

Anthawan Kotwal and ors. Vs. the State of Bihar and ors.

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Court : Jharkhand

Decided On : Feb-25-2009

Reported in : 2009(57)BLJR1680

Judge : R.K. Merathia and; Prashant Kumar, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302 and 307; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal (DB) No. 488 of 2001

Appellant : Anthawan Kotwal and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : V.S. Sahay, APP in Cr.A. 488/01,; Swapan Magi, APP in Cr.A. 490/01

Advocate for Pet/Ap. : A.S. Dayal, Adv. in Cr.A. 488/01,; Manoj Kumar and; Rekh

Disposition : Appeal allowed

Judgement :

Prashant Kumar, J.

1. Both these appeals arose from the judgment dated 27.09.2001 passed by 1st Additional Sessions Judge, Godda in S.T. No. 43 of 2000/57 of 2001 whereby and

whereunder the appellants of both the cases were convicted under Section 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life and they are also sentenced to pay fine of Rs. 10,000/-. Both the appeals were heard together and are disposed of by this common judgment.

2. The case of prosecution in short as per fard beyan of P.W. 3 Nonia Devi is that in the night of occurrence she was sleeping along with her husband Deo Narayan Marik and grand son Shaligram Marik in her new house. It is further alleged that in the late night co-villager, Anthawan Kotwal came and knocked the door and asked for opening the same. Whereupon, she opened the door and at that time she was holding a lantern. It is further alleged that suddenly Anthawan Kotwal, Arvind Marik, Arjun Mahamarik and Joytish Yadav entered inside the house armed with lathi. It is further alleged that they pressed the neck of informant with an intention to kill her and pushed her due to that she received injury on her head. Thereafter all the aforesaid four persons had pressed the chest, neck of informant's husband Deonarayan Marik and her grand son Shaligram Marik. Thereafter the informant become unconscious. It is further stated that the informant had regained her consciousness next day at 3 P.M. at Godda Hospital. Then she came to know from her son and inmates of her family that her husband Deonarayan Marik and grand son Shaligram Marik have been murdered by the aforesaid four persons. It is further stated that the husband of the informant had purchased one and half katha of land from Anthwan Kotwal and thereafter out of that, one katha of land was again sold to accused Arjun Yadav and Joyotish Yadav by Anthawan Kotwal and since then Arjun Yadav, Joyotish Yadav and Anthwan Kotwal are asking the husband of the informant for leaving the said land and for that purpose they were also threatening him. It is then alleged that when the husband of the informant did not leave the said land, the accused persons had assaulted her husband and grandson with an intention to commit their murder, due to that the husband and grand son of informant had died.

3. On the basis of aforesaid fard beyan, the police instituted the present case under Section 302, 307 of the Indian Penal Code. After completion of investigation, the police submitted charge sheet against the appellants under Section 302/34 and also under Section 307 of the Indian Penal Code. After

cognizance, the case was committed to the court of sessions as the offence under Section 302 and 307 of the IPC are exclusively triable by the court of sessions. After commitment, the court below has framed and explained the charges to the appellants under Section 302/34 and 307 of the IPC to which they pleaded not guilty and claimed to be tried. Thereafter the prosecution had examined altogether 11 witnesses. After the close of the case of prosecution, the appellants were examined under Section 313 Cr.P.C. in which their defence is of total denial.

4. After considering the evidence adduced on behalf of the prosecution, the court below convicted the appellants under Section 302/34 of the IPC. However the court below acquitted all the appellants from the charge leveled against them under Section 307/34 of the Indian Penal Code. It further appears that all the appellants were sentenced to undergo life imprisonment and also ordered to pay fine of Rs. 10,000/- for the offence under Section 302/34 of the Indian Penal Code, against that the present appeal has been filed.

5. The learned Counsel for the appellants submitted that the case is based upon the sole testimony of P.W. 3, the informant who claims herself to be the eye witness of the occurrence. It is further submitted that the evidence of P.W. 3 does not find support from the objective findings of the Investigating Officer. It is then submitted that the statement of P.W. 3 also find no support from the doctor who examined her injuries. It is then submitted that the prosecution has not been able to establish the place of occurrence of the present case which cast serious doubt in the case of prosecution. Accordingly, it is submitted that the prosecution has not been able to prove the charges leveled against the accused persons beyond the shadow of all reasonable doubts. Therefore, the appellants are entitled to be acquitted from the charges leveled against them.

