

Munna Kumar Lohani and Another Vs. the State of Bihar

Munna Kumar Lohani and Another Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/1151869

Court : Patna

Decided On : Mar-12-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No. 279 of 2002

Appellant : Munna Kumar Lohani and Another

Respondent : The State of Bihar

Judgement :

1. The present appeal has been preferred by the two appellants who were put on trial in Sessions Case No. 295 of 1997 by the learned Presiding Officer, Additional Court (Fast Track Court), Munger after being charged with committing offence under Sections 304 Part-I and 323 of the Indian Penal Code with another accused Malti Devi. By the judgment dated 04.06.2002 the two appellants were found guilty only of committing offence under Section 304 Part-I of the Indian Penal Code and after being heard on sentence on 05.06.2002 each of them was directed to suffer rigorous imprisonment for a period of seven years. As regards the other accused Malti Devi who was facing trial with the two appellants, she was acquitted of the charges. The appellants were also acquitted of charge under Section 323 of the Indian Penal Code.

2. In the background of admitted dispute and enmity for a wall which appears erected by using mud to fix the bricks, the allegation was that there had been

some dispute between the parties for throwing the house hold discards in the land which was passing by the side of the wall. On 25.02.1996 also the wife of one of the accused persons, i.e., third accused Malti Devi had again thrown the house hold discards in the lane which was objected to by Ganga Devi, the wife of the informant P.W. 12 Vijay Kumar. An altercation ensued between the two ladies when these two appellants also intervened and as soon as the exchange of words turned from mild to hot, the two retreated back to their houses uttering that the lady required to be killed.

3. It is alleged that they came back again and after telling him that the lady has to be killed, pushed the brick wall towards the side of the deceased Ganga Devi who came under it as soon as the wall collapsed. There was a hue and cry and people came around, removed the debris and brought out Ganga Devi who had sustained certain injuries on her person. Allegation was that the three little sons of the informant, namely Kumar Gautam (P.W. 6), Kunal Gautam (P.W. 7) and Bibhakar Gautam (P.W. 8) who were somewhere around 8 to 6 years of age on the day of occurrence also received injuries due to the fall of the wall. The lady was rushed to the hospital along with her three little sons and it appears that she died there and it appears that inquest proceedings were held and the inquest report Ext. 3 was prepared by P.W. 14, Sub-Inspector, Indrasan Prasad, who had taken up the investigation of the case. The post-mortem examination report suggested as appears from the document Ext. 5 as also from the evidence of P.W. 13 Dr. Krishna Mohan Purbey, that the deceased had as many as six injuries on her person. The evidence of P.W. 13 indicates that those six injuries were ante mortem in nature, which were as follows:

- (i) Lacerated wound of size 1? x ? x scalp deep over middle parietal region.
- (ii) Lacerated wound ? x ? x through and through over right side of lower lip.
- (iii) Bruise of size 2? x ? over front of chest.
- (iv) Bruise of size 2? x ? over middle of Back below scapula.
- (v) Blood stains over nostril, ear, and mouth.

(vi) Compound fracture of right leg 2? below the knee with lacerated wound of size 1? x ? x bone deep.

4. The doctor found blood stains over nostril, ear and mouth which suggested as if the deceased had bled through her nostrils, ear and mouth. After dissection, the doctor found extra vasation of blood under the scalp and fracture of both parietal, frontal, occipital and both temporal bones in pieces with laceration of brain matter. Blood clot was present. The doctor also found fracture of ribs on right side of chest from four to seven and on the left side from five to seven. Both lungs were lacerated. Blood and blood clot was present in pleural cavity and in the opinion of the doctor P.W. 13, death had resulted on account of above noted injuries caused by hard and blunt substance within twenty four hours of holding of the post-mortem examination.

5. Thus, there may not be any doubt that deceased Ganga Devi had died on account of injuries which were caused to her head and the chest which had caused the laceration of the brain matter and lungs.

