

Anik Mandal Vs. State of Bihar

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Court : Patna

Decided On : Nov-29-1999

Judge : S.K. Singh and M.L. Visa, JJ.

Appeal No. : Criminal Appeal (DB) No. 114 of 1987

Appellant : Anik Mandal

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

M.L. Visa, J.

1. This appeal by the sole appellant Anik Mandal is directed against the judgment and order dated 28th August, 1986 passed by 3rd Additional Sessions Judge, Munger, in Sessions Trial No. 400 of 1984 convicting and sentencing the appellant to undergo life imprisonment under Section 302 of the Indian Penal Code (in short, 'IPC').

2. The case of the prosecution, in short, is that on 8-4-1984 at about 10 a.m. Informant Ram Kishun Mandal (P W. 5), the own brother of appellant, was sitting with Tetar Tanti (not examined) at the bungalow (sitting room) or Tetar Tanti when his daughter Maya Devi (not examined) came there and informed him that the

appellant was beating his wife Manorma Devi (deceased) after confining her in a room. The informant asked Maya Devi to go back and he also followed her. In the way, he found his wife Radha Devi (P.W. 3), his another daughters Baby Kumari (P.W. 2) and Milo Devi (not examined) and his son Pramod Kumar (P.W. 4) standing near a well situate towards south east of his house waiting for him. His daughter Maya Devi was also standing there. The informant stopped there but because of quarrelsome nature of appellant, he could not dare for going to his house in the portion of which appellant was residing and he sent his son Pramod Mandal for calling one Shibu Paswan (P.W. 1). who happens to be the friend of appellant. On arrival of Shibu Paswan, the informant and his family members along with Shibu Paswan came to the house and from the lane and asked the appellant to open the door because the door of the house was closed from inside. The appellant did not open the door and replied that he will not open it. The informant called the deceased, wife of appellant, who also asked for help. Wife of informant and his other family members through another door of the house entered the Angan of house and asked the deceased, wife of appellant, to open the door upon which the appellant abused them and gave threatening that he would kill them also. The informant and Shibu Paswan then went to call other villagers and his other family members remained in the lane. After some time villagers, namely, Bimlanand Singh (P.W. 10), Bijay Shankar Singh, (P.W. 9), Sitaram Das (P.W. 7) and Harkhu Paswan (not examined) came there. By that time the appellant had gone on the roof of his house in order to escape. Villagers compelled him to come down and caught hold of him. The appellant, had already locked the room of his house. The keys of lock were taken from him and the door of the room was opened and the informant found that wife of appellant was lying in the room in naked condition with injuries on her person, The wife of informant with the help of other women of village brought out the wife of appellant from the room for taking her to hospital but she succumbed to injuries in the 'osara' itself. A cake of lifebuoy soap was found kept tied with the waist of appellant with which he had washed away his hands and feet and there were blood stains on his 'dhoti' which he was wearing at that time. The informant with the help of villagers and Chaukidar Baijnath Paswan took the appellant to police station on the same day at about 13.00 hours got the FIR (Ext. 4) recorded. About the motive of the

occurrence the informant in the FIR simply stated that the appellant is a man of hot temper and used to quarrel and become ready to assault on petty matters and everyone was scared of his such behaviour. During the course of investigation, the police seized blood-stained 'chhura', bloodstained stick, pieces of broken glass bottle, blood-stained clothes, bloodstained soil, a used lifebuoy soap and old lock & key and prepared seizure- list (Ext. 2). The blood-stained dhoti which the appellant was wearing at that time was also seized and a separate seizure list (Ext. 2/1) was prepared. Inquest report (Ext. 1) of the dead body of Manorma Devi, wife of appellant was prepared and the dead body was sent for post-mortem examination and thereafter post-mortem examination report (Ext. 3) was collected. After investigation the police submitted charge-sheet against the appellant, under Section 302, I.P.C.

3. After cognizance the case was committed to the Court of Session where charge under Section 302, I.P.C. against the appellant was framed who denied the charge and pleaded not guilty.

4. From the trend of cross-examination of prosecution witnesses, it appears that the case of appellant before the Court below was his false implication in this case.

