm the allegations levelled against the appellant. It has been submitted that P.W. – 3, P.W. – 4, P.W. – 5 and P.W. – 6 are the eye-witnesses who were nearby and who had clearly seen the appellant and his father assaulting Khiru Yadav with a lathi. She adds that though Sufal Soren also suffered some injuries but the same were opined to be simple in nature. She has further submitted that in view of the plethora of evidence clearly points towards the guilt of the appellant, this appeal is liable to be dismissed.

9. We have given our anxious considerations to the submissions advanced by the learned counsel appearing for both the sides and have also perused the lower court records.

10. The prosecution has primarily relied upon the evidence of P.Ws. 3, 4, 5 and 6 to bring home the guilt of the appellant. Before arriving at a conclusion, it would, therefore, be necessary to analyse such evidence. If we consider their evidence in totality it would be seen that Jata Mahato (P.W.-6) was nearest to the place of occurrence and he had seen the quarrel going on between the deceased and the accused persons as well as the scuffle but the same did not evoke any reaction from him. His evidence suggests total nonchalance on his part even when the deceased was chased by the accused persons with lathi. His conduct, therefore, makes his evidence not free from the shackles of doubt. An added future to his evidence is that Pran, Kusal and Dasrath had come within half an hour of raising the cry of alarm. Though it has come in the evidence of P.W. – 6 that he does not have any knowledge of a watch and certain exaggerations seems to have been imputed by P.W. – 6 with respect to the time of arrival of Pran, Kusal and Dasrath but it also cannot be concluded that they had arrived immediately on hearing the cry of alarm. With respect to the human behaviour, it has been held by the Hon'ble Supreme Court in the case of **Lahu Kamlakar Patil and Another v. State of Maharashtra** reported in (2013) 6 SCC 417 which is as under:-

"26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react

differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded."

11. If we travel to the evidence of P.W.-5 we find that in cross-examination he has stated that when Jata (P.W. – 6) started shouting they had gone to the place of occurrence. He claims to have seen the assault though the Investigating Officer (P.W. – 10) has stated that P.W. – 5 had disclosed to him during investigation that he was at his house when the incident had taken place. Though Pran Yadav (P.W. – 4) was stated to be present at the place of occurrence and had seen the assault committed by the appellant and his father upon deceased Khiru Yadav with some of the witnesses most notably P.W.-3 and P.W.-6 but P.W.-4 himself has stated that he had not witnessed the assault and he had gone to the place of occurrence on being called by Kusal (P.W.-3) and Gopan Tuddu to bring water. He has also stated that when he had reached the place of occurrence, the accused persons had already left by then. Therefore, P.W. – 4 can safely be discarded as an eye-witness to the occurrence. P.W. 3 in his examination of chief has narrated the version of the incident by claiming himself to be an eye-witness. He in his cross-examination, has stated that after the accused persons had fled away Pran (P.W. – 4) and Jata (P.W. – 6) had reached the place of occurrence. He had rushed to the place of occurrence after hearing the cry of alarm of his brother Jata (P.W. – 6) but Jata had reached the place of occurrence after this witness and Pran (P.W. – 4) though P.W. – 6 has contradicted such statement by deposing that it was he who was the first person to reach the deceased Khiru.

12. The learned trial court has disbelieved the evidence of Dasrath Yadav (P.W. – 5) as an eye-witness to the occurrence in view of his statement recorded under Section 161 CrPC before the Investigating Officer (P.W. – 10). It had also come to the conclusion that the story of assault with a kudal by the appellant as depicted by P.W. – 4 appears to be an exaggeration. It has relied upon the evidence of P.W. – 3, P.W. 4 and

P.W. – 6 while convicting the appellant for the offence under Section 302 of the Indian Penal Code. However, as noted above the dissection of the evidence of P.W. – 3, P.W. – 4 and P.W. – 6 clearly reveal major contradiction and even from the circumstances narrated by them it cannot be inferred that they had actually witnessed the assault.

13. The prosecution has, therefore, failed to prove its case beyond all reasonable doubt for which the benefit must accrue to the appellant.

14. Accordingly, in view of the discussions made hereinabove, we set aside the judgment and order of conviction and sentence 01.05.1992 (sentence passed on 04.05.1992) passed by Sri Pratap Singh, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 21 of 1988 whereby and whereunder, the appellant has been convicted for the offence under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life.

15. This appeal stands allowed.

16. Since the appellant is on bail, he is discharged from the liability of his bail bond.

(R. Mukhopadhyay, J.)

(Sanjay Prasad, J.)

**Jharkhand High Court, Ranchi,
Dated the 13.02.2024/NAFR
Umesh/Rakesh/-**