

(2023) 03 PAT CK 0076

In the Patna High Court

Case No : Criminal Appeal (DB) No. 75 Of 2022

Anil Kumar Mahto

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 28-03-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 147, 148, 149, 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2023) 03 PAT CK 0076

Hon'ble Judges : A. M. Badar, J;Chandra Shekhar Jha, J

Bench : Division Bench

Advocate : Gajendra Kumar Singh, Manish Kumar

Final Decision : Allowed

Judgement

1. At the outset, it is important to mention herewith that present appeal is limited with above named five (5) out six (6) convicts, except convict, Arbind Kumar Mahto S/o Ramavtar Mahto. It is to mention further that present appeal taken up for final hearing, as requested by learned counsel appearing for above named appellants/convicts, while arguing prayer of bail as raised through I.A. No. 01 of 2022.

2. The present memo of appeal preferred challenging the judgment of conviction dated 23.12.2021 and the order of sentence dated 06.01.2023 passed by Shri Ramayan Ram, IIIrd Additional Sessions Judge, Siwan as passed in Session Trial No. 52 of 2020, arising out of Siwan Muffasil P.S. Case No. 385 of 2019 lodged for offences alleged under Section 302, 120(B)/34 of the Indian Penal Code (I.P.C.), where the aforesaid appellants/convicts have been convicted under Section 148 of the I.P.C and sentenced to undergo rigorous imprisonment (R.I) for 3 years each and they have been also convicted under Section 302 read with 149 of the Indian Penal Code (I.P.C.) and sentenced to undergo rigorous imprisonment for life and fine of Rs. 25,000/- each. In default of payment of fine, all appellants/convicts shall further ordered to undergo rigorous imprisonment

(R.I) for six months each, where all the sentences to run concurrently, with an adjustment of already undergone period in jail.

3. The case of prosecution, as set out by the informant, namely, Salma Khatun (PW-3) through her written complaint dated 16.10.2019, addressing to S.H.O, Muffasil, Siwan, is that on 13.10.2019 at about 6:00 p.m., while she was cooking at her home, accused persons, namely, Anil Kumar Mahto aged about 21 years, Santosh Kumar Mahto aged about 20 years both are son of Ramdas Mahto, Arbind Kumar Mahto aged about 22 years S/o Ramavtar Mahto, Raju Kumar Srivastava aged about 23 years S/o Surendar Lal Srivastava & Samsad Miyan aged about 28 years S/o Aziz Miyan, all R/o Village- Bindusar Hamid and Jitendra Yadav S/o Savru Yadav R/o village- Barhan Gopal Bazar, all of P.S.-Muffasil Siwan, District- Siwan along with 5 to 6 unknown persons came to her home and asked her son to be accompanied with them for a place near to "Murghatia" and taken him with them. It is further alleged thereof that after some time her elder son, namely, Rabbudin came to home and asked informant regarding where about of Israil (deceased), whereupon informant replied him that above named co-accused persons called him to accompanied with them. Learning from her son, Rabbudin, that the above named accused persons are not good pesons, informant alongwith her son, Rabbudin, started to search her son and found that above named all six (6) accused persons were found assaulting her son at "Bindusar Hamid Murghatia" (place of occurrence) by means of lathi, danda and sword, consequent upon her son died on the place of occurrence itslef. It is further stated thereof that several persons of village arrived there after the occurrence, who also saw the occurrence. The reason to lodge delayed FIR was explained as informant was busy to mourn the sad demise of her son.

4. On the basis of above mentioned written complaint/first information, Siwan, Muffassil, P.S. Case No. 385 of 2019 dated 06.10.2019 was registered for offence alleged under Section 302/120(B)/34 of the Indian Penal Code against above named accused persons.

5. After investigation, the chargesheet against accused, namely, Arbind Kumar Mahto, was submitted on 10.02.2020 vide Charge-sheet No. 8 of 2020, whereas against appellants/convicts, namely, Anil Kumar Mahto, Santosh Mahto, Raju Kumar Srivastava, Samsad Miyan and Jitendra Yadav supplementary chargesheet was submitted after complition of investigation vide Chargesheet No. 28 of 2021 on 04.02.2021. Charge against above named six (6) accused persons including above named Five (5) appellants/convicts were framed on 02.03.2021 by the learned Trial Court, where all appellants/convicts plead not guilty, consequent upon trial was started, which ended with conviction of above named appellants/convicts through Sessions Trial No. 52 of 2020 dated 13.12.2021, which is the impugned judgment for the purpose of the present appeal.

