

Upendra Bhagat Vs. the State of Bihar

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Court : Jharkhand

Decided On : May-15-2009

Reported in : 2009(57)BLJR2744

Judge : Narendra Nath Tiwari and; Prashant Kumar, JJ.

Acts : Indian Penal Code (IPC) - Sections 300 and 302

Appeal No. : Cr. Appeal (DB) No. 313 of 1998 (P)

Appellant : Upendra Bhagat

Respondent : The State of Bihar

Advocate for Def. : V.S. Sahay, A.P.P.

Advocate for Pet/Ap. : S.S. Choudhary, Adv.

Disposition : Appeal dismissed

Judgement :

1. The appellant was tried for the charge under Section 302 of the Indian Penal Code for committing murder of the informant's husband, Baidyanath Bhagat. By the impugned judgment, the appellant has been held guilty and convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life.

2. Briefly stated, the prosecution case is that on midnight of Thursday fire broke in the house of the deceased Baidyanath Bhagat, which also engulfed a portion of adjoining cottage of Upendra Bhagat. The said Upendra Bhagat after two days i.e. on Saturday dragged Baijnath Bhagat to his house and assaulted him with Lathi and gave 3-4 blows; resulting into instantaneous death of Baijnath Bhagat. The reason was the alleged damage of a portion of cottage caused by fire, which broke in the house of Baijnath Bhagat.

3. On the basis of the fardbeyan of Mala Dholi, wife of the deceased, police registered a case under Section 302 of the Indian Penal Code and took up the investigation.

4. On completion of investigation, police submitted charge sheet against the accused-appellant under Section 302 of the Indian Penal Code. The cognizance of the said offence was taken and the charge was framed and the case was committed to the court of sessions.

5. The defence of the accused-appellant was the denial of the charge. According to the appellant, he has been falsely implicated.

6. In order to bring home the said charge against the accused-appellant, the prosecution altogether examined eight witnesses. P.W.1 is the doctor, who had conducted autopsy of the dead body of Baidyanath Bhagat. P.W.2-Shanti Bewa is said to be the eye-witness. P.W.3-Md. Tajuddin is an Advocate Clerk and a formal witness. He has formally proved the fardbeyan and signature on the first information report as also on the inquest report. P.W.4-Nimai Banerjee is said to be another eye-witness. P.W.5-Kedar Nath Mahto and P.W.6-Kalichand Swarnkar have been produced to prove their respective signatures on the inquest report. P.W.7-Mala Dholi is the informant. P.W.8 Mahendra Kumar Sinha is the Investigating Officer of the case. P.Ws.2 and 4, who were said to have witnessed the occurrence, turned hostile and did not support the prosecution case.

7. Prosecution has also proved the postmortem report as Ext.1, fardbeyan Ext.3, formal first information report-Ext.6, inquest report-Ext.7 and the signature of the witnesses on the fardbeyan-Exts.2 & 2/1, endorsement on the first information

report-Ext.4, signature of Kedar Nath Mahto on inquest report-Ext.5 and signature of Kalichand Swarnkar on inquest report-Ext.5/1.

8. Learned Trial Court on thorough appraisal of the material as well as the aforesaid documents on record has come to the conclusion that the prosecution has been able to prove its case beyond all reasonable doubts and held the accused-appellant guilty of committing murder of Baidyanath Bhagat and convicted and sentenced as aforesaid.

9. The impugned judgment of conviction has been assailed in this appeal on several grounds, which are as follows:

(i) Conviction is based on sole testimony of the informant-Mala Dholi (P.W.7) without any corroboration by other evidences.

(ii) There are contradictions between ocular and medical evidences.

(iii) No independent witness has supported the prosecution case.

(iv) P.W.2-Shanti Bewa and P.W.4-Nimai Banerjee, who were produced as eye-witnesses to the occurrence, did not support the prosecution case.

(v) P.W.7-Mala Dholi (informant) has given contradictory statements. She is not a reliable witness and the quality of her evidence is not of that standard which can be solely relied for convicting the appellant.

(vi) Even if the allegations are taken at their face value, it is an admitted case that the deceased was assaulted with Lathi and the accused-appellant did not use any deadly weapon.

