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Court : Patna

Decided On : May-16-2014

Judge : I.a. Ansari &Amp; Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) No. 870 of 2006

Appellant : Kamli Devi

Respondent : The State of Bihar

Judgement :

I.A. Ansari, J.

1. By the judgment and order, dated 05.06.2006, passed, in Sessions Trial No. 781 of 2003, by learned Additional Sessions Judge, Fast Track Court No. II, Jamui, the appellant, Kamli Devi, stands convicted under Section 302 of the Indian Penal Code. Following her conviction under Section 302 of the Indian Penal Code, the accused-appellant, Kamli Devi, has been sentenced to undergo imprisonment for life.

2. The case of the prosecution may, in brief, be described thus:

(i) On the night of 2nd June, 2003, when Prakash Yadav (since deceased) was sleeping, on a cot, with his brother, Dharmendra Yadav (PW 8) and their father, Bhikho Yadav, Prakash Yadav cried out of pain. Shocked by his cries, PW 8 (Dharmendra Yadav) woke up and so woke up his father, Bhikho Yadav. In order

to find out as to what had happened to Prakash Yadav, PW 8 (Dharmendra Yadav) switched on a torch-light and noticed, in the focus of the torch-light that, while Prakash Yadav was writhing in pain, accused, Kamli Devi, was running away holding a pistol in her hand. PW 8 also found that Prakash Yadav was hit by a bullet on his abdomen. Though PW 8, along with his father, Bhikho Yadav, and his two other brothers, namely, Basudeo Yadav (PW 1) and Parmeshwar Yadav (PW 5), made attempt to chase and catch accused, Kamli Devi, but accused, Kamli Devi fled away. Injured Prakash Yadav, who had sustained bullet injury on his abdomen, was taken to Jhajha Hospital and from there, he was shifted to Jamui Hospital.

(ii) While lying at Jamui Hospital, Prakash Yadav gave, on 03.06.2003, at 4.15 AM, Sri B.N. Roy, a Sub Inspector of Police, Jhajha Police Station, a statement, which was recorded in the form of fardbayan.

(iii) Treating the said fardbayan as First Information Report, Jhajha Police Station Case No.57 of 2003, under Section 307/326 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, was registered against the accused. During investigation, as injured Prakash Yadav died, Section 302 of the Indian Penal Code was added to the case aforementioned. During investigation, inquest was held over the dead body of the said deceased, which was also subjected to post mortem examination and, on completion of investigation, charge sheet was laid, under Section 307/326/302 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, against accused Kamli Devi.

3. At the trial, when a charge, under Section 302 of the Indian Penal Code, was framed against the accused, she pleaded not guilty thereto.

4. In support of their case, prosecution examined as many as 12 (twelve) witnesses. Accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in her examination aforementioned, the accused denied that she had committed the offence, which was alleged to have been committed by her, the case of the defence being that of denial. No evidence was adduced by the defence.

5. The learned trial Court, having reached the conclusion that the case, as against the present appellant, namely, Kamli Devi, stood proved beyond reasonable doubt, convicted her accordingly. Following her conviction under Section 302 of the Indian Penal Code, the learned trial Court passed sentence against her as has been mentioned above. Aggrieved by her conviction and the sentence, which has been passed against her, the accused, as a convicted person, has preferred this appeal.

6. We have heard Mr. Amar Prakash, learned Counsel, for the appellant, and Mr. Ashwini Kumar Singh, learned Additional Public Prosecution, for the State. We have also heard Mr. Arun Kumar Tripathi, learned Amicus Curiae, appearing for the appellant.

7. While considering the present appeal, it needs to be noted that the doctor, who is claimed to have performed post mortem examination on the dead body of Prakash Yadav, as well as the Investigating Officer of the case have not been examined as witnesses at the trial. Nonetheless, there is no dispute that Prakash Yadav died, because of the bullet injury sustained by him.

8. What is of immense importance to note is that the witnesses, who have been examined at the trial, are either brothers or close relatives of the deceased. Though the evidence of a relative of a deceased cannot be rejected on the ground of being inherently unworthy of trust, the fact remains that when a witness is a close relative of a deceased, his evidence has to be closely scrutinized in order to avoid possibility of false implication, particularly, when it is the admitted case of the prosecution that the relation between accused Kamli Devi and the said deceased was far from cordial. Enmity is a double-edged weapon inasmuch as enmity may become a ground for assaulting on enemy and enmity may become also a ground for implicating a person, as an accused, either on suspicion or in order to take revenge.

9. The sum and substance, therefore, of what has been indicated above, is that the evidence on record needs to be very minutely scrutinized and carefully considered so that the possibility of being falsely implicated can be safely ruled out.