6. Hence, the present appeal;

7. To establish its case, prosecution altogether examined eight (8) witnesses

before learned Trial Court which is as PW-1 Rabbudin, PW-2 Sahabuddin Miyan, PW-3 Salma Khatun (informant/mother of deceased), PW-4 Dr. Ahmad Ali, PW-5 Dr. Vijay Kumar, PW-6 Jai Shree Prasad Singh (I.O. of the case), PW-7 Pramod Das (I.O. of the case) and PW-8 Parashuram Singh Gond (I.O. of the case).

8. The prosecution, during the course of trial, relied upon the following exhibits:

Ext.1 - Signature of Dr. Ahmad Ali (PW-4) on post-mortem report.

Ext.1/1 - Signature of Dr. Vijay Kumar (PW-5) on post-mortem.

Ext.2 - Handwriting and signature of Ram Bichar Rai, In-charge of Police Station.

Ext.2/1 - Signature of station In-charge, Ram Bichar Rai, on formal FIR.

Ext.3 - Signature of Md. Rabbudin (PW-1) upon carbon copy of inquest report of the deceased.

No witnesses and documents were produced during the trial by appellants/convicts in defence.

9. The statement of all appellants/convicts during the trial was recorded under Section 313 of the Cr.P.C., where they claimed to be an innocent person and denied their involvement in the occurrence.

10. It appears from the deposition of PW-3, namely, Salma Khatun, who is mother of the deceased and informant of the present case that she became hostile before learned Trial Court, and such failed to support the case of prosecution during the trial. It appears from her examination in chief that on the 'Hulla' (collective alarm or shouting), she came to know about the occurrence as her son, Israil Miyan, was murdered at Bindusar Hamid, Murghatia (place of occurrence). It appears that when she went to the place of occurrence on said hulla, she found her son in injured condition lying over there having sharp cut injury on his neck beside other bodily injuries. It is further deposed that subsequently, she went to police station, where police in-charge (Daroga) obtained her thumb impression on blank paper. It is further deposed that police in-charge (Daroga) never inquired her about the occurrence and also failed to identify appellants/convicts before the learned Trial Court, she was declared hostile by the learned Trial Court, where on being crossed by prosecution, she denied all suggestions as advanced by prosecution. On cross examination on behalf of the appellants/convicts, she deposed that the present deposition what she made before the learned Trial Court is out of her own sweet will without fear and favour. She further deposed that she still unaware that how her son was murdered.

11. PW-1, namely, Rabbudin, who is the brother of the deceased deposed before this Court that he knows nothing about the occurrence and deposed that he put signature on the inquest report of the deceased brother namely, Israil Miyan, prepared by the police on 03.10.2022. He also failed to identify appellants/convicts during trial before the Court. He was also declared hostile, and on cross-

examination by prosecution, he denied all the suggestions as advanced by learned Additional Public Prosecutor. On being crossed by appellants/convicts, he was deposed that he is making his deposition before the Court, out of his own free will without having any pressure. He also deposed that he came to know after one day of the occurrence regarding murder of his brother.

12. PW-2, namely, Sahabuddin Miyan, who is also one of the brother of the deceased did not support the case of prosecution during the trial by deposing that he never made any statement before the police during the investigation. He also failed to identify the accused persons during the trial. On cross-examinations by prosecution, he denied all the suggestions as advanced regarding the occurrence and involvement, whereas on being crossed by the appellant/convicts, he deposed his deposition before the Court is out of his own sweet will and without having any pressure.

13. PW-4, namely, Dr. Ahmad Ali, who is one of the member of the Medical Board constituted for post-mortem of the deceased, Israil Miyan, who identified signature on post-mortem report, which is exhibited as Mark-1.

14. PW-5, namely, Dr. Vijay Kumar, who is also one of the member of the post-mortem team, who conducted post-mortem upon the deceased, found following anti-mortem/external injuries:

1. Rigor mortis present in all four limbs including fingers and jaw.

(i) An oblique shaped incised wound at right shoulder of size 1/2"x1/2"x7" deep to thoracic cavity (confirmed with probe insertion) oozing of blood from wound present.

(ii) Incised wound over right clavicle 1"x1/4"x7" deep to thoracic cavity with oozing of blood present.

(iii) Incised wound oblique shaped at right hand 2" above the elbow of size 1/2"x1/4"xMuscle deep present. Wound reddish.

(iv) Lacerated wound over left side of occipital bone size 4"x1/4"x1/4" wound reddish in color.

(i) Chest-thoracic cavity filled with blood and blood clots, right lung tear/ruptured, left intact, both heart chamber empty.

(ii) Abdomen and pelvis : liver, intestine, spleen, both kidneys are intact, stomach semi-digested food present, coffee coloured blood mixed with food particles, bladder empty, head intact.