(vii) It can be clearly inferred that there was no intention and pre-plann to commit murder of Baidyanath Bhagat. The case in that view does not fall within the ambit of Section 300 of the Indian Penal Code and homicidal death of Baidyanath Bhagat does not amount to murder. Conviction of the appellant under Section 302 of the Indian Penal Code is, thus, not sustainable.

10. Learned Counsel appearing on behalf of the appellant submitted that in view of the above said infirmities, the impugned judgment cannot sustain and is liable to be set aside. Learned Counsel further submitted that P.W.7-the informant has stated in her fardbeyan as also in her statement in Court that the accused-appellant had given 3-4 Lathi blows on the person of the deceased, but the doctor, who conducted the postmortem of the dead body of Baidyanath Bhagat, has not corroborated the said allegation. The doctor has found only two injuries, one abrasion and the other is crack on the skull of the deceased. Since other material witnesses i.e. P.Ws.2 and 4 did not support the prosecution case and sole testimony of P.W.7 is contradictory and has not been supported by the medical evidence, conviction of the appellant cannot be said to be based on any cogent or positive evidence. From the said contradictory statements, serious doubts arise regarding mode and manner of occurrence as alleged by the prosecution and the benefit thereof must have been given to the accused-appellant. Learned Trial Court has committed serious error of law as well as of fact in convicting and sentencing the appellant.

11. Learned A.P.P., on the other hand, supported the impugned judgment and urged that the learned Trial Court has thoroughly scrutinised the evidences on record and has found clear and substantive evidences to come to the conclusion of holding the appellant guilty of committing murder of Baidyanath Bhagat and convicting him. Learned Trial Court has particularly taken into consideration the evidence of P.W.7, who is an eye-witness of the incident. She has clearly described the occurrence and has fully supported the prosecution case. Her evidence has been also supported and corroborated by the documentary evidence; inquest report-Ext.7, postmortem report-Ext.1 and the evidence of the doctor-P.W.1, who conducted postmortem of the dead body of Baidyanath Bhagat. P.W.8-Investigating Officer has also supported the prosecution case. He has proved the documents. The Investigating Officer had visited the place of occurrence and found the hut of the informant as well as the accused-appellant burnt. He has also proved the place of occurrence and the inquest report. Nothing has been elicited in the cross-examination so as to disbelieve the said evidence on record. Learned A.P.P. submitted that the impugned judgment of the learned Trial Court is well discussed and thoroughly considered and the same is sound and

legal.

12. We have heard learned Counsel for the appellant and learned A.P.P. and scrutinized the evidences and materials on record. From the evidence of P.W.1, we find that the doctor, on examination of the dead body of Baidyanath Bhagat, has categorized the injuries in two parts. In one part, he found small abrasions on both wrists on the dorsal surface and in second part, he found crack in the skull bone on vertex, which was 4 cm. long. On opening of the skull, he has found huge collection of blood on the base of skull and also on the surface of brain. Crack measuring about 2.5 cm. was also found on the base of the skull. According to the doctor, all the said injuries were caused by hard and blunt substance and were anti mortem in nature. He has given a definite opinion that the Injury No. (ii) was sufficient to cause death in the ordinary course of nature. The doctor has found injuries on both wrists joint. He has, thus, found one injury on each wrist joint, total two injuries in first part. As aforesaid, he has also found crack in the skull bone on vertex and huge collection of blood on the base of the skull as also on the surface of brain. There was also a crack on the base of skull, measuring 2.5 cm. Therefore, he has found more than one injury. He has also used the word 'All the above mentioned injuries were caused by some hard and blunt substance'. Though the injuries have been categorized in two parts, from the description we find that the doctor has found more than two injuries on the person of the deceased. Injuries categorized as second part were grievous in the opinion of the doctor and were sufficient to cause death of the person in ordinary course. The said injuries find corroboration from the inquest report as well.

13. P.W.7-the informant in whose presence, the occurrence took place has given a clear account of the incident as to how Upendra Bhagat came to her house and caught hold her husband Baidyanath Bhagat and, thereafter, inflicted repeated severe Lathi blows on his person, resulting into immediate death of her husband. In her cross-examination, she has refuted the suggestion that her husband died due to fall on the stone.

