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Court : Patna

Decided On : Oct-22-2002

Judge : S.N. Pathak, J.

Appeal No. : Criminal Appeal (SJ) No. 304 of 1991

Appellant : Sohan Singh

Respondent : State

Disposition : Appeal Dismissed

Judgement :

S.N. Pathak, J.

1. This appeal is directed against the judgment dated 9.8.1991, passed by the 2nd Additional Sessions Judge, Vaishali at Hajipur, in Sessions Trial No. 122 of 1985, convicting the appellant for the offence under Section 304 of the Indian Penal Code and sentencing him to undergo RI for eight years.

2. The son of the deceased, Dasrath Singh, lodged an information at the police station (sic) on 26.10.1984 at 5.15 p.m. alleging therein that at about 4 p.m. his mother had gone to Gorhiya market for selling vegetables (Potato) along with this informant. Her mother had kept her basket full of vegetables and was selling the same. In the mean time the accused-appellant Sohan Singh came there along with

his basket of radish and kept his basket at the same place where her mother was selling her own vegetables and asked her to remove her basket from there. When the informant's mother refused to remove her basket from there, Sohan Singh caught his mother by her neck and started pressing it. Subsequently the accused gave a jerk to the neck of the deceased and pushed her, rather threw her down. The deceased fell down and died at the spot. Thereafter, the accused fled away from there. This occurrence was witnessed by the Bhageran Singh, Faujdar Singh, Kishundeo Singh, Ram Pukar Singh and Bhuteran Singh, who were also selling their own vegetables at the same place.

3. On the same day at about 12 noon, the informant's mother had gone to demand her dues from the accused which resulted in shower of abuses by the accused. The accused took the defence of false implication.

4. The prosecution examined altogether nine witnesses to prove its case. PW 9 was a formal witness, who brought on the record the case diary (Ext. 5). PW 7 and 8 were the eye-witnesses of the occurrence. PW 6 was the doctor who hold the post-mortem examination on the dead-body of the deceased Somariya Devi, the mother of the informant. PW 1 to 5 were declared hostile.

5. However, the evidence of the hostile witnesses is also relevant to some extent, because they offered some circumstantial credence to the occurrence in as much as some of them had seen the deceased dead in the market on the date and at time of the alleged occurrence. In this connection, PW 1 said that when he had gone to the Gorhiya market and was taking tea, he heard that one Somariya Devi, an old women was dead. He heard that the accused Sohan Singh had pushed her down and killed her. PW 2 was also a vendor in Gauriya market. This witness in detail said that Somaria Devi was selling vegetables in the market where the accused Sohan Singh also was selling his own wares. There was an altercation between the deceased and the accused Sohan Singh over keeping of their baskets. This witness thereafter, left the piace and when he came back he found the old women dead. PW 3 Ramdeo did not say a word in favour of the prosecution, so his evidence is of no avail. PW 4 also said that he was a vendor in the Gauriya market and Somariya and Sohan were also vending their vegetables.

When this witness came to his own shop, he found that old woman dead. This witness further said at paragraph 7 that the informant Dashrath is dead. This witness at paragraph 9 said that Daroga read over whatever he had written on the information of the informant about the occurrence. Then this witness signed the aforesaid statement of the informant. His signature was marked as Ext. 1. In cross-examination, this witness denied that the informant gave his statement before the police in his presence. But, however, the statement of the informant in the FIR shows that he had gone to the police station along with this witness. In this view of the matter, the retrograde statement of this witness in cross-examination by the accused appears to be an after thought intended to help the prosecution and that is why this witness was declared hostile by the prosecution. PW 5 is also a hearsay witness because he failed to support the alleged occurrence as an eye-witness, although he admitted that he was also a vendor of vegetables in the Gouriya market on the alleged date and time. This witness, however, had witnessed the inquest by the police in the Gouriya market itself, so this circumstance indicates that he had at least seen the deceased dead in the market itself, although he might not have seen the alleged occurrence. PW 6 the doctor, held the autopsy on the dead-body of the deceased on 28.10.1984 at 12.40 p.m. This doctor did not find any ante-mortem injury on the dead-body. He failed to ascertain the cause of death. The viscera was preserved, but no report of viscera examination was produced by the prosecution. I shall comment further on the medical evidence later on. PW 7 and 8 spoke of the alleged occurrence and they were positive in their evidence that they had seen the scuffle between the deceased and the accused in the Gaurhiya market on the alleged date and time and the occurrence of pushing of the deceased by the accused. They also supported the fact of the death of the deceased on account of act of pushing by the accused. The evidences were criticised on the ground that there were some discrepancies in the statement of the PWs. as to the kind of vegetables being sold by the accused. This discrepancy, in my opinion, does not lead to any disbelief of the occurrence, firstly because the witnesses are not supposed to say what kind of vegetables other vendors are selling. It was submitted by the appellant's lawyer that the PW 8 said that the ground at the place of occurrence was hard and so there should have been some injuries on the body of the deceased, but the doctor