10. Bearing in mind what has been indicated above, let us, first, come to the evidence of PW 8, who claims to have been sleeping with the deceased at the time, when the deceased was shot. This witnesss evidence is that on the date of the occurrence, while he was sleeping, on a cot, at the verandah of his house, with Prakash Yadav (i.e. the deceased) and their father, Bhikho Yadav (who, too, has died), he woke up on hearing the sound of firing and, on flashing the torch-light, he saw accused Kamli Devi running away with a pistol in her hand and though he, along with father and other brothers, to chase accused Kamli Devi, accused Kamli Devi fled away, whereupon injured Prakash Yadav was taken to Jhajha hospital and from there, he was shifted to Jamui hospital, but he died at about 4 Oclock in the evening and at Jhajha hospital, injured Prakash Yadavs statement was recorded by the police.

11. The above statement, which is claimed to have been recorded by the Investigating officer, has been treated as the First Information Report and since the maker of the said statement has died, the same may be treated as his dying declaration. However, what is most crucial to note, in this regard, is that the Investigating Officer has not been examined and, hence, the defence has been denied the opportunity of cross-examining the person, who is claimed to have recorded the said injured persons statement, which has, later on, become his dying declaration.

12. In the circumstances indicated above, the dying declaration, in question, cannot be safely relied upon, more particularly, when the same has not been proved in accordance with law.

13. In his cross-examination, PW 8 has clarified that when he flashed the torch-light on hearing the sound of firing, he saw accused Kamli Devi running away and Prakash Yadav crying in pain.

14. What is, now, of immense importance to note, in the evidence of PW 8 (Dharmendra Yadav), is that he has, in no uncertain words, deposed that his brother, PW 1 (Basudeo Yadav), and PW 5 (Parmeshwar Yadav), were sleeping inside the house at the time of occurrence and not at the verandah.

15. Clearly, therefore, the evidence of PW 1 (Basudeo Yadav) and PW 5 (Parmeshwar Yadav), that they had seen accused Kamli Devi running away, after shooting Prakash Yadav, cannot be believed, more particularly, when we notice that the learned trial Court, while recording the evidence of PW 8, has observed, at paragraph 42, thus: œOn being asked as to how long Kamli Devi stayed there after firing shot, the witness takes much time to think over it, and says that she had fled away immediately.?

16. From the above observation, it becomes abundantly clear that since PW 8 (Dharmendra Yadav) did not spontaneously answer the question put to him, he cannot be readily believed and his evidence also shows that accused Kamli Devi had, upon shooting Prakash Yadav, fled away immediately and, hence, the question of PW 8 (Dharmendra Yadav) having seen accused Kamli Devi and chasing her along with his father, Bhikho Yadav (since deceased), PW 1 (Basudeo Yadav) and PW 5 (Parmeshwar Yadav) does not arise. This apart, when the said deceased himself was in deep sleep, he could not have, on being shot at his abdomen, be safely held to have known, in the dark night, as to who had shot at him.

17. In the circumstances mentioned above, when accused Kamli Devi had, immediately, fled away, the question of the injured, having seen her running away after having shot him, does not arise. Thus, the injured persons statement, which has been treated as his dying declaration, cannot be safely and confidently believed in, or relied upon.

18. Bearing in mind, what has been pointed out above, let us, now, come to the evidence of PW 1 (Basudeo Yadav). This witness has deposed that on the night of the occurrence, on hearing the sound of firing, he woke up, came out from inside his house and saw accused Kamli Devi fleeing away with a half-a-cubit article in her hand.

19. As already indicated above, in the light of the evidence of PW 8 (Dharmendra Yadav), it is not possible to implicitly rely upon the evidence of PW 1 (Basudeo Yadav) that accused Kamli Devi, who had already fled away after allegedly shooting Prakash Yadav, could be seen by PW 1 (Basudeo Yadav), when he was

not sleeping at the verandah, but sleeping inside his house.

20. Similarly, though PW 1 has claimed that injured Prakash Yadav had told that while he was asleep, accused Kamli Devi had fled away after shooting him, it is clear in the light of what we have already discussed above, that the evidence of dying declaration, so given, is not believable inasmuch as Prakash Yadav, on having been shot at the abdomen and while himself writhing in pain, could not have seen the assailant; more so, when we notice that belying completely the evidence of PW 8 (Dharmendra Yadav), who had claimed that he along with his father and brothers had chased accused Kamli Devi, PW 1 conceded that neither his father, Bhikho Yadav, nor his brother, Dharmendra Yadav (PW 8), had chased accused, Kamli Devi, because they were near injured Prakash Yadav.

21. What clearly emerges from the above discussion is that the evidence of neither PW 1 nor PW 8 can be safely believed in or relied upon.

22. Coming to the evidence of PW 2, we notice that on hearing the sound of firing, when he rushed to the south of this house, he saw Kamli Devi running away carrying an article measuring about one cubit in length. Though this witness (PW 2) has denied, in his cross-examination, that he had not stated before the police that Kamli Devi was running away carrying an article measuring about one cubit in length, the fact remains that when the Investigating Officer has not been examined, the defence has been denied the opportunity of ascertaining from the Investigating Officer if such a statement, as indicated hereinbefore, was at all made by PW 2. At any rate, we do not find the evidence of PW 2 is believable, when he, admittedly, came to the place of occurrence long after shooting took place and when he had not seen any firearm in the hands of the accused.

