

Dilip Kumar Singh Alias Chhedi Singh Vs. State of Bihar

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Court : Patna

Decided On : Mar-01-2001

Judge : Narayan Roy and M.L. Visa, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302 and 342

Appeal No. : Cri. Appeal (DB) No. 255 of 1987

Appellant : Dilip Kumar Singh Alias Chhedi Singh

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Behari Prasad, A.P.P.

Advocate for Pet/Ap. : Tara Sinha and Dharmesh Kumar, Advs.

Disposition : Appeal dismissed

Prior history : M.L. Visa, J. 1.This appeal by the sole appellant is directed against the judgment and order dated 8-5-1987 passed by 2nd Additional Sessions Judge, Samastipur, in Sessions Trial No. 123/29 of 1985 convicting and sentencing the appellant to undergo imprisonment for life under Section 302 of the Indian Penal Code (in short, I.P.C.). 2. The case of prosecution, in short, is that informant Maheshwari Devi (P.W. 13) had an old thatched house towards west of a pond in her village and the house of c

Judgement :

M.L. Visa, J.

1.This appeal by the sole appellant is directed against the judgment and order dated 8-5-1987 passed by 2nd Additional Sessions Judge, Samastipur, in Sessions Trial No. 123/29 of 1985 convicting and sentencing the appellant to undergo imprisonment for life under Section 302 of the Indian Penal Code (in short, I.P.C.).

2. The case of prosecution, in short, is that informant Maheshwari Devi (P.W. 13) had an old thatched house towards west of a pond in her village and the house of co-accused Satya Narayan Singh alias Gandhi is situate towards south of that house. Because the house of informant was old her husband Satya Narayan Thakur (since deceased) after uprooting the old house wanted to construct new house there and for this he on 7-6-85 after embedding some poles started fixing Kores (wooden sticks) for holding tiles. At about 4 p.m. the appellant along with his father co-accused Satya Narayan Singh alias Gandhi, his brother co-accused Nawal Kumar Singh and his mother co-accused Parbati Devi came there and asked the husband of informant not to construct his house on the ground that water of Olti (extreme lower portion of the thatched roof) will fall in their house and altercation between the parties took place on this point and in the meantime villagers Ram Kumar Thakur (P.W. 4), Chander Pandey (P.W. 1), Baijnath alias Baidyanath Thakur (P.W. 14) came there and they also told that water of Olti of the new house of informant will not fall in the house of appellant. Thereafter the appellant and his companions brought 'Chhura' from their house and they became ready to assault the husband of informant who tried to run away but the appellant and his companions after chase caught hold of him and appellant and his brother co-accused Nawal Kumar Singh gave 'chhura' blows on the chest and abdomen of the husband of informant. When the husband of informant was being assaulted with 'chhura' by appellant and his brother co-accused Nawal Kumar Singh, co-accused Satya Narayan Singh had caught hold of his waist and co-accused Parbati Devi had caught hold of his legs. The husband of informant after receiving 'chhura' blows became unconscious and fell down and appellant and his companions fled away. The appellant and his companions did not allow any body to rescue the husband of informant because they were threatening that any body

who tried to save the husband of informant would also be assaulted with 'chhura'. The informant with the help of villagers took her injured husband to Kalyanpur hospital where she reached at about 6.30 p.m. on the same day and the doctor after examining her husband declared him dead. Thereafter the informant took the dead body of her husband to police station and lodged the F.I.R. (Ext. 1). A case under Section 302/34, I.P.C. was registered against the appellant and co-accused Satya Narayan Singh alias Gandhi, Nawal Kumar Singh and Parbati Devi. Police prepared inquest report, sent the dead body of deceased for post mortem examination, recorded the statements of witnesses present at the police station, inspected the place of occurrence, collected the bloodstained earth and bloodstained dagger from the place of occurrence and prepared seizure lists in presence of witnesses and after completing investigation submitted charge-sheet under Section 302/34, I.P.C. against the appellant and other three co-accused persons. After taking cognizance the case was committed to the Court of Session where charge under Section 302, I.P.C. against the appellant and co-accused Nawal Kumar Singh, charges under Section 342, I.P.C. against the appellant, co-accused Satya Narayan Singh, Parbati Devi and Nawal Kumar Singh and charge under Section 302/34 against co-accused Satya Narayan Singh and Parbati Devi were framed. The appellant and three co-accused persons denied the charges levelled against them and pleaded not guilty. The case of defence as it appears from the trend of cross-examination of prosecution witnesses and evidence of witnesses examined on its behalf is that no occurrence as alleged had taken place and husband of informant was killed by some criminals or he died due to fall in a ditch and because informant's husband wanted to oust the appellant and his family members from the village and their house was dismantled on the day of occurrence and they have been falsely implicated in this case. After trial the Court below found the appellant guilty under Section 302, I.P.C. and accordingly convicted and sentenced him to undergo imprisonment for life. The other three co-accused persons were not held guilty and they were acquitted. However, the appellant was not found guilty under Section 342, I.P.C.

