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Court : Patna

Decided On : Dec-14-2001

Judge : R.N. Prasad and Ashok Kumar Verma, JJ.

Appeal No. : Criminal Appeal (DB) No. 320 of 1995

Appellant : Md. Ismail and ors.

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

Ashok Kumar Verma, J.

1. The Appellants have filed this appeal against the judgment and order of conviction and sentence dated 16-9-1995 passed by the Additional Sessions Judge, I, Saharsa in Sessions Case No. 19 of 1987, whereby the learned Additional Sessions Judge has convicted the appellant Md. Ismail, Md. Ushman, Ali Hussain and Kari under Sections 302/34, I.P.C. and 323, I.P.C. and sentenced them to undergo R.I. for life under Section 302/34, I.P.C. and to undergo R.I. for six months under Section 323, I.P.C. Appellant Md. Ismail has also been convicted under Section 148, I.P.C. and sentenced to undergo R.I. for one year under the same. Appellants Md. Ushman, Ali Hussain and Kari have also been convicted under Section 147, I.P.C. but no separate sentence has been passed for the

offence under Section 147, I.P.C The sentences are to run concurrently.

2. In short, the case of the prosecution, according to the fardbeyan of the informant Raja Ram Ram is that on 20-5-1986 at about 5 p.m. the informant Raja Ram Ram was at his house and he was putting Tati along with his father Mahabir Ram and in the meantime, accused Ismail, Yunus, Ushman, Kari and Ali Hussain came there and protested to the putting of the Tati. The father of the informant told the accused-personss that the land belonged to Shatrughan Yadav and he has inhabited them on the land. Then, there was altercation and Ismail assaulted Mahabir Ram with Chhura on his head and other accused-personss assaulted him (father of the informant) with lathias a result of which he fell down. Accused Ali Hussain gave a lathi blow on the leg of the informant. The fardbeyan (Ext. 3) of the Informant Raja Ram Ram was recorded by S.I. D.N. Oraon on the same day, i.e., 20-5-1986 at 11-45 p.m. at Sour Bazar hospital. On the basis of the fardbeyan the formal F.I.R. (Ext. 4) was drawn in this case. As a result of the assault, Mahabir Ram died. After investigation police submitted charge-sheet against the accused-personss. The learned C.J.M. took cognizance of the case and committed it to the Court of Sessions for trial. During the trial accused Md. Yunus died and the trial proceeded against the four accused-personss who are appellants in this appeal.

3. The defence of the accused-personss, according to the trend of cross-examination of the prosecution witnesses and according to the statement of the accused-personss under Section 313, Cr.P.C. is that they have been falsely implicated in this case.

4. In this case four witnesses have been examined on behalf of the prosecution and five witnesses have been examined on behalf of the defence. P.W. 1 Raja Ram Ram is the informant and son of the deceased Mahabir Ram. P.W. 2 Kalri Devi is wife of the deceased Mahabir Ram. P.W. 3 Dr. Shiv Nandan Bhagat had conducted the post-mortem examination on the dead-body of the deceased and P.W. 4 Radha is daughter-in-law of ihe brother of the deceased.

5. It was submitted by the learned lawyer for the prosecution that the important witnesses named in the F.I.R., have not been examined by the prosecution in this case. Bisho Ram, Ganeshi Ram, Bhagwat Sharma and Achhay Ram have been

named as witnesses in the fardbeyan. According to the order-sheet dated 9-7-1990 of the Sessions Judge, in Sessions Case No. 19 of 1987 during trial of the case of the A.P.P. had filed a petition that witnesses Achhay Ram, Bhagwat Sharma and Bisho Ram had been gained over by the accused-personss and hence he would not examine them and they had been given up. P.W. 1 Raja Ram Ram, P.W. 2 Kalri Devi and P.W. 4 Radha had made consistent statement that Ismail had assaulted the deceased with Chhura and other accused-personss had assaulted him with lathi.

