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Court : Patna

Decided On : May-15-2002

Judge : Indu Prabha Singh, J.

Appeal No. : Criminal Appeal No. 233 of 1991

Appellant : Bachu Rabidas

Respondent : The State of Bihar

Disposition : Appeal Dismissed

Judgement :

Indu Prabha Singh, J.

1. The sole appellant has been convicted under Section 302 Part-II of the Indian Penal Code and was sentenced to undergo R.I. for six years.

2. The prosecution case in short is that on 22.1.1990 at about 10 p.m. in the night the informant, Kunti Devi was sitting in her house. Her husband, Pairu Mochi was also in the house at that time. It has been stated that Sharda Kumari, daughter of the informant threw water in front of her house for which mother of the appellant, Bachu Rabidas abused the informant. The informant came out of the house and asked the mother of Bachu Rabidas not to abuse her daughter, Sharda Kumari. It is alleged that the appellant, Bachu Rabidas abused the informant and when he

protested the appellant started to assault him on his head by 'Lathi'. The deceased, Pairu Mochi fell down and became unconscious as a result of assault on him. Thereafter, he was brought to Kawakole Hospital for treatment, where he succumbed to his injuries at about 8.20 a.m. in the morning on 23.1.1990.

3. The Fardbeyan of the informant, Kunti Devi was recorded by the A.S.I., in Kawakole Hospital at 8.30 a.m. on 23.1.1990. On the basis of Fardbeyan the F.I.R. was registered and the police started investigation and after completion of investigation charge sheet was submitted. Accordingly, cognizance was taken and the case was committed to the Court of Sessions. Ultimately the trial concluded with the result as indicated above. Hence this appeal.

4. The pleaded not guilty.

5. The prosecution in support of its case examined altogether eleven witnesses. P.W. 1 is Sharda Kumari, daughter of the deceased, P.W. 2 is Kunti Devi, informant and the wife of the deceased, P.W. 3 is Pyare Rabidas, son of the deceased who was declared hostile, P.W. 4 is Prakash Rabidas, P.W. 5 is Muni Rabidas was also declared hostile, P.W. 6 is Kailash Rabidas and P.W 7 is Rameshwar Rabidas, P.W. 8 is Jago Rabidas, P.W. 9 is Pasupati Nath Thakur, he is the I.O. and P.W. 10 is Indradeo Mochi and P.W. 11 is the doctor Prabhat Kumar Rai, he has examined the deceased, Pairu Mochi.

6. The informant, Kunti Devi has fully supported the case of the prosecution, as narrated in the Fardbeyan. According to her, on the date of occurrence when she was on the house, her husband was also there. In the meantime, her daughter Sharda Kumari went to throw water in front of her house, that annoyed the mother of the appellant and she started abusing her. When her husband came, mother of the appellant also hurled abuse on him. Thereafter, there was altercation between them and the appellant assaulted the deceased with 'Lathi' on his head. He fell down and became unconscious. Thereafter, he was taken to Kawakole Hospital for treatment, where he succumbed on 23.1.1990. Her Fardbeyan was recorded by the A.S.I, of police, P.W. 1, Sharda Kumari, daughter of the deceased has also supported the version of the informant, Kunti Devi as stated in her fardbeyan. P.W. 11 is the Dr. P.K. Rai. According to him, on 24.1.1990 he was posted as C.A.S. at

Sadar Hospital, Nawadah and he conducted the post mortem examination on the dead body of Pairu Mochi, at 11.15 a.m. According to him, he found the following wounds on the dead body.

I. Echymosed swelling on right side of head 3' diameter.

II. Blood clot in between scalp layer and also there was defused fracture of parital bone.

According to him, cause of death was shock and haemorrhage as a result of above noted injuries and the injuries were caused by hard and blunt substance as lathi'. P.W. 9, the I.O. has also supported the case of the prosecution. According to him, he got O.D.S. on 23.1.1991 at 8.30 a.m. and on the basis of the O.D.S. he entered a Sanaha and went to the Hospital. He recorded the Fardbeyan of the informant, Kunti Devi. He also received the report of the dead body of the deceased. He also recorded the statements of the informant and other witnesses. According to him, he inspected the place of occurrence and has given the true description of place of occurrence. According to him, he did not find the trempling mark and blood stain on the place of occurrence. P.W. 7 is the hearsay witness. He has not seen the assault on the person of the deceased. Although P.Ws. 6 and 10 have supported the case of prosecution but time of occurrence has been disputedly P.W. 1, Sharda Kumari, daughter of the deceased. Learned Counsel for the appellant has submitted that there are no independent witness and only on the evidence of the informant P.W. 2 and P.W. 1, the appellant has been convicted. It has been further submitted that there are contradictions in the deposition of the witnesses. Although many witnesses came on the place of occurrence but none of them has been examined by the prosecution.

7. From the evidence on record, it is apparently clear that when the deceased Pairu Mochi was sitting in his house along with his wife, Kunti Devi and his daughter went to throw water in front of his house the mother of the appellant became annoyed and abused the daughter of the deceased. When the deceased Pairu Mochi went out be was also abused by the mother of the appellant. There was altercation between the appellant and the deceased and eventually the appellant gave a Lathi blow on his head resulting in his death in the hospital.

8. The submission of the learned Counsel for the appellant that only on the evidence of P.W. 2 the informant and her daughter Sharda Kumari, the appellant should not have been convicted as they are interested witnesses but there is no hard and fast rule that on the evidence of the interested witnesses like informant the case of the prosecution cannot be decided. P.W. 2, the informant being wife of the deceased and P.W. 1, Sharda Kumari, the daughter of the deceased they were present in the house as such they are the most natural and competent witnesses. There is nothing to discard the evidence of these two witnesses. So far the submission of learned Counsel that the witnesses are interested and none of the independent witness has been examined. But only on this account that all the witnesses are interested and related the case of the prosecution cannot be brushed aside. The Court has to be very conscious and careful while scrutinising the evidence of such witnesses.

9. On the appreciation of evidence adduced, it is evident that the prosecution has proved its case and all the eye witnesses have consistently supported the factum of occurrence. The Court below has rightly come to the conclusion that while the deceased was sitting in the house with his wife the informant and her daughter went to throw water in front of his house the mother of the appellant got annoyed over it and abused her. Thereafter, the deceased came and he was also abused by the mother of the appellant. Thereafter, the appellant went to his house and came out with a Lathi and assaulted the deceased on his head. The deceased felled down and became unconscious and thereafter he was taken to the hospital. The next morning he succumbed to his injuries. The doctor has also corroborated that the deceased died due to shock and haemorrhage of the injuries inflicted by the appellant for offences punishable under Section 304 Part-II of the Indian Penal Code. I do not find any reason to interfere with the conviction of this appellant.

10. However, coming to the question of sentence, the learned Counsel for the appellant submitted that the occurrence took place in the year 1990 and this appellant has no intention kill the deceased, Pairu Mochi and it was also not permidited. It has been further submitted that the appellant has no criminal history and moreover the appellant has remained in jail for one and a half years and as such some lenient view may be taken while awarding the sentence.

11. Having regard to the submissions so rair.ed on behalf of the learned Counsel for the appellant and in the facts and circumstances of the case, I am of the view that the ends of justice will meet if the sentence of six years awarded by the Court below is reduced to four years.

With the aforesaid modification in the sentence, this appeal is dismissed.

In this case, Ms. Ratna Das has appeared and assisted the Court as Amicus Curiae, therefore, her fee shall be paid as per rules of the Patna High Court Legal Aid Committee.

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