14. The Investigating Officer-P.W.8. in his deposition, has also fully supported and corroborated the prosecution version. He had visited the place of occurrence and

found the dead body of Baidyanath Bhagat lying there. He recorded the statement of Mala Dholi, the informant, and others. He inspected the place of occurrence and found the house of the informant completely burnt and the appellant's house partially burnt. He prepared inquest report of the dead body of Baidyanath Bhagat and sent the body for postmortem examination. He had again taken the evidence of Shanti Bewa-P.W.2, who had supported the occurrence in her statement under Section 161 Cr.P.C. However, she turned hostile when she was brought in dock. Nothing has been elicited in the cross-examination of P.Ws.7 and 8 or other witnesses on the basis of which the testimony of the said witnesses can be discarded, though there are some inconsequential omissions.

15. The inquest report-Ext.7 is consistent with the postmortem report-Ext.1. The postmortem report clearly goes to show that Baidyanath Bhagat died due to injuries caused on his head. Injuries were so deep that they caused fracture of the skull and also the base of the brain. The doctor has given clear opinion that the injuries were caused by hard and blunt substance, may be with Lathi. There is, thus, no contradiction in ocular evidence and medical evidence.

16. In view of the above, we find sufficient positive and clinching evidence on record to hold the appellant guilty under Section 302 I.P.C.

17. Learned Counsel for the appellant submitted that even if the prosecution story is taken to be true, the case does not fall within the ambit of Section 300 of the Indian Penal Code, as the accused-appellant said to have given only Lathi blows. He has not inflicted any injury with any lethal or deadly weapon and as such the finding of the learned court below does not come in the category of culpable homicide, amounting to murder and conviction of the appellant under Section 302 of the Indian Penal Code is not legal and sustainable.

18. The said plea of the appellant is not acceptable in view of the evidences on record. As aforesaid, Upendra Bhagat inflicted severe Lathi blows on the vital parts of the deceased's body. Intensity of the blow was so severe that the same caused instantaneous death of Baidyanath Bhagat. There is no case of any altercation, hot exchange of words or any provocation at the spur of the moment so as to bring the case within the exception of Section 300 of the Indian Penal

Code. The circumstance established by the cogent evidence goes to suggest that the assault on Baidyanath Bhagat was pre-planned and pre-meditated. The blow was given on the head of Baidyanath Bhagat, causing brain deep severe injuries, which in ordinary course is sufficient to cause death and which in fact caused immediate death of Baidyanath.

19. In view of the above, in our considered opinion, the homicidal death of Baidyanath Bhagat amounts to murder. Our views are fortified by the decision of the Supreme Court in *Gudar Dusadh v. State of Bihar* : AIR 1972 SC 952. In that case, the death was caused by a single Lathi blow inflicted on the head of the deceased, as a result of which he had fallen down and died instantaneously. The Apex Court held that the nature of the injuries was not accidental, as it was sufficient in ordinary course of the nature to cause death and such injuries squarely fall within the ambit of clause thirdly of Section 300 and the accused was rightly held guilty of the offence of committing murder.

20. The said decision of the Apex Court was rendered in almost similar facts situation. The Supreme Court in that case held as follows:

Where the accused gave a lathi blow on the head of the deceased as a result of which the deceased fell down and died instantaneously and the circumstances indicate that the assault was premeditated and the blow on the head of the deceased was not accidental and that the injury was sufficient in the ordinary course of the nature to cause death, then the case would fall squarely within the ambit of Clause 3rdly of Section 300 and the accused would be guilty of the offence of murder. That it was the Intention of the accused to cause the precise injury found on the head of the deceased would be clear from the fact that the accused aimed a blow on the head of the deceased with a lathi. The mere fact that the accused gave only one blow on the head would not mitigate the offence of the accused and make him guilty of the offence of culpable homicide not amounting to murder.

21. In view of the above discussion, we are of the considered opinion that the injuries inflicted by the appellant though with Lathi caused instantaneous death of Baidyanath Bhagat and comes within the ambit of clause 'thirdly' of Section 300 of

the Indian Penal Code and the accused-appellant has been rightly held guilty of committing murder of Baidyanath Bhagat.

22. We find that the learned court below has thoroughly and properly scrutinized the evidences and materials on record and has come to the right conclusion of convicting the accused-appellant under Section 302 of the Indian Penal Code. We, therefore, find no ground to interfere with the impugned judgment of conviction and order of sentence awarded by the learned court below.

23. There is, thus, no merit in this appeal and the same is, accordingly, dismissed.

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