5. In order to prove its case, the prosecution has examined 11 witnesses. Besides this, Ram Lal Pandit (Witness No. 12) has been examined as Court Witness who is a formal witness and has proved FIR (Ext. 4) and the seizure list (Ext. 2/1) which was prepared by police when a bloodstained dhoti from the body of appellant was seized. Ram Krishun Mandal (P.W. 5) is the informant. Chandi Pd. Singh (P.W. 6) is a witness on the inquest report which was prepared by police for the dead body of deceased Manorma Devi and is also a witness on the seizure list when the police seized a blood-stained Chhura, blood-stained stick, blood-stained clothes, a soap, lock and key, etc. He has proved inquest report (Ext. 1) and seizure list (Ext. 2). Bijay Shankar Singh (P.W. 9) and Bimlanand Singh (P.W. 10) are the witnesses who had seen the appellant on the roof of his house and had asked him to come down and thereafter, the appellant gave the key of his house to them and when the room of the appellant was opened the deceased was found lying there in injured condition breathing her last and when she was taken out she died. Baby

Kumari (P.W. 2) is a child witness who had seen the appellant dragging his wife inside the room and thereafter closing the door and had also found the deceased thereafter dead. Dharmendra Kumar Sinha (P.W. 11) is the doctor who had held autopsy on the dead body of the deceased. Shibu Paswan (P.W. 1), Radha Devi (P.W. 3), Pramod Kumar (P.W. 4), Sita Ram Das (P.W. 7) and Harkhu Paswan (P.W. 8), who all, according to the prosecution, had reached the place of occurrence but they have not supported the case of the prosecution and they all have been declared hostile.

6. Dharmendra Kumar Sinha (P.W. 11), in his evidence, has stated that on 9-4-1984 he held post-mortem examination on the dead body of deceased Manorma Devi and found the following ante-mortem injuries:

- i) Incised wound 3' x 1-1/2' x skin deep on the scalp, right side of the mid line 1' above the hair line above the forehead.
- ii) Incised wound 1' x 1/2' x bone deep on the forehead right side of the mid-line.
- iii) Incised wound 1' x 1-1/2' x bone deep over left eyebrow.
- iv) Incised wound 3' x 1' x 3' near left ear with cutting the whole of pinna.
- v) Incised wound 1' x 1/2' x 1' on the middle of the neck. On dissection the muscles and the trachea beneath it were cut. On dissection to muscles and the trachea beneath it were cut.
- vi) Incised wound 1' x 1' x cavity deep on the nose.
- vii) Incised wound 1' x 1/2' on the right lip.
- viii) Incised wound 2' x 1' x muscle deep on the neck left side. On dissection, the muscles were cut. There was echymosis within the tissues.
- ix) Multiple incised wound on the left palm.
- x) Multiple incised wound on the right palm.
- xi) Incised wound 1' x 1' x muscle deep on right thigh,

xii) Incised wound 1' x 1' x muscle deep on the right thigh, just lateral and above knee joint.

xiii) Incised wound 1' x 1' x muscle deep on the right heel.

xiv) Incised wound 1' x 1' x muscle deep near vagina.

xv) Incised wound 1' x 1' x muscle deep on the abdomen, left to the umbilicus.

xvi) Lacerated wound 1' x 1' x muscle deep on the right forearm above the wrist joint on the dorsal portion.

According to the doctor, all the injuries from injury Nos. (i) to (xv) were caused by sharp-cutting weapon and injury No. (xvi) was caused by hard and blunt substance and the death was caused due to haemorrhage and shock due to above injuries. He has proved the post-mortem report which is marked Ext. 3, Although, in his evidence he has not given the time of holding post-mortem examination but his report (Ext. 3) shows that the post-mortem examination was conducted on 9-4-1984 at 9.05 a.m. In his evidence, he has stated that time elapsed since death was within 24 hours from the time of post-mortem examination. The postmortem examination report establishes the fact that the deceased died of injuries received by her. The time of death as given by this witness corresponds to the time of occurrence as given by the prosecution. Now, it has to be seen what evidence has been adduced on behalf of the prosecution against the appellant for making him responsible for the injuries which were found on the body of the deceased and which proved fatal.

7. Baby Kumari (P.W. 2) is the daughter of informant and niece of appellant. On the day of examination, her age was estimated at 12 years and she was treated by the Court below as child witness and her examination had been taken up after voir dire. She in her evidence has stated that on the day of occurrence deceased was in a lane when the appellant caught hold of her and took her by dragging in his room and closed the door and thereafter deceased died. She has denied the suggestion of defence that she has deposed falsely. There is nothing in her cross-examination to disbelieve her evidence because the defence has not been able to

elicit anything from her to doubt her evidence. As stated earlier the defence has simply given her suggestion that she has deposed falsely which she has denied.

