

Patel Ketwar Vs. State of Bihar

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Court : Jharkhand

Decided On : Jan-04-2018

Appellant : Patel Ketwar

Respondent : State of Bihar

Judgement :

-1- IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Appeal (D.B.) No. 95 of 1993 (R) (Against the Judgment of conviction dated 11th of March, 1993 and Order of sentence dated 12th of March, 1993, passed by the 2nd Additional Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No. 8 of 1990).
----- Patel Katwar .. Appellant Versus The State of Bihar (Now Jharkhand) .. Respondent -----
For the Appellant : Mr. R.P. Gupta, Advocate. For the Respondent-State : Mr. Mukesh Kumar, A.P.P. -----
PRESENT : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE ANIL KUMAR CHOUDHARY
----- By Court.:- Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant is aggrieved by the Judgment of conviction dated 11th of March, 1993 and Order of sentence dated 12th of March, 1993, passed by the learned 2nd Additional Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No. 8 of 1990, whereby, the appellant has been found guilty and convicted for the offences under Sections 302 / 34 and 323 of the Indian Penal Code. Upon hearing on the point of sentence, the appellant has been sentenced to undergo R.I. for life for the offence under Sections 302 / 34 of the Indian Penal Code and further

sentenced to undergo simple imprisonment for 4 months for the offence under Section 323 of the Indian Penal Code, and both the sentences were directed to run concurrently. It may be stated that the other two co-accused, who were the own brother and nephew of the informant, and who had faced the trial along with the appellant, have been acquitted of the charges.

3. The prosecution case was instituted on the basis of fardbeyan of Raibu Paik, who is father of the deceased Parsan Paik, recorded on 15.2.1989, stating therein that on the previous night he was sleeping in the courtyard of his house, where his daughter Nilmani Paikin was also sleeping. At about mid-night he woke up upon the alarm raised by his daughter and he saw three persons in the courtyard, one of whom was having torch in his hand and one person was having bhujali. He caught one accused, and another accused came -2- and assaulted him by bhujali, causing injuries on his head, hand and back. It is further alleged that his daughter Nilmani Paikin had also caught one accused, and she was also assaulted by bhujali. Upon raising the alarm, his son Parsan Paik came from the nearby house to save them, whereupon, all the three accused persons assaulted him by bhujali, causing his death at the spot. The informant has stated that the accused, who was caught by Nilmani Paikin was Patel Katwar and other two accused persons had covered their faces with cloths. He has stated that his goat had destroyed the potato crop of his brother Somra Paik and has suspected that Somra Paik got the offence committed by Patal Katwar and other two persons. On the basis of the fardbeyan of the informant, Chakradharpur P.S. Case No. 11 of 1989, corresponding to G.R. No. 47 of 1989 was instituted for the offences under Sections 302, 307, 326 / 34 of the Indian Penal Code, against the appellant Patel Katwar and two unknown persons, and investigation was taken up. After investigation the police submitted the charge-sheet against the accused appellant Patel Katwar and also against Somra Paik and Radha Krishna, who are the brother and nephew of the informant.

4. After commitment of the case to the Court of Session, charge was framed against all the three accused persons for the offences under Sections 120-B, 302 / 34 and 307 / 34 of the Indian Penal Code, and upon the accuseds pleading not guilty and claiming to be tried, they were put to trial. In course of trial, nine

witnesses were examined by the prosecution, including the Doctor, who had conducted the post-mortem examination on the dead body of the deceased and two I.Os. P.W.-4 Surendera Paik was only tendered by the prosecution. No witness was examined on behalf of the defence.

5. P.W.-1 Raibu Paik is the informant of the case. This witness has stated that the occurrence had taken place about 1 years ago and he was sleeping in the courtyard of his house in the night. His daughter Nilmani Paikin was also sleeping nearby. He woke up on the screams of his daughter and saw Somra Paik, Radha Krishna and Patel Katwar armed with bhujali. Patel Katwar assaulted his daughter by fist and bhujali. This witness caught Radha Krishna and called his son, whereupon Radha Krishna, Somra Paik and Patel Katwar assaulted him by bhujali, injuring him. When his son came to their rescue, all the three persons assaulted him by bhujali, causing bleeding injuries on him. He has stated that prior to the occurrence, -3- there was an altercation with Somra Paik due to the fact that his goat had destroyed the potato crop of his brother Somra Paik. He has stated that Somra Paik is his own brother and Radha Krishna is the son of Somra Paik. On the next day he gave the fardbeyan at the police station, which was read over to him and he put his thumb impression. He has identified all the three accuseds in the Court and has stated that Nilmani Paikin and this witness were sent for treatment and the dead body of deceased Parsan Paik was sent for post-mortem examination. In his cross-examination on behalf of accuseds Somra Paik and Radha Krishna, he has stated that he had named these persons also before the police and has denied the suggestion that he had not named these persons. There is nothing of much importance in his cross-examination made on behalf of the accused appellant Patel Katwar.