found no injury and hence the occurrence was belied. In my opinion, however, in absence of the statement of the I.O. regarding the nature of the ground at the place of occurrence, whether it was very hard or in the ordinary condition, when a witness speaks of the nature of particular ground as hard, his observation may not be strictly interpreted to mean that the ground must be so hard as to cause any apparent injury on any part of the body of the victim who falls on it, being pushed by any culprit. The doctor gave the age of the victim as 60-years so the chance of the deceased dying on account of being pushed after her neck being pressed and being jerked as also on account of the shock received by her during the course of scuffle preceding the act of pushing, cannot be ruled out.

6. Under the circumstances unleashed by the evidence on record to the effect that the deceased was found dead on the day and at time as alleged and the evidence of at least PW 7 and 8 further positive to the fact that the deceased was manhandled by the accused appellant and pushed and threw down on the ground, probability of the deceased dying on account of the occurrence cannot be ruled out. The occurrence took place on 27.10.1984 at near about 4 p.m. and the post-mortem on the dead-body was done on 28.10.1984 at 12.40 p.m. The doctor was very much in a position to give his opinion regarding the cause of death. The doctor had failed in his professional duty and perhaps he had been dishonest in ascertaining the cause of death. This opinion of mine is further re-infracted by the fact that the doctor also failed to give the exact or probable time of death while holding autopsy. Even if any person is pushed down on the ground which may be hard, there may or may not be an apparent injury to an old person, but the person, specially a female, may die on account of the fact of fall on the ground. Of course, that may vary from person to person on the health of the victim and in the instant case the deceased was aged about 60 years and the evidence has shown that she had been found dead in the market itself and there was also altercation between the accused and the deceased preceding her death. Two witnesses atleast were categorical in their statement that the accused had manhandled the deceased and he had pushed her down on the ground. So there can be no escape from the fact that the death of the deceased resulted from the illegal act of the accused. There was no specific defence taken by the accused appellant in his examination under Section 313 Cr.P.C. although he admitted that on the alleged

date and time the deceased had gone to Gauriya market for vending his vegetables. He did not deny his presence in the market as well. He further admits that the deceased was dead in the market itself. These statements of the accused under Section 313 Cr.P.C. will add a further circumstance to the prosecution case that the death of the deceased was caused at the hands of the accused appellant. No plausible and significant cause for false implication has been elicited by the accused from cross-examination of the PWs.

7. As a result of the aforesaid discussion upon the evidence, I am of the opinion that the conviction of the accused-appellant was well merited by the evidence and the circumstances on the record. So far the sentence is concerned, the trial Court failed to mention whether it was convicting the accused in Part I of Section 304, IPC or Part II. In this connection, it has further been submitted by the appellant's lawyer that the circumstances of the case did not indicate that the accused had any intention to cause the death of the deceased nor he had knowledge that his act will result in the death of the deceased in ordinary course of nature. So far the intention of the accused is concerned, of course, from the evidence, it does not appear that he had any intention to kill the deceased by his act of pushing her or by pressing her neck, but the manner in which he pushed her by jerking her neck, his knowledge that his act shall result in an injury, internal or external, to the deceased which may cause her death can be easily attributed to him. So, in my opinion, the culpable act of the accused may be covered under Section 304, Part II IPC. Now the question arises as to what quantum of punishment the accused appellant deserves under Section 304, Part II IPC which penalizes a person for ten years punishment in the maximum. The trial Court has awarded a sentence of 8 years RI to the accused appellant. In my opinion five years RI shall serve the cause of justice. The Court has to award punishment to a culprit which may not necessarily be too stringent or too light. The sentence to be awarded by the Court must be commensurate with the entire set of circumstances. So in my opinion five years RI shall meet the interest of justice. In the result, the appeal is dismissed confirming the order of conviction, but modifying the sentence awarded by the trial Court to RI for five years. The accused shall surrender in the Court below to serve the sentences of imprisonment modified by this Court (Five years RI).