8. Vijay Shankar Singh (P.W. 9) and Bimla Nand Singh (P.W. 10), in their evidence, have said that they both along with informant Ram Kishun Mandal (P.W. 5) had gone to the house of appellant on the day of occurrence and had found the appellant standing on the roof of his house and they asked the appellant to come down and when the appellant came down, they asked him about his wife on which the appellant had replied that his wife was sleeping in the room but they found that the room of the appellant was locked from outside and then they demanded the key of the lock from the appellant who gave it to them and when they got the room of the appellant opened, they found the wife of appellant lying in the room naked with injuries on her person and she was breathing her last and she was taken out from the room but she died there. It is true that these witnesses have said that they had gone to the house of appellant No. 8-4-1984 at about 1 p.m. whereas the case of prosecution is that at 10 a.m. on that day the informant was informed that the appellant was beating his wife and thereafter the informant went to the house of appellant and from there he went to the police station at about 1 O'clock along with other villagers including the aforesaid two witnesses. So, according to the case of the prosecution, the occurrence took place after 10 a.m. but before 1 p.m. whereas, as stated earlier, P.W. 9 and P.W. 10, in their evidence have stated that they had gone to the place of occurrence on 8-4-1984 at about 1 p.m. Except this discrepancy about the time of occurrence there is nothing in the evidence of P.W. 9 and P.W. 10 to disbelieve their evidence. In our opinion, P.W. 9 and P.W. 10 in their evidence have given an approximate time and we also find that the difference as to time is only for an hour or two and because the witnesses are giving an approximate time, therefore, this discrepancy is not of such nature to disbelieve the entire evidence of these witnesses.

9. Ram Krishun Mandal (P.W. 5), the informant, no doubt has been declared hostile by the prosecution because he has not supported the case of prosecution as stated by him in the Fardbeyan but then he has stated that on the day of occurrence at about 10 a.m. he was at the bungalow of Tetar Tanti when his daughter Maya Devi came and informed him that the appellant was quarrelling

with his wife and thereafter he went there but he did not see anything. He has admitted that the wife of appellant had been killed but he says that he does not know who killed her. He has further admitted that the wife of appellant was taken to hospital and villagers had taken the appellant to police station.

10. It is also true that other witnesses, who according to the prosecution, had assembled on the place of occurrence, have not supported the case of prosecution when they were examined and they have been declared hostile and there is no eye-witness in this case to depose that he had seen the appellant assaulting his wife. But then, it is a case in which a wife has been assaulted by none-else but her husband and that too in her own house. It is the case of prosecution that appellant after confining his wife in a room of his house assaulted her resulting into her death. Under such circumstances, the question of any other person witnessing the assault does not arise because assault took place in the own house of appellant. The Court below has held that appellant guilty on the basis of circumstantial evidence. The prosecution by adducing evidence has proved that at the time of occurrence appellant dragged his wife into the room of his house, closed the door from inside and thereafter he was found standing on the roof of his house and he gave the keys of his room which was locked to villagers and when his room was opened, his wife was found lying naked in the room with number of injuries on her person and she immediately thereafter died. These circumstances unerringly point out that it was the appellant who assaulted his wife. The Court below has rightly held the appellant guilty in this case.

11. Learned Counsel appearing on behalf of appellant has argued that the doctor (P.W. 11) in his evidence has stated that the deceased would have been saved, had she been provided proper medical treatment and the nature of injuries does not conclusively prove that appellant had any intention to commit the murder of his wife. We are unable to accept this argument because deceased had as many as 16 injuries and except one other injuries were caused by sharp-cutting weapon. The deceased died immediately after receiving the injuries. So, the opinion of the doctor that deceased could have been saved had she been properly treated will not minimize the guilt of the appellant,

12. From the entire evidence on record, we find that the prosecution has proved the charge against the appellant beyond all reasonable doubts and the conviction and sentence passed against him by the Court below does not required any interference by this Court.

13. In the result, this appeal is dismissed. The judgment and order of the Court below convicting and sentencing the appellant is hereby confirmed.

S.K. Singh, J.

14. I agree.

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