

(2000) 07 PAT CK 0112

In the Patna High Court

Case No : Criminal Appeal (DB) No. 255 of 1993

Akhileshwar Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 288
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2000) 4 PLJR 373

Hon'ble Judges : Narayan Roy, J;M.L. Visa, J

Bench : Division Bench

Advocate : Sheela Sharma, for the Appellant; Ganesh Pd. Jaiswal, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy & M.L. Visa, JJ.—Heard Mrs. Sheela Sharma, Amicus curiae for the appellant and Mr. G.P. Jaiswal, learned A.P.P. for the respondent. The sole appellant has been found guilty for an offence under sections 302 and 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and for a term of three years respectively. However, both the sentences have been directed to run concurrently.

2. The prosecution case, briefly stated, is that the informant P.W. 6 Bhuneshwar Singh having come to know from P.W. 1 Ram Pravesh Singh that his daughter Anita Devi has been killed in her Sasural, he lodged a Fardbeyan on 27.4.1988 at 11.30 A.M. before the Officer Incharge of Harnaut Police Station in presence of Ram Pravesh Singh, P.W. 1, his wife Chinta Devi, P.W. 9 and his son Ravindra Kumar Singh, P.W. 5 stating therein that his daughter Anita Devi was married with the accused Akhileshwar Singh at Rajgir in 1974 and since then they were living as husband and wife at village Basti. Subsequently, his daughter was ill treated by the accused persons namely Akhileshwar Singh and Sita Devi and thus they were not keeping well. It is further stated in the Fardbeyan that

Akhileshwar Singh had developed illicit relation with his Bhabhi Sita Devi and on that account his daughter Anita Devi was ill treated by Akhileshwar Singh. It is further stated that on 26.4.88 he went to village Basti and there he came to know that the dead body of Anita Devi has been cremated in the Ganges. They enquired from the accused persons about the whereabouts of Anita Devi but no plausible explanation was given to him and from the villagers he only came to know that Anita Devi has been killed at the hands of the accused persons.

3. On the basis of the Fardbeyan, a formal F.I.R. (Exht. 1) was drawn up and a case u/s 302 of the Indian Penal Code and after due investigation charge sheet was submitted against the accused persons namely Akhileshwar Singh, Hansraj Singh, Satish Singh and Sita Devi and after taking cognizance of the offence they were sent up for trial where appellant alone was found guilty and other accused persons were acquitted.

4. The appellant, however, has not taken any specific plea of the defence but from the trend of cross examination of the prosecution witnesses it appears that he pleaded innocence as his wife died out of snake bite.

5. The prosecution, in all, has examined ten witnesses in support of its case. Out of them, P.W. 10 Amir Hasan is formal witness who has proved F.I.R. (Exht. 1) and also the signature of the informant put in the F.I.R. (Exht. 1/1). P.Ws. 7 and 8 namely Rajendra Singh and Bindesher Singh have been tendered only for cross examination. P.Ws 3 and 4 namely Shiv Shankar Singh and Gopal Singh have been declared hostile. P.W. 6 Bhuneshwar Singh is the father of the deceased and informant of this case. P.W. 9 Chinta Devi is mother of the deceased whereas P.W. 5 Ravindra Kumar Singh is brother of the deceased. P.W. 1 Ram Pravesh Singh is said to be cousin of the deceased whereas P.W. 2 Basudeo Singh is a resident of village Basti, the place of occurrence.

6. P.W. 1 Ram Pravesh Singh, in his evidence has stated that on 25.4.1988 at about 8 P.M. he had gone to village Basti and he stayed in the house of Shiv Shankar Singh, P.W. 3. He has further stated in his evidence that the deceased was his cousin sister and was married to Akhileshwar Singh of the same village and in the village itself he heard the rumor that Anita has been killed and thereafter he came to the house of Anita and there he found the dead body of Anita lying in one of the rooms of the house. This witness has been cross examined at length. In his cross examination, he has admitted that immediately after knowing about the death of Anita he started for his home village Dekpura and in the way he had passed through Harnaut police station within whose jurisdiction the occurrence had taken place. He has further admitted in his evidence that in the night he stayed at Harnaut and had gone to the police station where he met the Officer Incharge of Harnaut Police Station and had narrated to him about the incident. He has further admitted in his cross examination that again on 27.4.88 he came back to the police station along with his uncle P.W. 6 and there the Fardbeyan of his uncle was recorded by the Investigating Officer.

7. P.W. 1 nowhere in his evidence has stated as to whether the police had made any Sanaha entry on the information furnished by him nor he had said anything as to why at the first instance he had not lodged any case when he had gone to the police station.