6. It has been held by the Apex Court in the case of Hukam Singh and Ors. v. State of Rajsthan (2002) 7 SCC 490 that testimony of related witnesses cannot be disbelieved merely on ground that they are interested witnesses. Public Prosecutor is not bound to examine all the witnesses including even those who, according to his information, would not support the prosecution case. It is relevant to mention that these days generally the people are reluctant to get themselves involved in an occurrence. It has been held by the Apex Court in the case of Appabhai and Anr. v. State of Gujarat : 1988 CriLJ848 , that the prosecution case cannot be thrown out on the alone ground of failure of prosecution to examine independent witnesses. In the facts and circumstances, the prosecution case cannot be disbelieved on the ground that the witnesses named in the F.I.R. have not been examined by the prosecution during the trial of the case.

7. P.W. 1 Raja Ram is the information of this case and son of the deceased. He has stated that the occurrence is of 4-5'O clock in the evening and he was at his house and when his father returned, the accused-personss were putting Tati, in his land and then he along with his father went near the Tati and saw Ismail, Yunus, Kari and Ali Hasan and Ismail was armed with Chhura and others were armed with lathi. According to him, Ismail was claiming the land and his father had told him that the land belonged to him. He has stated that thereafter, Ismail assaulted his father with Chhura and other accused-personss assaulted him with lathi. Further according to him Ali Hasan had assaulted him (P.W. 1) with lathi and he raised hulla on which people came and the accused-personss filed away. He has also said that he took his father to the hospital and his father died there. He has stated that the Daroga came in the hospital and recorded his statement and

he put his signature on it. Ext. 1 is his signature on the fardbeyan. He has also said that his father never gained consciousness' and he died in unconscious stage. He has said in his cross-examination that he has got Basgit Parcha of his house and he is living in that house for a long time. Fardbeyan (Ext. 3) of this witness Raja Ram Ram shows that his fardbeyan was recorded by S.I., D.N. Oraon at 11.45 p.m. at Sour Bazar hospital. There has been no delay in instituting the F.I.R. The fact that the deceased had sustained head injury by Chhura is supported by the evidence of doctor, who is P.W. 3 Dr. Shiv Nandan Bhagat who had conducted the post-mortem examination on the dead-body of the deceased Mahabir Ram. P.W. 3 Dr. Shiv Nandan Bhagat has stated that on 22-5-1986 at 11.15 a.m. he had held post-mortem examination on the dead-body of Mahabir Ram and found following injuries:

- (i) Incised wound 1' x 1/2' x bone deep on the value of the head and blood from left nostril. This injury is possible by sharp-cutting weapon such as edge of Chhura.
- (ii) Fracture of the scalp on both sides anteriorly. This injury is possible by hard and blunt substance such as lathi.
- (iii) On opening the skull found membrane converging the brain was blood stained and blood clot under the scalp. Brain substance of both sides anteriorly damaged.

According to him the death was due to shock and naemortage caused by the head injury and the head injury was sufficient to cause death in ordinary course of nature. Ext. 2 is the post-mortem report. He has also said that the injury which he had found at the time of conducting post-mortem were ante-mortem. He has said in his cross-examination that he has not mentioned in his post-mortem report that the injury which he had found on the person of the deceased were ante-mortem and it may be due to mistake of pen. In the facts and circumstances the prosecution case cannot be disbelieved on this ground.

8. P.W. 2 Kalri Devi wife of the deceased Mahabir Ram has stated that in her land Ismail, Yunus, Ushman, Kari and Ali Hasan were putting Tati and her husband protested and accused-personss assaulted her husband. She has also stated that Ismail assaulted her husband with Chhura and other accused-personss assaulted

him with lathi. According to her, when Raja Ram Ram went to save her husband Ushman assaulted him with lathi and her son raised hulla and when the witnesses came accused-personss fled away. She has said that due to assault her husband became unconusciuous and Raja Ram Ram and others took him to Sour Bazar and the doctor gave medicine and asked to take him to Saharsa and when they were going to Saharsa her husband died in the way. P.W. 4 Radha is daughter-in-law of the brother of the deceased Mahabir Ram. She has also stated that Ismail, Ushman, Yunus, Kari and Ali Hasan were putting Tati and when Mahabir threw the Tati Ismail assaulted him which Chhura and other accused-personss assaulted him with lathi as a result of which Mahabir Ram became unconscious and he was taken to hospital. Nothing has been elicited in the cross-examination of these witnesses (P.Ws. 1, 2, 3 and 4) to disbelieve their evidence.

