
(2009) 11 JH CK 0041
In the Jharkhand High Court

Badho Kewat and Akli Devi

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 304(1), 34

Citation : (2009) 11 JH CK 0041

Hon'ble Judges : Pradeep Kumar, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for the appellants and learned Counsel for the state.

2. The instant appeal is directed against the judgment of conviction and order of sentence dated 8.5.2000 passed by Sri Ram Snehl Thakur, 2nd Additional Sessions Judge, Bermo at Tenughat by which judgment both appellants were found guilty u/s 302/ 34 of the I.P.C. and sentenced to undergo R.I. for life. Since, the pronouncement of judgment, appellant No. 1 is in jail custody.

3. It is submitted by leaned Counsel for the appellants that appellant No. 2 is not named in the fardbeyan given by the sole eye witness of the case i.e. the informant, P.W.4 and such learned trial court has (sic) the appellant No. 2 only on the basis of the (sic) given by the witnesses during trial which has (sic) subsequently only to rope his wife (sic) the husband. He has further submitted that it will appear from the evidences of the witnesses , facts and circumstances disclosed by the informant, P.W.4 that he had no intention to commit the murder of the deceased, Mangri Devi who happened to be his brother's wife and also his own sister-in-law. It was just by chance that when heated exchange was going on between the informant and accused, Badho Kewat, then suddenly the deceased, Mangri Devi came and intervened. On that, appellant No. 1, Badho Kewat, suddenly brought a spade and gave one blow on her head. There is no

repetition of blow and as such the conviction of Badho Kewat u/s 302 of the I.P.C is also bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the state has submitted that it will appear from the evidences of the witnesses P.W.2, 3, 4 and 5, who are stated to be the eye witnesses, in the trial that both the appellant Badho Kewat and Akli Devi had participated in the assault of deceased, Mangri Devi and caused fatal blow to her due to which she died after reaching hospital. As such, no interference is required by the Hon"ble Court and the impugned judgment of conviction and order of sentence are in accordance with law and fact of the case.

5. After hearing both the parties and after going through the record, We find that the prosecution case was started on the basis of the fardbeyan given by the informant, P.W.4 Maha Kewat stating therein that on 5.7.1991 in the evening at about 6.50 p.m. he gave his statement to the S.I. of Tenughat police station that on 5.7.1991at about 3 p.m. in the afternoon when he was entering his house with his animals then his brother - accused, Badho Kewat objected and asked him not to go by the road since, both brothers had common road for entering the house. When he stated that he has got no other road to go then he started rebuking and assaulting him. Then (sic) wife, Mangri Devi came to save him, since accused Badho Kewat wanted to assault him by a brick, (sic) when his wife intervened, then suddenly accused-Badho Kewat went inside the house and brought a spade and gave a spade blow from backside causing injury on her head. His wife fell down and started bleeding from the injured head. Thereafter, she was taken to the Tenughat Hospital in a jeep which was brought from the neighbour, but during treatment she died. On the basis of the said fardbeyan, police registered a case u/s 302 of the I.P.C. against the sole accused Badho Kewat and after investigation submitted charge sheet against both the accused Badho Kewat and Akli Devi, since during investigation the name of Akli Devi was also taken by other witnesses.

6. Since, the case was exclusively triable by the court of Sessions, learned Magistrate after taking cognizance of the case committed the case to the court of Sessions and the trial was held lastly by 2nd Additional Sessions Judge and the appellants were convicted and sentenced as aforesaid.

7. It will appear that in course of trial the prosecution has examined altogether 13 witnesses.

P.W.1 is Kalwa Kewat

P.W.2 is Bigal Kewat

P.W.3 is Madan Kewat

P.W.4 is Maha Kewat, informant of the case

P.W.5 is Mina Devi is the daughter of the informant.

P.W.6 is Laldeo Kewat

P.W.7 is Ram Kishun Kewat

P.W.8 is Govind Kewat

P.W.9 is Triveni Kewat

P.W.10 is Anwar Khan, Investigating Officer of the Case.

