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Court : Patna

Decided On : Jan-12-1999

Judge : R.A. Sharma and A.K. Prasad, JJ.

Appeal No. : Cr. Appl. No. 296 of 1989 (R)

Appellant : Laxmi Singh

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : A.K. Prasad, J. 1. The sole appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment thereunder, on the charge of committing the murder of Chhotan Sad, by the Sessions Judge, Gumla, by the impugned judgment and order dated 8-5-1987 in S.T. No. 449/1982/T.R. No. 21/1987. 2. The prosecution case, in brief, as made out in the F.I.R. (Ext. 5) is as under; the appellant Laxmi Singh is the son-in-law of Baijnath Singh. He resides in his house at vil

Judgement :

A.K. Prasad, J.

1. The sole appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment thereunder, on the charge of committing

the murder of Chhotan Sad, by the Sessions Judge, Gumla, by the impugned judgment and order dated 8-5-1987 in S.T. No. 449/1982/T.R. No. 21/1987.

2. The prosecution case, in brief, as made out in the F.I.R. (Ext. 5) is as under; the appellant Laxmi Singh is the son-in-law of Baijnath Singh. He resides in his house at village Birinda, Bhandar Toli, within P.S. and District Gumla. The house of Baijnath Singh is in the neighbourhood of the houses of the informant Ram Sewak Sao as well as the deceased Chhotan Sao. On 16-8-1981, around 8 p.m., the appellant visited the house of the deceased and took him in his company to his own house. The informant, who was sitting at his Darwaja, saw Chhotan Sao, the deceased going in the company of the appellant towards the house of the appellant. Soon thereafter, the informant heard the cry of the deceased 'ARE MAR DIYA' coming from the house of the appellant. Thereupon, the informant ran to the Courtyard of the appellant. He witnessed the appellant assaulting the deceased with Balua. When he attempted to save the deceased, the appellant fled away with Balua towards the North. The deceased had fallen in the Courtyard with severe bleeding wound on head and he died also instantaneously. Parwati Devi (P.W. 1), the wife of the deceased had arrived on the spot. The cause of the incident is that there was a dispute some days ago between the parties over grazing of cattle, for which the appellant had convened the Panchayati and had threatened to assault the deceased. The informant (P.W. 2) lodged the F.I.R. (Ext. 5) about the incident with Gumla police station on the night of occurrence at about 11.30 p.m., on its basis, the present case was instituted and after completion of investigation, the charge-sheet was laid in the Court against the appellant,

3. The main defence is of innocence and false implication.

4. The point which arises for consideration is whether the prosecution has been able to establish the charge under Section 302 of the Indian Penal Code against the appellant beyond shadow of reasonable doubt?

5. At the trial, the prosecution examined 6 witnesses in support of its case; out of them P.W. 6 is a formal witness, P.W. Bijala Sahu is a witness to the seizure of blood-stained earth by the Investigating Officer from the place of occurrence (Vide Annexure-3). The other P.Ws, are : P.W. 1 Parwati Devi, the widow of the

deceased, P.W. 2 Ram Sewak Sao (the informant), who claimed themselves to be the eye-witnesses to the alleged occurrence, P.W. 3 Nageshwar Singh and P.W. 5 Dr. Basant Lal who held autopsy on the deadbody of Chhotan Sao (deceased).

6. The defence, on the other hand, did not examine any witness.

7. The learned Sessions Judge on consideration of the evidence, materials on record and relying mainly on the testimony of P.W. 1 Parwati Devi, widow of the deceased, held that the appellant had committed the murder of the deceased arid, accordingly, convicted and sentenced him for life imprisonment under Section 302, I.P.C., as stated above.

8. The learned Counsel for the appellant has assailed the impugned judgment on the grounds that the trial Court has based conviction on the solitary ocular testimony of P.W. 1 Parwati Devi, which is not corroborated by the medical evidence inasmuch as she has spoken about giving of two Balua blows to the deceased, but, in fact, the Doctor had found merely one incised wound on the person of the deceased and, in the circumstances of the case, it is extremely doubtful that she could have witnessed the assault on the deceased. He further contended that the Investigating Officer has not been examined and this is an infirmity in the prosecution case; Further, he advanced alternative argument that assuming the case to be true, no offence of murder simpliciter is made out as the deceased had suffered one Balua wound and it may, at least, be a case of culpable homicide not amounting to murder.