6. The Investigating Officer P.W. 14, Indrasan Prasad stated that he had, during the inspection of the place of occurrence, found the lane measuring about 8 feet in width and about 27 feet in length and it was running towards south of the house of P.W.12 the informant Vijay Sah. The wall in question was situated on the eastern side of the lane and the bricks have been fixed by using mud and further, that on account of erosion in quality of bricks, some part of the wall had collapsed. The wall was running from south to north and was about 9 feet-high. The outlet for flowing water from the house of the informant was also running just by the side of the wall. The place where Ganga Devi had come under the wall, as per P.W. 14, was near the house of Krishna Sao where the outlet for flowing water from the house of the informant was situated. The Investigating Officer found fresh blood fallen at the place of occurrence and further found that the part of the wall which had not collapsed was still a bit tilted downwards. P.W. 14, thereafter, recorded the statements of witnesses and after collecting the post-mortem report submitted the charge-sheet for trial of the accused persons.

7. The defence of the appellants was that it was a natural fall of the wall on account of natural decay in brick-quality and Ganga Devi came under the wall accidentally when it had collapsed and had received injuries and on account of old enmity for certain plot of land which appears admitted in the deposition-sheet of the informant, the accused persons were falsely roped into the case.

8. The prosecution examined a total number of fourteen witnesses, out of whom P.W. 1 Upendra Prasad was a witness of formal character having proved the writings of the inquest report and the document as such as Ext. 1. P.W. 2 Om Prakash Gupta had been tendered for cross-examination while P.Ws. 3, 4 and 5, namely, Awadhesh Prasad, Rameshwar Prasad and Bipin Kumar respectively had given almost one line evidence that having picked up the rumour that the wall near the house of the informant had fallen down, they rushed to the house of the informant of Vijay Sah and saw that the wall had collapsed and Ganga Devi was lying under it. The witnesses stated that some of them and other villagers had dug out the deceased after removing the debris and she was rushed to the hospital where she died. As against the above evidence given by P.Ws. 3, 4 and 5, the three sons of the informant, namely, Kumar Gautam P.W. 6, Kunal Gautam P.W. 7 and Vibhakar Gautam P.W. 8 came to support his father P.W. 12 that it was an intentional act of the appellants of pushing the wall down in order to injuring and killing the deceased. Two other witnesses, i.e., P.Ws. 9 and 10, namely, Kanta Devi and Vidya Devi respectively did not state anything, rather stated that they did not know anything of the occurrence and, as such, they were declared hostile by the prosecution with P.W. 11 Krishna Prasad. The informant, I have already noted, had supported his case.

9. While passing the judgment, the learned trial Judge discarded the evidence of P.Ws. 6 and 8, namely, Kumar Gautam and Vibhakar Gautam and had in spite of discussing the fact that P.W. 7 had admitted in his evidence, as appears referred by him in paragraph 38, that he was brought by one Murari from his house for giving evidence and was left in the Civil Court where he went to the advocate and the advocate pointed out to him the facts, the learned trial Judge in spite of noticing this evidence of P.W. 7 still chose to place reliance upon his evidence. I am afraid that the finding as regards attaching credibility to the evidence of P.W. 7

Kunal Gautam by the learned trial Judge appears completely unknown to the realm of appreciation of evidence. His very evidence suggested that he had been tutored prior to coming into the dock probably by a hired legal mind because on the date of his deposition in the Court below Kunal Gautam was aged thirteen years. His deposition was recorded by the Court below on the 28th of July, 2000, i.e., after about four years of the occurrence. As such, Kunal Gautam could be aged about nine years on the day of occurrence. Childhood memory is too fragile to withstand the onslaught of sequence of events due to efflux of time and it cannot be expected from a child, in the present circumstances of life to narrate the events with so much exactitude, particularly from a developing child. A child of nine years could never be expected to be so mature as to retain and recall the facts in his memory to reproduce them before the Court of law. This is one psychological aspect of a child witness. Even on the day Vibhakar Gautam P.W. 8 had deposed in Court, he could not have been on the threshold of being a witness other than a child witness. Prudence suggests that evidence of such a witness has to be approached with great care and caution and there is always a chance of tutoring a child witness, as has been noted by the learned trial Judge, by a hired legal mind. These are some of the reasons which in my opinion could have persuaded the learned trial Judge not to act upon the evidence of P.W. 7.