6. P.W.-2 Nilmani Paikin is the daughter of the informant and P.W.-3 Mankuwar Paikin is the wife of the informant and they have also supported the prosecution case, as stated by the informant P.W.-1 Raibu Paik. These witnesses have also stated in their cross-examination that they had named the other two accused, namely Somra Paik and Radha Krishna, before the police. So far as the accused Patel Katwar is concerned, these witnesses have stated that he had also assaulted the deceased by bhujali, and P.W.-2 Nilmani Paikin has also stated that

she was assaulted by Patel Katwar.

7. P.W.-7 Suresh Dehri and P.W.-8 Dinbandhu Paik are the witnesses to the inquest report and seizure list relating to the seizure of blood stained soil from the place of occurrence. They had put their signatures on them and their signatures on the seizure list have been proved and marked as Exhibits 6/1 and 6/2.

8. P.W.-5 Dr. Arun Kumar Gupta had conducted the post-mortem examination on the dead body of the deceased on 17.2.1989, and had found the following ante-mortem injuries on the dead body:- (i) 5x2 transverse incised wound extending from front of left ear to the middle of the forehead. The frontal bone was cut through brain subtract were also cut through. (ii) 4x1 transverse incised wound extending behind the left ear to that of occipital region. Occipital bone was cut through meninges and brain substance were also cut. -4- (iii) 4x3 incised wound over the left shoulder, the greater tuberosity of left humerus was cut through and head of humerus was explored. (iv) 3x2 obliquely placed incised wound over the upper part of exterior surface of left arm. (v) 1 x x muscle deep incised wound over the exterior surface of left hand 5th metacarpal bone was cut. (vi) 1cm x 1/2 cm x muscle deep incised wound over the middle phalange of left middle finger. (vii) 5x2 x muscle deep transverse incised wound over the posterior surface of the neck. On dissection:- cranium and neck - as mentioned previously; lung and heart were intact; heart chambers contained small amount of blood; abdomen - liver, kidney etc. were intact; Stomach and bladder empty; intestine contained gas. He has stated that the death was caused due to shock and haemorrhage caused by aforesaid injuries, particularly the head injuries, which were sufficient to the cause of death and the injuries could be caused by bhujali. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-1.

9. P.W.-6 Subhash Prasad and P.W.-9 Shiv Nath Ram are the I.Os. in this case. P.W.-6 has proved the fardbeyan, the formal F.I.R., the memo for issuing the injury reports of the two injureds and the seizure lists, which were marked as Exhibits- 2, 3, 4, 5 and 6 respectively. This witness has stated that he had visited the place of occurrence and he has given the details of the place of occurrence, stating that he found the dead body of deceased Parsan Paik on the veranda of the house and he

had seized the blood stained soil from the place of occurrence. He had sent the dead body for post-mortem examination. He also recorded the statements of the witnesses, and thereafter, handed over the charge of investigation on 19.2.1989. His attention was drawn towards the statements of informant P.W.-1 Raibu Paik and P.W.-2 Nilmani Paikin and he has stated that they had not named Somra Paik and Radha Krishna before him, in committing the offence. P.W.-9 Shiv Nath Ram had taken over the charge of investigation after P.W.-6 Subhash Prasad. He had also recorded the statements of some witnesses and he also received the post-mortem report and -5- submitted the chargesheet in this case and also sent the blood stained soil for forensic examination.

10. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein, they have denied the evidence against them.

11. On the basis of the evidence on record, the Court below has found the appellant Patel Katwar guilty, and convicted and sentenced him for the offences as aforesaid, whereas the other two accused persons, facing the trial with the appellant, were acquitted of the charges, and rightly so, because it was stated in the F.I.R. that other two persons had covered their face with cloths, and they were not named before the police to be directly involved in the occurrence, but in their evidence, the material witnesses have made improvement in their earlier versions making direct allegations against them also.