9. The learned A P.P. on the other hand, has supported the impugned judgment.

10. The fact that the death of the deceased was homicidal is not in dispute, P.Ws, 1 and 2 have testified to the effect that they had found wound on the person of the deceased. P.W. 5 Dr. Basant Lal, who had held autopsy on the deadbody of the deceased, has stated that he had found an ante-mortem incised wound 3 3/4' x 3/4 x 1' on his head and on dissection the scalp, fascia, scalp bone and brain matter was found cut. He had also found blood and blood clots. He has opined that the injury, which was caused by a sharp-cutting weapon like Balua, was fatal and sufficient in ordinary course of nature to cause death. He has further stated

that the post-mortem examination was held by him on 17-8-1981 around 1 p.m. and 'the injury was caused within one day of the examination. He has proved the post-mortem report of the deceased (Ext. 4), which is in his pen. The medical evidence establishes beyond doubt that the death of the deceased was homicidal.

10-A. The identity of the place of occurrence is not in dispute in the instant case. P.Ws. 1 and 2 have testified to the effect that the deceased was lying in pool of blood in the 'Angan' (Court-yard) of the accused-appellant. It is significant that P.W. 3 Nageshwar Singh, the own Sarhu of the appellant, who too lives at the house of his father-in-law, at village Birinda, Bhandar Toli, has stated that he had found the deadbody of the deceased, who had been done to death, in the 'Angan' of the appellant. P.W. 4 Bijala Sahu has deposed that blood-stained earth was seized by the police officer from the spot under seizure list Ext. 3. It is not the defence version that the occurrence culminating in the death of the deceased had taken place elsewhere. Hence, the identity of place of occurrence is well established by the evidence on record.

11. Now the crucial point, which arises for consideration is whether the appellant was instrumental in the murder of the deceased At this juncture, one may state that the Trial Court disbelieved the testimony of P.W. 2, Ram Sewak Sao that he had witnessed the actual assault on the deceased. The reason for such conclusion was that there was one wound on the person of the deceased and P.W. 2 had claimed to rush to the spot from his house, which is at a distance of about 50 yards, on the alarm raised by P.W. 1 and there was every possibility that the occurrence of actual assault, which was for a short time, had ended by the time P.W. 2 had, in fact, reached the spot and there was no occasion for him to witness further assault on the deceased.

12. Hence, the evidence of P.W. 2, in the given circumstance, is to be excluded from consideration on the actual occurrence culminating in the death of the deceased.

13. Now, there remains the solitary testimony of P.W. 1 Parwati Devi, the widow of the deceased, on the actual occurrence. It is true that she is related to the deceased. But, on the ground of relationship alone her evidence is not to be

rejected outright. The evidence of a related witness has to be scrutinised with care and caution. A related witness may not be an interested witness. It has to be seen whether the evidence of such a witness is inherently probable, free from infirmity and suspicion and gives the ring of truth. Keeping these principles in mind one may now analyse the testimony of P.W. 1.

P.W. 1 Parwati Devi has stated in her examination-in-chief that on the fateful day, around 8 p.m., she was with her husband-deceased at her door, when the appellant came to call him and took him in his company to his house. It has come in the evidence of P.W. 2 that the house of the appellant is at a distance of about 50 yards from the house of the deceased. P.W. 1 has stated that her husband was employed at Dhanbad and used to visit home in the holidays. It was quite natural that she was with her husband in her house at the relevant point of time, when the appellant had come to invite him to his place. She has further stated that she followed her husband and the appellant from her house and she saw them entering the Courtyard of the appellant while she stayed outside near the 'Angan' and on other side of its wall. She has further testified to the effect that her husband was standing in the 'Angan', when the appellant went inside the house and came out armed with Balua and struck with it twice on the head and hear it as a result of which the deceased fell down and died on the spot. She has further stated that at that time, she was at a close distance from her husband and on her alarm