15. PW-6, namely, Jai Shree Prasad Singh, PW-7, namely, Pramod Das and PW-8, namely, Parashuram Singh Gond are investigating officers of this case. PW-6 identified the signature of station in-charge, Ram Bichar Rai, and identified the handwriting and signature regarding endorsement of FIR on the written complaint which is exhibited as Ext.2 and 2/1 before the learned Trial Court. He

also identified signature on inquest report of the deceased which is exhibited as Ext.3. It was deposed before the learned Trial Court by him that he visited place of occurrence and also obtained the supervision note of his superior officers, during the course of investigation. He also deposed to obtained the re-statement of informant and also to record statement of witnesses, during the course of investigation, and submitted charge-sheet against arrested appellant/convict, Arbind Kumar, under Section 147, 148, 149, 302, 120(B) of the Indian Penal Code vide Charge-sheet No. 08 of 2020 dated 10.02.2020. On cross-examination, he deposed before the learned Trial Court that he is not visited the place of occurrence after receiving the information. He further deposed that written complaint was received after 4 days of the occurrence and not received any Informatory petition (Sanha regarding deceased) during this period. He also deposed that he did not find any blood stains on the place of occurrence, and stated that on the date of occurrence though he was in police station but place of occurrence was visited by station in-charge, Ram Bichar Rai.

16. PW-7, namely, Pramod Das, who received the charge of investigation after transfer of PW-6 and after completion of investigation submitted charge-sheet against appellants/convicts, namely, Anil Kumar Mahto, Raju Kumar Srivastava, Samsad Miyan, Santosh Kumar Mahto and Jitendra Yadav vide Charge-sheet No. 28 of 2021 dated 04.02.2021 under Section 302, 120(B)/34 of the Indian Penal Code. On cross-examination, he deposed that he submitted chargesheet on the basis of fact collected by his predecessor i.e. PW-6 and also under the direction of his higher officials. He also deposed that no independent opinion was given by him, while maintaining case diary.

17. PW-8, namely, Parashuram, who is also one of the investigating officer of this case and as per his deposition, it appears that his investigation is limited to arrest of appellant/convict, Jitendra Yadav. On cross-examination, he deposed that no investigation was conducted by him.

18. It is submitted by learned counsel appearing on behalf of appellants/convicts that PW-3, who is informant of this case and claiming herself to be an eye witness of the occurrence became hostile before the learned Trial Court, negating the occurrence in totality. It is submitted that same is the position of PW-1 and PW-2, who are brothers of the deceased and they also became hostile. Learned counsel further submitted that rest of the witnesses are official witnesses as doctors and Investigating Officers of this case and on the basis of their deposition, it can not be said that prosecution established its case beyond reasonable doubt.

19. Learned APP, while arguing over the subject submitted that injuries as explained by experts, who are doctors and examined before learned Trial Court as PW-4 and PW-5 appears in corroboration with Ext.2, Ext. 2/1 and Ext. 3 proved by PW-6 before the learned Trial Court. However, learned APP conceded that material witnesses including informant as PW-1, PW-2 and PW-3 did not support the case of prosecution during the trial.

20. From the perusal of the aforesaid witnesses, it appears that PW-4 and PW-5 are doctors and PW-6, PW-7 and PW-8 are the police officials, who conducted investigation of this case at different point of time. These witnesses are official witnesses and their depositions are of limited bearing over the trial of the case.

21. From the deposition of PW-3, namely, Salma Khatun, who is informant and mother of the deceased, Israil Miyan, it appears that she narrated a complete different story before the learned Trial Court, stating that she is not the eye witness of the occurrence and what information she received about the occurrence is based upon hearsay input, as she gathered from co-villagers. It appears from her deposition that when she arrived at the place of occurrence, no accused persons were there and only dead body of her son was lying, having several injuries found upon neck and other parts of the body. She also failed to identify the co-accused persons facing the trial before the learned Trial Court. Accordingly, Informant (PW-3) was declared hostile and same is the position with PW-1 Md. Rabbudin and PW-2 Sahabbudin who are none but the brother of the deceased and they also turned hostile before the Court.

22. It appears from the impugned judgment that having all hostile witnesses in hand learned Trial Court convicted appellants/convicts, merely, on the basis of deposition of PW-4 and PW-5 who are doctors and PW-6, PW-7 and PW-8 who are investigating officers of the case.

23. Accordingly, the finding of conviction is not convincing on its face, which is made by defying all the basic principles of criminal jurisprudence.

24. Accordingly, the criminal appeal stands allowed.

25. Accordingly, the judgment of conviction dated 23.12.2021 and order of sentence dated 06.01.2022 passed by the learned Additional Sessions Judge-III, Siwan in Sessions Trial No. 52 of 2020 arising out of Siwan Muffasil P.S. Case No. 385 of 2019 are set aside. The all above five (5) appellants are acquitted of the charges level against them.

26. Appellants/convicts be set at liberty at once, if not wanted in another case.