12. Learned counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court below cannot be sustained in the eyes of law, inasmuch as, on the same set of evidence two accused persons, facing the trial with the appellant Patel Katwar, have been acquitted by the Trial Court below, whereas the appellant Patel Katwar has been convicted and sentenced on the same evidence. It is submitted by learned counsel that if the other two co-accused were falsely implicated in this case there are chances of false implication of the appellant as well. Learned counsel submitted that in that view of the matter, the evidences of P.W.-1 Raibu Paik, the informant, his daughter P.W.-2 Nilmani Paikin and the wife of the deceased P.W.-3 Mankuwar Paikin do not inspire confidence and it is a fit case, in which, the

appellant ought to have given the benefits of doubt.

13. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that the accused appellant Patel Katwar has been named in the F.I.R. itself, stating that he was caught by P.W.-2 Nilmoni Paikin, the daughter of the informant at the time of occurrence, whereupon she was assaulted. It is also stated by the witnesses that three persons, including the accused Patel Katwar had assaulted the deceased by bhujali, causing his death at the spot, and the oral evidence of these witnesses are fully supported by the medical evidence of P.W.-5 Dr. Arun Kumar Gupta, who had found -6- seven incised injuries on the dead body of the deceased, including the injuries on his head, which were sufficient to cause death in normal course of nature and the Doctor has also stated that these injuries could be caused by bhujali. Learned counsel, accordingly, submitted that there is no illegality in the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, against the accused-appellant Patel Katwar.

14. Having heard learned counsels for both the sides and upon going through the evidence on record, we find that so far as the other two accused Somra Paik and Radha Krishna are concerned, they are the own brother and nephew of the informant and their presence at the place of occurrence was not stated in the F.I.R. Had they been present at the time of occurrence, they would have been named by the informant in the F.I.R. itself, in committing the offence. Even the I.O. P.W.-6 Subhash Prasad has stated that P.W.-1 Raibu Paik and P.W.-2 Nilmani Paikin, had not named Somra Paik and Radha Krishna before him, in committing the offence. As such, these accused persons appear to be rightly acquitted by the Trial Court below. However, so far as the present appellant is concerned, he was named in the F.I.R., stating that at the time of occurrence, he was caught by P.W.-2 Nilmani Paikin, who is said to be accompanied with two other persons. The informant had also apprehended one person and both the informant and Nilmani Paikin were also assaulted and injured by the accused persons. However, their injuries have not been proved by the prosecution, and accordingly, the appellant has been rightly convicted only for the offence under Section 323 of the Indian Penal Code, for causing hurt to Nilmani Paikin, even though, the charge was framed under Sections 307 / 34 of the Indian Penal Code for the same. There is

consistent evidence on record that the appellant Patel Katwar along with other two persons assaulted the deceased by bhujali, causing his death at the spot and this evidence is fully corroborated by the medical evidence of P.W.-5 Dr. Arun Kumar Gupta and the post-mortem reported proved by him as Exhibit-1, which show that seven injuries caused by sharp cutting weapon, were found on the dead body of the deceased, including two injuries on his head, which were sufficient to cause the death in ordinary course of nature. We are of the considered view that on the basis of the evidence on record, the prosecution has been able to bring home the charge against the appellant Patel Katwar, beyond all reasonable doubts for the offences under Sections -7- 302 / 34 and 323 of the Indian Penal Code, and he has been rightly convicted and sentenced for the said offences.

15. In view of the aforementioned discussions, we do not find any illegality in the impugned Judgment of conviction dated 11th of March, 1993 and Order of sentence dated 12th of March, 1993, passed by the learned 2nd Additional Sessions Judge, West Singhbhum at Chaibasa, in Sessions Trial No. 8 of 1990, convicting and sentencing the appellant Patel Katwar for the offences under Sections 302 / 34 and 323 of the Indian Penal Code, which we hereby, affirm. The appellant is on bail. His bail is cancelled and he is directed to surrender in the Court below forthwith, to serve out the sentence passed by the Trial Court below. The Trial Court below is also directed to issue process forthwith, compelling the surrender / production of the appellant Patel Katwar for serving out the sentence.

16. We do not find any merit in this appeal, and the same is, accordingly, dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy this Judgment. (H.C. Mishra, J.) (Anil Kumar Choudhary, J.) Jharkhand High Court, Ranchi. Dated the 4th of January, 2018.
AFR/Amitesh/-

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