23. When we turn to the evidence of PW 4, we notice that according to him, when he heard the sound of firing, he came out of his house and saw Kamli Devi fleeing away carrying something in her hand. On reaching the place from where hulla was raised, he found Prakash lying injured. Curiously enough, this witness (PW 4) admits that he did not chase or tried to stop Kamli, who was fleeing away. There is absolutely no reason why this witness (PW 4) did not try to catch hold of her, when he had, admittedly, not seen any fire-arm in the hands of Kamli Devi.

24. Turning to the evidence of PW 6, we notice that according to him, he woke up on hearing the sound of firing and rushed to the house of Prakash Yadav and saw that Prakash had sustained bullet injury on his abdomen and, on being asked, Bhikho Yadav and Prakash Yadav had stated that Kamli Devi had shot at and fled away. We have already pointed out above that it was impossible for Prakash Yadav to have seen Kamli Devi shooting him inasmuch as he woke up from his sleep only after he had been shot at his abdomen and cried out of pain.

25. In the circumstances indicated hereinbefore, it is impossible to safely hold that Prakash Yadav could have told PW 1, PW 6 and or anyone that Kamli Devi had shot him.

26. Because of what have been discussed and pointed out above, we do not find any of the witnesses, who have been examined by the prosecution, can be said to be wholly reliable witness and even if their evidence is not rejected outright as evidence of wholly unreliable witness, their evidence would fall, at best, in the category of those witnesses, who are neither wholly reliable nor wholly unreliable. The evidence of a witness, who is found to be neither wholly reliable nor wholly unreliable, cannot be made basis of conviction unless his evidence is corroborated by independent credible evidence, direct or circumstantial.

27. It is trite that the witnesses, ordinarily, fall into three distinct categories, namely, (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. If the witness is wholly reliable, his evidence can be implicitly relied upon and such a witnesss testimony can be made basis for convicting an accused. Similarly, when a witness is found to be wholly unreliable, no reliance can at all be placed on his evidence and his evidence has to be rejected outright. When, however, a witness is found to be neither wholly reliable, nor wholly unreliable, his evidence cannot be accepted as true unless his evidence is found to have been corroborated by some credible independent evidence, direct or circumstantial.

28. The evidence of the eye-witnesses, which the prosecution has adduced in the present case, cannot be safely relied upon unless the same is found to have been corroborated by some credible independent evidence, direct or circumstantial.

29. It is also an undisputed position of law that one infirm witness cannot be taken to have corroborated the evidence of another infirm witness meaning thereby that witnesses of same brand cannot be taken to have corroborated each other.

30. Thus, when a witness is neither wholly reliable nor wholly unreliable, his evidence cannot be taken to have been corroborated by a witness of the same brand, namely, a witness, who is neither wholly reliable nor wholly unreliable, for, evidence is not to be counted, but weighed. It is not the number of the witnesses, which shall determine the outcome of a trial; rather, it is the intrinsic quality of the evidence, given by the witnesses, which decides the outcome of trial. If each one of a large number of witnesses is found to be wholly unreliable, their evidence cannot become acceptable as true merely because a large number of similar brand of witnesses has corroborated each other.

31. What emerges from the above discussion is that none of the prosecution witnesses can be held to be wholly trustworthy and even if we do not reject their evidence as wholly unreliable, they will fall, as indicated above, in the category of those witnesses, who are neither wholly reliable nor wholly unreliable. Coupled with this intrinsic weakness of the prosecution case, there is no credible and convincing evidence, direct or circumstantial, corroborating the evidence of the so-called eye-witnesses.

32. In the face of the fact that every witness, who has been examined as an eye-witness, is found to be neither wholly reliable nor wholly unreliable, none of these witnesses, in the absence of any independent credible evidence, direct or circumstantial, can be said to have corroborated each other and they cannot be said to have proved the prosecutions case beyond reasonable doubt.

33. Because of what have been discussed and pointed out above, we are clearly of the view that the evidence, adduced by the prosecution, was nothing but an admixture of half-truth and untruth and it has become impossible to extricate the truth from falsehood. Benefit of such a situation ought to have gone to the accused-appellant and she ought to have been accorded, at least, benefit of doubt.

34. What crystallizes from the above discussion is that the prosecution has failed, in the present case, in proving its case beyond reasonable doubt against the appellant and the learned trial Court ought to have acquitted the accused-appellant by according her benefit of doubt.

35. In the result, and for the reasons discussed above, this appeal succeeds. The impugned conviction of the accused-appellant and the sentence passed against her by the judgment and order, under appeal, are hereby set aside. The appellant is held not guilty of the offence, which she has been convicted of, and is acquitted of the same under benefit of doubt.

36. Let accused-appellant, Kamli Devi, be set at liberty forthwith unless she is required to be detained in connection with any other case.

37. Let the Lower Court Records be sent back to the learned Court below with a copy of this judgment and order.

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