3. In order to prove its case the prosecution has examined 17 witnesses. Maheshwari Devi {P.W. 13} is the informant. Chander Pandey (P.W. 1), Ram Kumar Thakur (P.W. 4), Kishori Thakur (P.W. 5), LakshmeshwarThakur (P.W. 6)

and Baijnath alias Baidyanath Thakur (P.W. 14) are said to be eye-witnesses to the occurrence. Nasib Lal Jha (P.W. 15) is the doctor who had held post-mortem examination on the dead body of Satya Narayan Thakur, husband of informant. Jai Shankar Paswan (P.W. 17) is the I.O. Pramod .Thakur (P.W. 2), Arun Kumar Jha (P.W. 3), Rajeshwar Pd. Sinha (P.W. 9), Ram Bilas Ram (P.W. 10), Hari Nandan Prasad (P.W. 11) and Ganesh Pd. Sinha (P.W. 16) are the formal witnesses who have proved F.I.R. (Ext. 1), signature (Ext. 2) of Ram Kumar Thakur on F.I.R. seizure list (Ext. 3), signature (Ext 2/2) of Baijnath Thakur on seizure list, signature (Ext. 3/1) of Jai Shankar Paswan on seizure list and signature (Ext. 2/10) of Jai Shankar Paswan on F.I.R. Mahesh Pandey (P.W. 7), Ramesh Thakur (P.W. 8) and Sadan Ram (P.W. 12) are tendered witnesses.

4. Dr. Nasib Lal Jha (P.W. 15), in his evidence, has stated that on 8-6-85 at about 12.30 p.m. he held post mortem examination on the dead body of Satya Narayan Thakur and found the following ante mortem injuries :

- (i) Penetrating wound 4' x 1' x thoracic cavity deep on the right side of the chest in the third intercostal space.
- (ii) Penetrating wound 4 1/2' x 1' x abdominal cavity deep on the right side of chest in the ninth intercostal space.
- (iii) Penetrating wound 4' x 1' x abdominal cavity deep on the left side of the chest on the 7th rib.
- (iv) Penetrating wound 3 1/2' x 1 1/2' x abdominal cavity deep on the left side of the chest in the 10th intercostal space.
- (v) Incised wound 1 1/2' x 1/4' x half skin deep on the left and back part of the neck.
- (vi) Teeth bite mark on the left deltoid region.
- (vii) Incised wound 2 1/2' x 1/2' x skin deep on the right deltoid region.

He has further stated that on deep dissection he found as follows :

- (a) Incised wound 1/2' x 1/2' x wall deep on the descending columns.

- (b) Incised wound 3/4' x 1/2' x wall deep on the transverse column.
- (c) Presentry artery was cut and the peritonal cavity was full of blood and faeces.
- (d) Incised wound ,1 1/2' x 1/2' x wall deep on the left coupula of diaphragm.
- (e) Incised wound 1' x 1/2' x wall deep on the left side of the diaphragm.
- (f) Fracture of left seventh rib.
- (g) Right ploural cavity was full of blood.

According to him, rigor mortis was present in all the limbs and stomach contained semi digested rice and all the injuries except injury No. (vi) were caused by sharp penetrating instrument which may be a 'chhura' and injury No. (vi) was caused by teeth bite. Time elapsed since death was within 24 hours. In his opinion the cause of death was shock and haemorrhage resulting from the above injuries. He has proved the post mortem examination report (Ext. 4). According to him time of death was within 24 hours from the post mortem examination and death was caused by shock and haemorrhage resulting from the above injuries. In his cross-examination he has stated that all the injuries except injury No. (vi) can be caused by fall on glass pieces but not by a single fall. The time of death given by this witness corresponds with the time as suggested by prosecution. Now it has to be seen what evidence has been led by the prosecution against the appellant for making him responsible for the injuries which were found on the dead body of the deceased.

5. Maheshwari Devi (P.W. 13), the informant, who is the wife of deceased, in her evidence has stated that on the day of occurrence her husband was repairing his old house when at about 4 p.m. father of appellant asked her husband not to construct the house. Her husband then went to village for bringing 'Punches' and thereafter Punches, namely, Baidyanath Thakur (P.W. 14), KishoriThakur (P.W. 5), Ram Kumar Thakur (P.W. 4), Chander Pandey (P.W. 1), Ramo Thakur and Lakshmeshwar Thakur (P.W. 6) came there and they after examining the matter permitted her husband for repairing his house. When her husband started fixing 'Koros' father of appellant went to his house and ordered his sons to assault her

