

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 206 OF 2005

MUNNA PRASAD
(s)

Appellant

VERSUS

STATE OF BIHAR

Respondent

(s)

(With Office Report)

WITH

CrI. A. No. 762/2005 (With appln.(s) for bail and exemption from filing O.T.
and with office report)

Date: 13/12/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE TARUN CHATTERJEE

For Appellant(s)

Mr. S.K. Sinha, adv.

Mr. V.N. Sahay, Adv.

Mr. Ramjee Prasad, Adv.

Mr. Umang Shankar, Adv.

Mr. Ugra Shankar Prasad, Adv.

For Respondent(s)

Mr. Sudhanshu Kumar Choudhary, Adv.

Mr. Nishakant Pandey, Adv.

Mr. Gopal Singh ,Adv.

UPON hearing counsel the Court made the following

O R D E R

Criminal Appeal No. 206/2005 is allowed and Criminal Appeal No. 762/2005 is dismissed in terms of the signed judgment.

(Ajay Kr. Jain)
(Vijay Dhawan)

Court Master
Court Master

(Signed non-reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 206 OF 2005

Munna Prasad Appellant

Versus

State of Bihar Respondents

WITH

CRIMINAL APPEAL NO. 762 OF 2005

Bhukhal Koery Appellant

Versus

State of Bihar Respondents

ts

J U D G M E N T

Criminal Appeal No. 206/2005 has been preferred by Munna Prasad whereas

Criminal Appeal No. 762/2005 has been preferred by Bhukhal Koery. Both of them were

found guilty of the offence punishable under Section 302/149 IPC by the learned 7th

Additional Sessions Judge, Chapra in Sessions Trial No. 325/1994. Their appeals to the

High Court were dismissed. They have appealed to this Court by special leave.

We may at this stage notice that there were in all 14 accused persons of whom 8

were acquitted by the Trial Court of the charge under Section 302/149 IPC. All the accused

persons were acquitted of the charge under Section 380 IPC. Only six accused persons were

convicted of the offence punishable under Section 302/149 IPC and sentenced to

imprisonment for life. The occurrence is said to have taken place between 6.30 p.m. and

7.30 p.m. on February 2, 1993 in Village Chandanpur in the District of Saran. The case of

the prosecution is that earlier on that day at about 8.00 a.m. one Sushila Devi was passing

by the side of the house of the informant Usha Devi, to which Usha Devi objected. It is the

case of the prosecution that Sushila was infuriated by such objection and she threatened

them with dire consequences. The case of the prosecution is that Balmiki Prasad, the

brother-in-law of Usha Devi PW-1 was returning from the market at about 6.00 p.m. The

informant was at her door and she noticed that several accused persons including the

appellant Munna Prasad had gathered near Chandanpur canal armed with deadly weapons

such as lathi, farsa etc. They attacked Balmiki Prasad, deceased. Mani Thakur assaulted the deceased on the head with his sword followed by assault by other persons. Balmiki

Prasad ran towards his house and entered his house but he was followed by those persons.

His wife Urmila Devi, deceased was at the door of the house and she protested against their entry inside her house. As a result she was also assaulted by Mani Thakur and Bhukhal

Koery (Appellant in CrI. Appeal No. 762/2005) and Munna Koery (other than appellant

Munna Prasad). As a result she fell down and died. The police reached the village sometime

later and it appears from the record that the first information report was recorded at about

0.30 hours on February 3, 1993. The next morning, i.e., on 3rd February, 1993 Balmiki

Prasad was removed to the hospital where he succumbed to his injuries on 10.2.1993.

Three eyewitnesses were examined in support of the prosecution case, namely,

PW-1 Usha Devi, PW-2 Tulsi Prasad- father of the deceased and PW-3 Ram Dulari Devi-

mother of the deceased. The Trial Court on appreciation of the evidence on record found

PWs 2 and 3 to be unreliable and therefore placed no reliance on their testimony. So far as

PW-1 Usha Devi is concerned the courts below have relied on her testimony and convicted

the appellants before us and four others.

We have been taken through the depositions of the three eyewitnesses and we

have also heard counsel for the appellants as also the counsel for the State.

From the F.I.R. lodged by PW-1 it appears that the occurrence took place at

about 6.30 p.m. in the month of February. She has herself stated in the first information

report that the persons could be identified with the help of torch light and candles. In her deposition she has stated that a lantern was burning when the accused entered her house

and that she had handed over the lantern to the police officer. These facts leave no room for doubt that it was quite dark when the occurrence had taken place. PW-1 claims to have

identified several persons who were near the Chandanpur canal which was at a distance of about 40 yards from her house. She has further stated that after the assault on Balmiki

Prasad commenced and Balmiki ran towards his house those persons also followed Balmiki and ultimately entered the house of the informant. In the process, on protest being raised by Urmila Devi, she was also assaulted and she fell down dead. The question is whether in the

facts of this case appellant Munna Prasad can be held guilty on the basis of the testimony of PW-1. It is apparent that no particular role has been ascribed to Munna Prasad. He is

stated to be one of the persons in the group. PW-1 claims to have identified him from her house when he was at a distance of about 40 yards at 6.30 p.m. in the month of February.

Having regard to the evidence on record, we are not convinced that at that time in the evening when it was quite dark and it was not possible to identify anyone without the help of artificial light, PW-1 could have identified Munna Prasad standing near the canal which is about 40 yards from her house. However, it cannot be disputed that if the accused

in a mob entered the house of the informant she could have identified him because she would have seen him from a close distance and as claimed by PW-1 there was a lantern

burning in the house. We find from the evidence of PW-1 that she has not named Munna Prasad appellant as one of the persons who entered her house, though she has named 11

such persons including the appellant Bhukhal Koery. The question arises as to whether in this state of the evidence the prosecution can be said to have proved its case as against

appellant Munna Prasad beyond reasonable doubt. As we have observed earlier, we

entertain a serious doubt as to whether it would have been possible for PW-1 to identify

Munna Prasad from a distance of 40 yards at that time of the day. If she had deposed that

Munna Prasad was one of the persons who had entered her house alongwith others, perhaps

conviction of appellant Munna Prasad could be sustained. But the evidence on record is

otherwise. Munna Prasad has not been identified by name but there is a general statement

that other accused also entered the house. Appellant Munna Prasad is certainly entitled to

the benefit of doubt, once his identification by PW-1 near the canal is discarded.

Accordingly, we allow Crl. Appeal No. 206/2005 and set aside the conviction and sentence

passed against appellant Munna Prasad. He shall be released forthwith unless required in

connection with any other case.

So far as the appellant Bhukhal Koery is concerned, his case stands on a

different footing. He is one of the persons who entered the house of the PW-1 armed with a

Dab and he is said to have assaulted Urmila Devi. Counsel for the appellant Bhukhal Koery

submitted that though there is an allegation that he assaulted Urmila Devi on her back with

a Dab there is no corresponding injury on the back of Urmila Devi. Assuming it to be so, he

still cannot escape his liability under Section 149 IPC because the assembly being unlawful

every participant must be held guilty of the offence with the aid of Section 149 IPC. In the

instant case Bhukhal Koery was not an idle spectator but an active participant inasmuch as

he joined the mob armed with a deadly weapon and pursued Balmiki Prasad inside his

house. In these circumstances, it cannot be held that he did not share the common unlawful object of the assembly. His conviction is therefore sustained and Crl. Appeal No. 762/2005 filed by him is dismissed.

.....J.

(B.P. SINGH)

.....J.

(TARUN CHATTERJEE)

New Delhi

December 13, 2006