8. P.W. 2 in his evidence, has stated that on 25.4.88 at about 9 P.M. while he was in his Khalihan he heard some halla in the dalan of Mathura Singh where Muneshwar Singh, Akhileshwar Singh, the appellant, Hansraj Singh, wife of Hansraj Singh, Satish Kumar Singh and Mathura Singh were gossiping together saying "Mar Diya". However, he has stated in his examination-in-chief that he has not seen anything in the village. In his cross examination this witness has stated that he is on inimical terms with Mathura Singh as Title Suit is pending. There is nothing in the evidence of P.W. 2 to show that he had seen the dead body of the deceased or atleast he had gone to the house of the deceased on hearing the gossiping of her killing in the dalan of Mathura Singh rather it has come in his evidence that he was inimically disposed towards Mathura Singh on account of pendency of Title Suit.

9. P.W. 6 the informant, in his evidence, has stated that on 26.4.88 he knew about the occurrence from Ram Pravesh Singh and thereafter he went to village Basti where he came to know from the villagers that his daughter Anita was killed at the hands of the accused persons. In his cross examination, this witness, however, has stated that he did not see the dead body in the house of Akhileshwar Singh and he only came to know that his daughter was cremated in the river Ganges. This witness, in his evidence, however, has tried to say about the motive of the killing of his daughter Anita by saying that Anita was being ill treated by her husband Akhileshwar Singh as Akhileshwar Singh had developed illicit relation with his Bhabhi Sita Devi and few days prior to the occurrence his daughter had gone to her inlaws" place and she was living with Akhileshwar Singh, her husband. Likewise, P.W. 5 Ravindra Singh has also deposed on the line of P.W. 6. He has also stated in his evidence that he came to know about the occurrence through Ram Pravesh Singh, P.W. 1.

10. P.W. 9 Chinta Devi, wife of the informant has also deposed on the same line and in her cross examination she has stated that she had seen Akhileshwar Singh wearing Utari and she came to know from Mathura that her daughter died out of snake bite. At the same time, she also stated that accused Hansraj Singh stated that her daughter has been killed whereas Satish Singh pointed a pistol on her and asked her to go away.

11. The Investigating Officer of the case, however, has not been examined as in course of trial he died. P.Ws 7 and 8 have been tendered for cross examination and it appears that in their cross examination, they have spoken about the snake bite on which account Anita died.

12. Evidence of P.Ws 7 and 8 in cross examination, however, is of no avail to the prosecution, firstly because they could not have been tendered after omission of

section 288 of the Code of Criminal Procedure, 1898 and secondly tendering of witnesses for cross examination without there being any examination-in-chief, is not permissible as it amounts to giving up of the witnesses and, therefore, the evidence of these witnesses namely P.Ws 7 and 8 need not be referred to. In this connection, reference may be made to the case of Sukhant Singh vs. State of Punjab (1995 SCC Cri. 524) and Tej Prakash vs. State of Haryana (1996 SCC Cri. 412).

13. It appears that the appellant along with Hansraj Singh, Satish Singh and Sita Devi were charged for an offence under sections 302/34 and also u/s 201 of the Indian Penal Code. The learned trial court, on scrutiny of evidence, held that there is no evidence establishing the charges against accused Hansraj Singh, Satish Singh and Sita Devi and therefore, held them not guilty for the offence under sections 302/34 and 201 of the I.P.C. However, the learned trial court held the appellant Akhileshwar Singh guilty for the offence under sections 302 and 201 of the Indian Penal Code and sentenced him as indicated above.

14. We find that for the same set of evidence which have been discussed above, accused Hansraj Singh, Satish Singh and Sita Devi have been acquitted whereas the appellant alone has been found guilty where the charge was common against all saying that all these accused persons intentionally and knowingly committed murder of Anita Devi in furtherance of common intention. Since other accused persons have been acquitted as against same set of evidence, we find it difficult to hold the appellant guilty for the same. At the same time, we find that the evidence as adduced by the prosecution are not inspiring confidence as their evidence is shaky to establish the charge against the appellant beyond all reasonable doubts. The prosecution witnesses namely P.W. 1, 2, 5, 6 and 9 have spelt out different version of the case. Evidence of P.W. 1 who claims to have seen the dead body in the house of the appellant becomes doubtful in view of his subsequent statement made in his evidence to the extent that even though he had gone to the police station he had not lodged any information to the police.

15. The other witnesses namely, P.Ws 5, 6 and 9 are all hearsay and there are material contradictions in their evidence. That being the situation, it would not be safe to rely on their testimony. For the reasons and discussion aforesaid, therefore, we hold that the prosecution has failed to prove the charges against this appellant beyond all reasonable doubts and since the other accused persons similarly situated to this appellant, have been acquitted against the same set of evidence, this appellant deserves acquittal in the facts and circumstances of the case. In the result, this appeal is allowed and the order of conviction and sentence passed against the appellant is set aside and the appellant is acquitted of the charges levelled against him. The appellant, therefore, is directed to be released forthwith if not required in any other case.