husband with 'chhura' on which her husband started running away but the appellant, his brother Nawal and his father and mother chased her husband and they caught hold of her husband. Father of appellant caught waist of her husband, mother of appellant caught legs of her husband and father of appellant gave a teeth bite on 'pakhura' of her husband and appellant and his brother assaulted him with 'chhura' and her husband fell down and thereafter the appellant and his family members fled away. She has further stated that she took her injured husband to Kalyanpur Hospital where after examination the doctor declared him dead and thereafter she took her husband to police station where she lodged a case. In her cross-examination she has stated that she was present at the place where her husband was constructing bungalow and when appellant and his family members were having an altercation with her husband. At that time no other person was present there and because appellant and his family members raised objection to the repairing of her house by her husband, therefore, her husband went to village and brought 'Punches' with him. She has denied the suggestion of defence that on the day of occurrence her husband and some others uprooted the house of appellant, looted articles and took away cattle and on protest the appellant and his family members were assaulted and when villagers assembled in order to save his family members her husband started running away but he was chased by villagers and during that chase her husband fell in a ditch situated towards north of her house and died there.

6. Chander Pandey (P.W. 1), Ram Kumar Thakur (P.W. 4), Kishori Thakur (P.W. 5), Lakshmeshwar Thakur (P.W. 6) and Baidyanath Thakur (P.W. 14) have supported the case of prosecution and they all have said that at the request of deceased, husband of informant, they had gone to the site where he was repairing his old house. Chander Pandey (P.W. 1), Ram Kumar Thakur (P.W. 4) and Baidyanath Thakur (P.W. 14) have said that they after reaching the place of occurrence examined the matter and told the appellant and his family members to allow the husband of informant to construct his house because it will not cause any harm to their house. But they did not listen to them and when husband of informant resumed his work they went to their house and brought 'chhuras' and ran to assault the husband of informant. Kishori Thakur (P.W. 5) and Lakshmeshwar Thakur (P.W. 6) have said that when they reached the place of

occurrence, husband of informant was fixing 'koros' and appellant and his family members were raising objection and thereafter they ran to assault him. All the aforesaid witnesses supporting the case of prosecution have stated that the appellant, his father, mother and brother after chase caught hold of husband of informant and the appellant and his brother Nawal assaulted the deceased with 'chhura' and at that time father and mother of appellant had caught hold of deceased by his waist and legs. They all have said that the husband of informant was taken to .Kalyanpur Hospital where he was declared dead.

7. Jai Shankar Paswan (P.W. 17), I.O. of the case, has stated that on 7-6-85 he was posted as Officer-in-charge of Kalyanpur Police Station and on that day he had recorded the F.I.R. of informant on which P.W. 4 and P.W. 14 put their signatures and after instituting a case he himself took up the investigation of the case and visited the place of occurrence on the same day but since informant had herself come to police station so before visiting the place of occurrence he recorded her further statement and sent the dead body of deceased for post mortem examination and he also recorded the statements of P.Ws. 4, 5, 6, 7, 8 and 14 who had accompanied the informant at police station itself. He has further stated that he seized bloodstained soil from the place of occurrence in presence of witnesses and prepared seizure list and on 9-6-85 arrested the appellant along with his brother and father and on the basis of confessional statements of the three he recovered a big spring dagger with bloodstains under the Jackfruit tree and prepared seizure list (Ext. 3/1). He has added that after completing investigation he submitted charge-sheet against the appellant and other co-accused persons.

8. From the evidence on record I find that the informant who is none-else but wife of deceased has fully supported the case of prosecution. Her evidence is corroborated by the evidence of P.Ws. 1, 4, 5, 6 and 14 who are also eye-witnesses to the occurrence. The medical evidence further supports the case of prosecution that deceased died of injuries inflicted to him by sharp penetrating weapon which may be a 'chhura'. The eye-witnesses to the occurrence have fully supported that it was appellant and his brother Nawal who inflicted chhura injuries. It is a fact that co-accused Nawal who is brother of appellant has been acquitted

by the Court below by giving him benefit of doubt on the ground that, confessional statement of appellant, his brother and his father was that Nawal had thrown the dagger which he used in the commission of offence in a river but neither this I dagger was recovered nor their confessional statement before police is admissible. Since in the present appeal Nawal, brother of appellant, who has been acquitted by the Court below is not a party so i retrain myself from making any comment on the finding of the Court below by which Nawal has been given benefit of doubt and has been acquitted. So far the case of appellant; is concerned. I find that prosecution has proved it beyond all reasonable doubts that he gave 'chhura' blow to the deceased resulting into his death. I therefore find no reason for interfering with the findings of the Court below by which the apellant has been convicted and sentenced as indicated above.

9. In the result, this appeal, is dismissed. The judgment and order of the Court below convicting and sentencing the appellant is hereby confirmed. The bail bond of the appellant, who is on bail, is cancelled and he is directed to surrender before the trial COUF, forthwith to serve out. the remaining period of his sentence.

Narayan Roy, J.

10. I agree.

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