

Kanhai Yadav Vs. State

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Court : Patna

Decided On : Jul-29-1999

Judge : R.N. Prasad and M.L. Visa, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Cri. Appeal (DB) 100 of 1987

Appellant : Kanhai Yadav

Respondent : State

Advocate for Def. : Ashwini Kumar Sinha, Adv.

Advocate for Pet/Ap. : Ved Prakash, Adv.

Disposition : Appeal allowed

Judgement :

R.N. Prasad, J.

1. The appellant has preferred this appeal against the judgment and order dated 2-3-1987 passed by 9th Addl. Sessions Judge, Munger in S.T.No. 145/81 whereby the appellant has been convicted for the offence under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life.

2. The prosecution case is that one Shyam Nandan Singh gave his fardbeyan on 6-7-1979 at 11.45 p.m. that he resides with family at Sultanganj. He got information that his father has been killed. He came to his house at Mirzapur and found his father dead. He also found injury on the neck and blood on the clothes. Many people of the village came and from them he learnt that in the morning his father had gone to Tarapur for irrigation. He was an old man and as such he was taken on bullock-cart by cart-man Kanhai Yadav, the appellant. He returned in the evening. From the door of Babanlal Sah his father was coming on foot along with Kanhai Yadav. On way when he reached at Makesri As than he asked Kanhai Yadav to see whether water of the canal was flowing to the field. Kanhai Yadav went there and when he returned he found his father lying injured under dilapidated brick wall. He was alive at that time. On hulla several people came and while they were taking him to the Hospital for treatment he died on way.

3. On the aforesaid fardbeyan formal First Information Report was drawn. Investigation was taken up and after conclusion of investigation, charge-sheet was submitted against two persons namely the appellant and one Anandi Sao. The case was committed to the Court of Session for trial. The trial Court convicted the appellant as stated above and acquitted Anandi Sao.

4. The defence of the appellant was that he was innocent and has not committed any offence. He has falsely been implicated in this case merely on suspicion.

5. The prosecution in support of its case examined 16 witnesses. Out of whom, P.Ws. 1 & 15 are hearsay witnesses. P.Ws. 2, 5, 6 & 10 claimed to have seen running away Anandi who has been acquitted. P.Ws. 7, 8 & 11 have claimed that when they reached at the place of occurrence they saw the appellant there. P.W. 12 stated that the appellant made extra judicial confession before him. P.W. 3 is Doctor who held postmortem over the dead body. P.W. 13 was tendered. P.W. 16 is first Investigating Officer. P.W. 14 is second Investigating Officer who submitted charge-sheet. P.W. 4 is witness to the inquest report. P.W. 9 is witness to the seizure.

6. It is a case of circumstantial evidence. There is no eye witness to the occurrence. The circumstances which have come on record are that the appellant

being cart-man had taken the deceased on bullockcart to village Tarapur to see irrigation in the field. They were returning in the evening and when they reached near Makasri Asthan the deceased asked the cartman, the appellant, to see water of the canal. He obeyed his order and when he returned he found the deceased lying under the dilapidated brick wall. He raised hulla on which several persons came there. P.Ws. 7, 8 and 11 stated that when they came at the place of occurrence he saw the appellant at the place of occurrence. P.W. 12 stated that the appellant made extra judicial confession before him. The trial Court rejected his evidence. No. other witness came forward to support the prosecution case even as hearsay witness. The circumstances are that the appellant was said to be last seen with the deceased. Therefore, in such a situation it cannot be said that the chain of circumstances has been completed to say that the appellant has committed the offence. In the circumstantial evidence the chain of circumstances must be completed and the Court must be satisfied that the evidence brought on the record is sufficient to hold that person is guilty of the offence excluding all hypotheses which in this case is lacking. The evidence of last seen is not sufficient to hold that the appellant is responsible for committing the crime.

7. Therefore, we are of the view that no sufficient evidence has been brought on the record to hold that the appellant was guilty of the charges. Accordingly, this appeal is allowed and the judgment and order of conviction are hereby set aside. The appellant is discharged from the liability of the bail bonds.

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