6. The learned APP submits that in view of the statement of P.W. 3, who happens to be the eye witness of the occurrence, the court below has rightly convicted the appellants for the charges leveled against them which does not require any interference by this Court.

7. Having heard the submissions, we have gone through the record of the case. From the perusal of evidence of doctor, P.W. 4 and also after going through Ext-1

& 2, we find that both the deceased died homicidal death. The learned Counsel for the appellants has also not disputed the aforesaid facts. Thus the question arise in this case for consideration is as to whether these appellants have any hand in commission of the present crime.

8. To prove the charges leveled against the appellants, the prosecution has mainly relied upon the evidence of P.W. 1, 2 and 3 who are witnesses of fact. Out of them, from the perusal of evidence of P.W. 1 and 2, we find that they are hearsay on the point of occurrence. Thus, on the point of occurrence, the entire prosecution case is based upon the sole testimony of P.W. 3, Nonia Devi.

9. P.W. 3, in her deposition had stated that on the date of occurrence in the night she was sleeping in her new house along with her husband and grand son. She had further stated that appellant Anthwan Kotwal had knocked the door and asked for opening it. On the instruction of her husband, she opened the door, thereafter appellant Anthawan Kotwal, Arvind Marik, Arjun Mahamarik and Joytish Mahamarik entered inside the house. She further stated that all the appellants had pushed her due to that she fell down. Thereafter all the four accused persons had climbed on the body of Deonarayan and Shaligram and pressed them due to that blood was coming out from the mouth of her husband and grand son. After seeing them she become unconscious. During the cross examination at paragraph-15 she had stated that the appellants had pressed her husband and grand son on the chowki itself. Thus from the perusal of evidence of P.W. 3, it is clear that the occurrence took place inside the house.

10. It is also not out of place to mention that P.W. 1 who is the son of deceased had stated in his examination in chief itself that in the morning he came to the house where the occurrence took place and when he entered inside the house, he found that his mother was lying unconscious inside the house whereas his father and son were lying dead. Thus, according to P.W. 1, he found the dead body on both the deceased inside the house. P.W. 2 who appears to be a co-villager had also stated in his examination in chief that when he went to the new house of Deonarayan Marik (deceased) he saw that Devnarayan and Shaligram are dead, whereas, informant was lying there unconscious. P.W. 2 had further reiterated at

paragraph 7 that the dead body of Deonarayan Marik and Shaligram was lying inside the room. Thus from the statement of P.W. 1, 2 and 3, it is clear that the occurrence took place inside the room where both deceased and informant were sleeping. But the objective finding of the Investigating Officer, P.W.9 contradicts the statement of aforesaid prosecution witnesses. P.W. 9 in his examination in chief had categorically stated that he found the dead body of both the deceased in a Khalihan which situate on the eastern side of the house of deceased Deonarayan Marik. The aforesaid facts also find support from the inquest report of both the deceased. From perusal of column No. 3 of the inquest report it appears that the dead body of both deceased were lying in a khalihan. There is nothing on record to show as to how the dead body of both the deceased was lying in Khalihan. The aforesaid circumstance cast serious doubt regarding the place of occurrence and consequently it cast the doubt on the statement of P.W. 3, as to whether she has seen the occurrence from her own eyes or not.

11. It is well settled principles of law that the prosecution case depends upon the proof of; (i) time of occurrence (ii) genesis of occurrence (iii) place of occurrence and (iv) manner of occurrence and if the prosecution fails to establish them, the case of prosecution becomes doubtful. Since in the instant case, I find that the prosecution has not been able to establish the place of occurrence, the appellants deserve benefit of doubt.

12. The Statement of P.W. 3 further does not inspire confidence because in the fard beyan she had specifically stated that during the occurrence she also received injury on her head, but doctor P.W. 8 who examined P.W.-3 had not found any injury on her body. It is already stated that P.W. 3 is the sole eye witness of the occurrence. It is well settled that conviction on the basis of uncorroborated testimony of sole eye witness can only be based if the same is wholly reliable and acceptable. In view of discrepancies stated above, the statement of P.W. 3 without corroboration can not become the basis for convicting the appellants.

13. Accordingly, I find that prosecution has not proved the charge leveled against the appellants beyond the shadow of all reasonable doubt. Thus there is material

illegality and irregularity in the impugned judgment which can not be sustained in this appeal.

In the result, this appeal is allowed, the impugned judgment of conviction and order of sentence is set aside and the appellants are acquitted from the charges leveled against them. It appears that the appellants are in custody, thus we direct that they must be released forthwith, if not wanted in any other case.

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