
(2004) 06 PAT CK 0023

In the Patna High Court

Case No : Criminal Appeal No. 4 of 2001 (DB)

Anand Kant Jha and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 23-06-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2004) PLJR 1028

Hon'ble Judges : R.N. Prasad, J;Mridula Mishra, J

Bench : Division Bench

Advocate : Kaushal Kumar Jha, Prafful Chandra Jha and Satyajeet, for the Appellant; Lala Kailash Behari Prasad, APP, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad and Mridula Mishra, JJ.—Both the appeals have been filed against the judgment and order dated 19.12.2000/ 20.12.2000 passed by the 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 109 of 1980/44 of 1985. They have been heard together and are being disposed of by this common judgment. The appellants in Cr. Appeal No. 4/2001 have been convicted for the offence u/s 201 of the Indian Penal- Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2000/- each, in default of payment to undergo simple imprisonment for two months each. The appellants in Cr. Appeal No. 71/3001 have been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000 each, in default of payment of fine to undergo simple imprisonment for two months each. Appellant Chandeshwar Jha has further been convicted u/s 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years, sentences were ordered to run concurrently.

2. Wali Mohammad, Chaukidar, is informant in the case. He gave his Fard bayan on 10.5.78 at 11.30 P.M. near Barahara Chowk before the Assistant Sub-

Inspector of Police of Babubarahi Police Station that at about 3 P.M. there was a talk in the village that Baiju Jha son of brother-in-law (Sarhu) of Chandeshwar Jha came to his house by train at about 12 o'clock. At about 2 P.M. Chandeshwar Jha, the Mause of Baiju Jha, Mundrakala Devi, the mother of Baiju Jha killed him by throttling his neck. Chandeshwar Jha, Narayan Jha, Haribansh Jha(since dead), Bhoop Jha, Anand Kant Jha and others were trying to cremate the dead body. On the said information he proceeded to inquire into the matter and saw the aforesaid persons except Mundrakala Devi taking the dead body to the orchard of Chandeshwar Jha,, He reached the orchard and found the dead body concealed under straw. He also found wood and k.oil there. He protested the cremation on which he was threatened. He called the other Chaukidar and Dafadar and thereafter he asked the Chaukidar Sukhdeo Mandal, Chaukidar Sukhdeo Paswan, Chaukidar Asarfi Paswan and Dafadar Ram Lakhani Thakur to keep watch over the dead body and went to the Police station. On way at Barahara Chowk the A.S.I. met him and he gave his Fard bayan. It has also been stated that the mother of the deceased was living with her brother-in-law Chandeshwar Jha and she had illicit relation with him. The deceased had come earlier to call his mother but she refused to go and on that day when he came he was killed.

On the aforesaid Fard bayan a formal F.I.R. was drawn and after investigation charge sheet was submitted against the appellants. On receipt of the charge sheet in the court cognizance was taken and the case was committed to the court of session for trial. The trial court convicted the appellants as stated above.

The defence of the appellants was that they have falsely been implicated and have not committed any offence.

3. The prosecution in support of its case examined 14 witnesses, P.W. 1 has proved the Fardbayan, Ext.1, P.W.2 proved inquest report, Ext.2. P.W. 3 and P.W. 10 have been tendered. P.W. 4, P.W. 5, P.W. 6, P.W. 7, P.W. 9 are hearsay witnesses. P.W. 8 is informant and he is also a hearsay witness. P.W. 11 is a formal witness and he took charge of investigation but he neither examined any witness nor inspected the place of occurrence. P.W. 12 proved the post mortem report, Ext.3. P.W. 13 is doctor, who held post mortem over the dead body.. P.W. 14 is also a formal witness, who proved the signature and writing of S.I. Kashi Prasad, Ext.5.

4. The death in this case is not in dispute. The dispute is with regard to participation of the appellants in commission of murder. There is no eye witness to the occurrence. The witnesses examined in this case are hearsay witnesses. P.W. 8, the informant, is also a hearsay witness. His evidence in the court is that on the day of occurrence at about 3 P.M. he was in the orchard west of his house. Some persons were saying that Chandeshwar Jha and Mundrakala Devi had killed Baiju Jha. The aunt of Chandushwar Jha was also there. Somebody came and said something to the aunt of Chandeshwar Jha and on inquiry she stated that Chandeshwar Jha and Mundrakala Devi had committed murder of Baiju Jha and

she was going there. He proceeded to the house of Chandeshwar Jha. When he reached the house of Chandeshwar Jha he did not find any dead body there. He proceeded towards the orchard and found Chandeshwar Jha, Bhoop Jha, Anand Kant,Jha, Haribansh Jha (since dead), and Narayan Jha taking the dead body and k.oil to the orchard. He went there and protested the cremation of the dead body on which there was altercation between him and Chandeshwar Jha. Thereafter, P.W. 6, P.W. 4, P.W. 5, P.W.,10, P.W. 7, P.W. 9 came there. The appellants thereafter ran away from there. He found injury on the neck and also near the anus on the person of the dead body. While he was proceeding to the police station he met Assistant Sub Inspector of Police near the Barahara Chowk and he gave his Fard bayan at the Chowk itself. It is, thus, obvious from the evidence of the informant that he is not an eye witness rather he is a hearsay witness with respect to the murder of Baiju Jha. It has already been stated that there is no eye witness to the occurrence and the case is based on circumstantial evidence. The other witnesses i.e. P.W. 4, P.W. 5, P.W. 6, P.W. 7 and P.W. 9 have stated in their evidence that they hoard about the occurrence and when they went in the orchard where the dead body was kept saw the appellant except Mundrakala Devi running away. The doctor, P.W. 13, held post mortem over the dead body and he found abrasion on the neck 3"x1/4" semi circular in nature with swelling of the neck and also injury on the left side of the anus 1.5"x1/4". It is, thus, obvious that in this case nobody claimed to be eye witness to the occurrence and the case is based on circumstantial evidence. The circumstances are that there was a talk in the village about commission of murder by appellants Chandeshwar Jha and Mundrakala Devi, the appellants except Mundrakala Devi were trying to cremate the dead body, the informant saw the appellants except Mundrakala Devi taking away the dead body to the orchard of Chandeshwar Jha. When the informant went in the orchard he found the dead body concealed under straw. He also found k.oil and wood, the means of cremation, near the dead body and the doctor also found injuries on the person of the deceased on the neck as well as near the anus. The allegation is that there was a talk that Baiju Jha was killed by strangulation by Chandeshwar Jha and Mundrakala Devi, there is no evidence as to how the injury was found near the anus of the deceased. It is thus obvious that there is no complete chain of circumstances to come to a conclusion that appellants have committed the murder. Moreover, in a case of circumstantial evidence it is a well established rule of law that the circumstances appearing against the accused persons must be put to them in statement u/s 313 of the Code of Criminal Procedure, but in the instant case the circumstances, as indicated above, were not at all put to the appellants while they were being examined u/s 313 Cr.P.C. In such a situation the evidence brought on record cannot be used against them and if such evidence is not used, then there is nothing in the case to connect the appellants with the crime. Thus, on consideration as discussed above, we find that the judgment of conviction of the appellants cannot be upheld. Accordingly, both the appeals are allowed, the judgment and order of the court below is hereby set aside. The appellant Mundrakala Devi @ Mundri Kala Devi is in jail and, as such, she is directed to be

released forthwith, if not required in any other case. The rest of the appellants are on bail and they are discharged from the liability of their bail bonds.