P.W.11 is Dr. Ram Nagina Sinha

P.W.12 is Kishun Sao

P.W. 13 is Chottan Kewat

8. Out of the aforesaid 13 witnesses P.W.2, 3, 4 and 5 are the eye witnesses of the case (sic) P.W.1 and 9 are circumstantial witnesses. Further P.W. 7, 8 and 13 are tendered witnesses and nothing was taken from them during cross examination.

9. P.W.4, Maha Kewat, informant, while supporting his fardbeyan given to the police stated in the court that on the date of occurrence while he was returning in the evening with his animal and entering his house from the common "galli" then his brother, accused Badho Kewat objected and heated exchange of words started between them. Badho Kewat went to assault him with brick piece and then suddenly his wife, Mangri Devi came there to save him, whereupon the accused, Badho Kewat went inside the house to bring a spade. After that accused No. 2, Akli Devi (Wife of Badho Kewat) caught hold of the deceased Mangri Devi and then Badho Kewat gave a spade blow causing head injury due to which she fell down. Subsequently, she was taken to hospital where she died. In cross examination it was asked to him as to why he has riot stated the said fact that Akli Devi caught Mangri from behind in the fardbeyan to which he stated that he had stated to the Investigating Officer, but he had not taken the same. He had also stated in his cross examination that on his hulla 10/15 villagers came there of which he has named Bigal, Kalwa etc.

10. The next important witness is P.W.2, Bigal Kewat, who is said to be son of informant, Maha Kewat, has stated in his examination in chief that he was sleeping in his house and hearing hulla of his father that Badho Kewat is assaulting him, he came out and saw that Akli Devi had caught hold of his mother and Badho Kewat gave a spade blow on her head due to which she became unconscious. After that she was taken to hospital where she died. In his cross examination at para-8 he has stated that on hearing hulla he had immediately woken up and came out and found that after his hulla other arrived at the spot. It is also important to note that in para-9 he (sic) stated that he had gone to the police station along with his father where his statement was taken. Subsequently, the Investigating Officer came and saw the dead body of his mother.

11. P.W.3, Madan Kewat is the nephew of the informant and son of Ram Kanwar Kewat. He has stated that at the time of occurrence he was at his house when he

heard hulla of Maha Kewat and his wife, then he came but and ran, since his house is just by the side of informant's house. Then he saw Badho Kewat and his wife coming out from the house. He asked Badho Kewat as to why he has assaulted Mangri Devi, then he told him to go and give water to her. Subsequently, she was taken to the hospital where she died. In his cross examination he has stated in para 7 that he was the first person to reach the place of occurrence. Then about 20/25 female members came there and then the injured was taken to the hospital. When he reached the place of occurrence, he stated in his cross examination in para-8 that he only saw wife of Maha Kewat shouting and she became unconscious. He had no opportunity to look on her. She was taken to the hospital.

12. The next important eye witness is P.W.5, Mina Devi, daughter of the informant, Maha Kewat. She has stated that at the time of occurrence she was in her house. On hearing hulla of her mother she had come out of the house along with his mother and she saw that his uncle, Badho Kewat is assaulting his father. When his mother intervened, then she was caught hold by her aunt, Akli Devi and uncle, Badho Kewat brought spade and assaulted her mother upon which she become unconscious due to head injury and finally she was taken to the hospital where she died during treatment. In her cross examination she has stated at para 6 that when her mother fell down then she was there with Madan and Kalwa. She also admitted in para 9 that there was dispute between her father and her uncle due to their property, since before this occurrence.

13. Two other witnesses to be considered are P.W.1, Kalwa Kewat and P.W.9, Tribeni Kewat. They came to the spot immediately after the occurrence. P.W.1 has stated in the court that when he reached the place of occurrence then he saw the accused, Badho Kewat running away from his house. He had spade in his hand and Mangri Devi was lying on the pathway with bleeding injury on her head. He admitted in his examination in chief that he had not seen Badho Kewat assaulting Mangri Devi. P.W.9 has also stated that on hearing hulla he reached the place of occurrence and saw Badho Kewat running away with a spade in his hand and saw Mangri Devi lying on the ground on the path way with head injury.

