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Court : Patna

Decided On : Jul-25-2008

Judge : S.N. Pathak, J.

Appeal No. : Criminal Appeal No. 419 of 2001

Appellant : Ramji Singh

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

S.N. Pathak, J.

1. This appeal is directed against the judgment dated 7.8.2001 passed by Addl. Sessions Judge XI. Saran at Chapra, in Session trial No. 127/91. The appellant was convicted under Sections 304 and 325 IPC and was sentenced to undergo RI for 10 years and 7 years respectively, both sentences directed to run concurrently.

2. The prosecution case originated on the fardbeyan of the deceased, Agin Singh, alleging therein that on 3.3.1991 at about 11 a.m., he was preparing the bundles of 'LAAHI' (Mustard crops) harvested from his field. Suddenly, accused-appellant appeared there and assault d the informant on both of his arms as also on ring finger and on the leg and on the other parts of the body with 'LABDA'. The

informant fell down from the impact of the assault and then the appellant aimed knife blow upon the stomach of the deceased and the latter while warding off this blow received an injury upon his left arm. Aforesaid occurrence was witnessed by Radha Mohan Singh and Bachcha Singh. The cause of occurrence as stated by the informant in his fardbeyan was that there was land dispute over the P.O. field.

3. The accused-appellant took up the defence of false implication on account of land dispute.

4. The prosecution had examined in all six witnesses. PW 6 was the I.O., PW 5 was the doctor who treated the informant and who also held post-mortem examination of the dead-body, PW 4 was an eye-witness, PW 3 was son of the informant who later died in the hospital, PWs 1 and 2 are other so-called eyewitnesses.

5. It was submitted by the appellant's lawyer that PW 1 admitted in his cross-examination at para 6 that when he reached at the P.O., he found the informant lying in the P.O. field by his right side. So, perhaps he had not seen the alleged occurrence. Moreover, it was submitted that this witness is related to the informant. PW 3 was the son of the informant and PW 4 was on litigating terms with the accused-appellant. So, it has been submitted that all witnesses are inter-related and interested in the deceased. So their evidence should be examined with care and cautious and since no independent witness has been examined, adverse inference may be drawn. However, in this connection, I am of the opinion that evidence of the interested witnesses cannot be discarded simply because of their interestedness or relationship with the informant or the deceased. PW 2 was an independent witness and he was very much named in the fardbeyan and this PW fully supported the occurrence of assault on the deceased at the hands of the accused-appellant. This witness was passing by the way when he had sighted the informant binding the mustard crops in a bundle. There the appellant appeared and subjected the deceased to assault. This witness, of course, later in his cross-examination, said that when he reached the P.O. field, he found the informant, injured, lying on the ground. This statement of this witness in cross-examination would not imply that he had not seen the accused-appellant assaulting the

deceased because he specifically stated in chief itself that he had seen the accused-appellant from a distance of 20/25 yards while he was passing by the way. So, his statement was that when he reached the P.O. field in particular, he had seen the injured lying at the P.O. field.

6. Now the question arises whether the alleged P.O. field belongs to the informant or whether the same belongs to the accused-appellant. In this connection, accused-appellant produced sale-deed, Exhibit B, to show that P.O. field was purchased by his grand father. However, a question was put to PW1 whether a title partition suit was filed by the appellant. This witness said that, of course, there was a title suit filed by the appellant in which PW 1 and others were defendants. The informant in his fardbeyan described the appellant as his Pattidar, So, it is apparent that the informant and the appellant both belong to the same family and perhaps that was the reason why the appellant filed partition suit against the deceased and PW 1. So, from this fact would also follow that the appellant had grievance against the informant, otherwise, there was no occasion for him to file the partition suit. It also indicates that the deceased was in possession of the P.O. field, otherwise he, the appellant would not have filed the concerned partition suit. All PWs examined in the Court categorically said that the informant was in possession of P.O. field. In view of the aforesaid circumstances, the probability of the appellant assaulting the informant while harvesting the mustard crops cannot be ruled out.

7. So far the evidence of the doctor is concerned-PW 5 found one lacerated wound on the medial side of left forearm 2 1/2 x skin deep. There was abrasion on the right trochanteric area (around the hip) of the size of 1/2' x 1/2'. He found another lacerated wound on the ventral aspect of right ring finger of the deceased 1' x 1/2' through which head of proximal phalanx was protruding i.e. dislocation of proximal inter-phalangeal joint. The 4th injury was swelling in the right popliteal (behind the knee) of the size of about 2' x 2 1/2'. X-ray of firearm showed fracture of left ulna. Injuries No. 1 and 2 were grievous and the rest of the injuries were simple. The injuries were caused by hard and blunt substance.

8. So far injuries are concerned, it has been submitted by the appellant's lawyer that the injuries were not sufficient in the ordinary course of nature to cause death of the victim. Moreover, the doctor described the cause of death as septicaemia and Toxemia. So there was no case under Section 304 IPC.

9. The trial Court, on the basis of the oral evidence coupled with the evidence of the doctor, held the accused-appellant, guilty under Section 304 IPC. So far alleged occurrence in particular is concerned, I think it was well substantiated by the oral evidence on record. In view of the enmity between the parties, chance of the accused-appellant in assaulting the informant is very much probable specifically in view of the fact that title partitions suit was filed by the appellant himself against the informant who later succumbed to his injuries in the hospital after 7/8 days of the occurrence.

10. Admittedly, the informant had sustained injuries on his finger as also on hip and arms and all were caused by hard and blunt substance. Of course, there was exaggeration in the evidence of PWs and in the fardbeyan itself that the appellant had aimed chura blow, but this exaggeration can be attributed to over enthusiasm of PWs in order to secure maximum punishment for the assailant. So not much significance can be attached to the exaggerated statements. In any case, the assault by the accused does not indicate that he had an intention to murder his collateral. The injuries themselves might not also result into the death of the victim in ordinary course of nature. The death also apparently occurred on account of septicaemia and toxemia and these diseases developed while the deceased was undergoing treatment at the hospital. Septicaemia and Toxemia (Toxemia) developed on his injured part due to neglected treatment of the deceased. However, in any case, offence under Section 325 IPC would very much stand substantiated on the basis of ocular evidence supported by the medical evidence.

11. The order of conviction recorded by the trial Court is modified to the effect that the appellant shall stand convicted under Section 325 IPC only. So far sentence is concerned he will suffer five years RI instead of seven years RI.

12. In the result, this appeal is dismissed modifying the order of conviction and sentence as stated above.