9. It was submitted by the learned lawyer for the Appellants that in the fardbeyan it has been stated that the informant and his father Mahabir Ram were putting Tati whereas the witnesses have stated in their evidence that the accused-personss were putting Tati on the land. The prosecution witnesses have made consistent and trustworthy statements regarding the assault by the accused-personss on the deceased Mahabir Ram as a result of which he had died. The evidence of P.W. 3 Dr. Shiv Nandan Bhagat who had conducted post-mortem examination on the dead-body of the deceased also supports the prosecution case. In the facts and circumstances, the prosecution case cannot be thrown out on the ground that in the fardbeyan, it has been stated that the informant and his father Mahabir Ram were putting Tati on the land whereas in the evidence the witnesses have said that the accused-personss were putting Tati.

10. D.W. 1 Sudhir Kumar Verma is a witness of formal nature, who has proved Ext. A, the inquest report in the writing and signature of D.N. Oraon, S.I. of Police. D.W. 2 Md. Salamat has stated that he had seen that deceased after taking toddy was going in unbalanced way and he fell on the railway track and became unconscious. In the cross-examination, he has said that he had seen the deceased taking toddy at the place of Raghunandan and he (D.W. 2) had stayed there for half an hour. D.W. 3 Md. Hadis has also stated that he had seen that the deceased had fallen on the crossing of the railway line. It is not expected that a

person will be lying on railway track and no one would remove him from such a place especially when these two persons (P.Ws. 2 and 3) claim to have seen him. In the facts and circumstances, the evidence of D.Ws. 2 and 3 is not worthy of reliance. D.W. 4 Chandra Kishore Yadav has stated that at the time of occurrence, house of Mahabir Ram was south to the house of Ismail. He has further said that Shatrughan Yadav has purchased the house and land of the deceased and he has removed the son of the deceased from that place and constructed his house at another place. His evidence is of little help in this case. D.W. 5 is Lalkun Yadav. He has made more or less similar statement. He has further said that at the time of occurrence the deceased and his son used to plough the land of Shatrughan Yadav and Shatrughan is Mukhiya and rich man of the village. His evidence is also of little help in this case.

11. The above evidence adduced on behalf of the prosecution proves beyond all reasonable doubts that accused appellants, Md. Ismail, Md. Ushman, Ali Hussain and Kari have committed the offence punishable under Sections 302/34, I.P.C. and accused Md. Ismail has also committed the offence punishable under Section 148 I.P.C. The above evidence adduced on behalf of the prosecution also proves beyond all reasonable doubts that accused Md. Ushman, Ali Hussain and Kari have also committed the offence punishable under Section 147, I.P.C. So far as the offence under Section 323 I.P.C. is concerned, P.W. 1 Raja Ram Ram and P.W. 2 Kalri Devi have made contradictory statement regarding the accused who had assaulted the informant Raja Ram Ram. P.W. 1 has stated that Ali Hasan had given him lathi blow whereas P.W. 2 Kalri Devi has stated that Usman had given lathi blow to Raja Ram Ram (P.W. 1). In the circumstances, it cannot be inferred that the accused-persons have committed the offence under Section 323, I.P.C. Therefore, the conviction and sentence of the accused-appellants Md. Ismail, Md. Ushman, Ali Hussain and Kari Under Section 323, I.P.C. is set aside and they are acquitted of the charge under Section 323, I.P.C. The conviction and sentence of the accused-appellants Md. Ismail, Md. Ushman, Ali Hussain and Kari under Sections 302/34, I.P.C. is maintained. The conviction and sentence of accused-appellant Md. Ismail under Section 148, I.P.C. and the conviction of accused-appellants Ali Hussain, Md. Ushman and Kari under Section 147, I.P.C. are also maintained.

12. With the above modification in the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, this Criminal Appeal is dismissed.

13. Accused-appellant Ali Hussain, Md. Ushman and Kari are on bail. Their bail bonds are cancelled and they are directed to surrender forthwith in the Court of the learned Additional Sessions Judge to serve not their sentences. Accused Md. Ismail is already in jail custody. The learned Additional Sessions Judge is also directed to take necessary steps in this regard.

R.N. Prasad, J.

14. I agree.

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