P.W. 2 had arrived on the scene of occurrence. Her further evidence is that the appellant escaped immediately after assaulting her husband-deceased. P.W. 2 has corroborated the testimony of P.W. 1 that she was already present on the spot when he had reached on hearing the alarm. It has been argued by the learned Counsel for the appellant that P.W. 1 has stated that the appellant had given two Balua blows to the deceased, but the Doctor had found one incised ante-mortem wound on the person of the deceased and this renders her evidence as suspicious. It has come in evidence of P.Ws. 1 and 2 that at the time of the occurrence the sky was covered with cloud, though it was a moon-lit night. It is quite possible that the second blow aimed by the appellant might not have hit the deceased as by then he might have fallen after receiving the first blow on the head or there might have been an error of observation in counting the number of blows.

In such a situation P.W. 1 would have been stunned, shocked and perplexed. The fact remains that she is consistent in her evidence on the main part of the occurrence that the appellant had struck the deceased with Balua on the head, which resulted in his instantaneous death. This part of evidence is corroborated by the medical evidence. The discrepancy in her evidence regarding the number of blows relied on by the appellant's Counsel in the context of the medical evidence is insignificant, natural and not material. Therefore, in the circumstances, her testimony cannot be disbelieved on basis of such minor discrepancy.

14. It has come in evidence of P.W. 1 that her husband without taking meal, though requested by her, had left in the company of the appellant to his house and the appellant had said that her husband would have his meal on return and she has followed them to call her husband for taking the meal. The evidence of the Doctor corroborates the testimony of P.W. 1 Parwati Devi that the deceased had not taken food because on post-mortem examination only about 10 C.C. of watery fluid was found in the stomach. It has come in evidence of P.Ws. 1 and 2 that there was background of differences between the deceased and the appellant over grazing the cattle. Therefore, for such reasons, it was quite natural that P.W. 1 followed her husband and the appellant to the 'Angan' of latter and had the occasion to witness the assault on her husband. Therefore, her presence on the spot at the time of occurrence was quite probable. She is a natural witness to the occurrence. The substratum of the story narrated by her is consistent with the medical evidence on record. In the surrounding circumstances and inherent probabilities of the case, her evidence gives the ring of truth. It does not appeal to reason that P.W. 1 would protect the real culprit and falsely implicate the appellant. The Court below rightly relied on her testimony to hold that the appellant had done her husband to death.

15. It is true that the Investigating Officer has not been examined in this case. It may be reiterated here that the identity of the place of occurrence is well established and it is not in dispute in the instant case. No vital contradiction or omission has been taken by the defence vis-a-vis the statement of the P.Ws. in Court and before the police during the investigation. The learned Counsel for the appellant has failed to show that the defence has been prejudiced on account of

non-examination of the Investigating Officer. Hence, the non-examination of the Investigating Officer does not adversely affect the prosecution case.

16. An argument was advanced by the learned Counsel for the appellant that one blow is alleged to have been given by him to the deceased, hence, the case does not come within the purview of Section 302 of the Indian Penal Code. The blow with Balua, a sharp and dangerous weapon, was given by the appellant to the deceased on head which is vital part of the body. The medical evidence shows that the blow was dealt with full strength, which had cut the scalp, fascia, scalp bone and brain matter. It was fatal and sufficient in ordinary course of nature to cause death. The appellant was unarmed when assault was made on him. The attending circumstances and nature; of injury suggest that blow was dealt by the appellant with intention to commit murder of the deceased. Hence, the act of the appellant amounts to the offence of committing the murder. The above contention of the learned Counsel for the appellant is without merit. So, it fails.

17. On the consideration of the evidence and material on Record, I find and hold that the prosecution has established the charge under Section 302 of the Indian Penal Code against the appellant beyond shadow of reasonable doubt.

18. In the result, the appeal fails as it lacks merit. The judgment and order of conviction and sentence passed by the Court below is sustained.

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