10. So far as the evidence of P.W. 12 Vijay Sah is concerned, he was very candid and forthright in admitting that not only he but his father and the father of the present set of appellants also had been litigating for a particular piece of land which appears described by him as appertaining to Plot No. 461. There had been proceedings before the Executive Magistrate and his father died in the year 1988-89 and in spite of there being a very clear question put to the witness as to whether the litigation had been winded up, he could not be very direct in denying the question that it had not ended. Even if assuming that it had not ended, P.W. 12 gives an impression that scare of the litigation was so deep in his mind that he was hatching up some plans probably to take revenge of the harassment which could have fallen the family. The litigation was not a short litigation. It appears admitted by P.W. 12 that there was a land dispute between his father and Madan Master about 15 years back and the family had been pushed into litigation in order to putting pressure as appears in paragraph 4 so as to getting the land vacated by

the family. Justice Gopal Das Khosla in his book 'Cases From a Judge's Notebook', while dealing with the story of Pallawant Kaur, tried for the alleged murder of her husband, the prince of Raja Sansi, noted that generally crimes are committed for three Z's- Zamin, Zoru and Zar. Here was a litigation for Zamin and the facts which have been narrated by P.W. 12 gives out a picture of real harassment and of being attempted to be deprived of a very valuable belonging by the father of the present set of appellants. This could be the background in which the evidence of P.W. 12 has to be appreciated.

11. He has given a very long history as to how there used to be quarrel for the same reason, i.e., throwing of the house hold discards in the lane in question between the acquitted accused Malti Devi and his deceased wife Ganga Devi. The story is given in paragraph 6 of his deposition. It appears further that Malti Devi was treating the act of discarding house hold discards in the lane, which was probably the pathway of the family of the informant to access their home, created not only a great annoyance to their minds, but was also causing irritation to the family. But, on that particular day of occurrence, as appears from the evidence of P.W. 12 in paragraph 6, he was never sure that Malti Devi had really thrown the household discards in the lane and he had only seen the household discards. If P.W. 12 was not sure that Malti Devi had really thrown the house hold discards in the lane then there could not be any question, that there was the real genesis or initiation of the occurrence because the very prosecution story stated that the exchange of hot words between the two ladies was the point of initiation of the occurrence. This is one infirmity in the evidence of P.W.12. The other infirmity may not be there in the evidence of P.W. 12, but when his evidence is contrasted against the evidence of P.Ws. 3, 4 and 5 who had rushed to the place of occurrence after learning about the collapse of the wall and found the deceased lying under it, it may be found that the prosecution itself suffered from the vice of placing two versions of the same incident. P.Ws. 3, 4 and 5 have stated that they rushed to the scene of occurrence and saw the wall collapsed and deceased Ganga Devi lying under it. The debris were cleared and the deceased was dug out of it and she was rushed to the hospital. The three witnesses have given one or two lines of evidence to the above effect. They have never been declared hostile nor suggested that they were making false statements. Thus, the very evidence of

P.Ws. 3, 4 and 5 remained unchallenged and undisturbed. So what this Court finds is that there are two versions of the same incident. One could be of the natural collapse of the wall on the person of the deceased causing injuries to her while the other version is as per the evidence of P.W. 12. If the prosecution is giving two types of evidence in respect of the same incident then it could not, in any view, succeed in getting the charges proved. It is a case where no reasonable person could reach a conclusion as regards the correctness of the version as told by P.W. 12. The very prosecution evidence lessens the quality of the evidence of P.W. 12 as a result of which it was a case of charges being not proved.

12. In the result, the appeal succeeds and the same is allowed. The judgment of conviction and the order of sentence passed against the two appellants are hereby set aside and the appellants are acquitted of the charge, they had been found guilty of. The appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com