14. The doctor, P.W.11, Ram Nagina Sinha, who conducted the post mortem examination on the dead body of the deceased, Mangri Devi found only singly injury on the scalp which was lacerated would -4" x 2" bone deep with fracture of both the vital bones. Lacerations of menigal were present with haemotoma and haemorrhage, laceration of brain matter was present with haemotoma. According to the doctor that single injury which caused fracture of scalp bone and laceration of brain haemorrhage causing the death.

15. The Investigating Officer, Anwar Khan (P.W.10) has also supported the prosecution case. He has proved the formal F.I.R. as well as the fardbeyan. He has also stated that the spade was presented by the son of the informant. He found no sign of bleeding on the face, since it was stated that face was clean. After examination of the witnesses he submitted chargesheet against the

accused persons.

16. After hearing the parties and going through the prosecution witnesses, we find that the prosecution has proved beyond reasonable doubt that some fight was going on with regard to the entry of the pathway between the two brother, Badho Kewat - Appellant No. 1 and Maha Kewat-informant and suddenly when the appellant was trying to assault the informant with brick, then the (sic) intervened, then the appellant No. 1, Badho Kewat brought spade and gave a single blow on the head of deceased, Mangri Devi.

17. As far as the appellant No. 2, Akli Devi, W/o of Badho Kewat is concerned, the informant who had given the fardbeyan had never mentioned even once that Akli Devi came out from her house and she participated in the occurrence. It appears that subsequently, since, he had enmity with his brother due to land dispute, he in connivance with his family members had developed a case and introduced Akli Devi. It is important to note that P.W.2, 3 and 5 who came immediately after the occurrence have not stated that they saw Akli Devi taking any part in the assault of Mangri Devi. According to P.W.3, he was the first person to reach the place of occurrence, but he could also not see Akli Devi participating in the assault.

18. In that view of the matter, in our opinion, we give benefit of doubt to Appellant No. 2-Akli Devi and she is acquitted from the charges levelled against her.

19. However, appellant No. 1, Badho Kewat is concerned, as per the discussion of the witnesses, it is clear that appellant - Badho Kewat had no intention to cause the death of Mangri Devi. A fight was going on between the appellant No. 1, Badho Kewat and informant, Maha Kewat and when the appellant No. 1, Badho Kewat was assaulting the informant with fist and blow and then threw brick upon him then suddenly deceased, Mangri Devi intervened, upon which the accused went inside the house and after coming out gave a spade blow on her head. Since, there is no repetition of blow and also as per the evidence of P.W.3 and P.W.5, when they asked the accused about the assault, then the accused, Badho Kewat asked them to give water to Mangri Devi, which shows that he had no intention to commit murder of Mangri Devi, his own sister-in law from his brother side as well as from his mother in Law's side.

20. In the facts and circumstances of the case, it appears that single blow was given by the appellant No. 1, Badho Kewat to the deceased, hence his case comes u/s 304 (Part-II) exceptions-IV of the I.P.C. In that view of the matter, the conviction of the appellant No. 1, Badho Kewat u/s 302/ 34 of the I.P.C. is altered to Section 304(11) of the I.P.C.

21. It appears that the appellant No. 1 has remained in jail for about 10 years, since, after filing of the appeal no bail was granted to him and he was taken into custody just after the pronouncement of judgment on 8.5.2000. In that view of the matter, in our opinion the sentence of 10 years undergone by him during trial

and appeal is sufficient punishment and if, the appellant No. 1, Badho Kewat is not wanted in any other case, he is directed to be released from jail custody forthwith.

22. Further, appellant No. 2, Akli Devi, who is on bail has been given benefit of doubt and acquitted from the charge. She is discharged from the bondage of her bail.

23. With the aforesaid alteration/modification in the conviction and sentence, the appeal is allowed in part.