
(1999) 08 PAT CK 0049

In the Patna High Court

Case No : Criminal Appeal (D.B.) 93 of 1987

Bal Bahadur Ram @ Karak Ram and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

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

Citation : (1999) 3 BLJR 1923

Hon'ble Judges : R.N. Prasad, J;M.L. Visa, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The appellants have preferred this appeal against the judgment and order of conviction and sentence dated 3-1-1987 passed by 3rd Additional Sessions Judge, Bhojpur, Arrah in Sessions Trial No. 306 of 1984 whereby appellant Bal Bahadur Ram @ Karak Ram has been convicted for the offence u/s 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and rest two appellants, namely, Baleshwar Ram and Bahadur Ram have been convicted for the offence under Sections 302/34 of the Indian Penal Code and have been sentenced to rigorous imprisonment for life.

2. The prosecution case is that one Panchratan Ram gave his fardbeyan on 18-3-1984 at about 3.30 p.m. that while Nirmal Ram of Itarhi Anchal was passing through the lane and reached near the house of Chandrika Ram and Jiut Ram, appellants Baleshwar Ram and Bahadur Ram @ Lal Bahadur caught hold of his both hands and appellant Bal Bahadur Ram gave dagger blow on the chest as a result of which he fell down and became unconscious. After assault, they ran away towards north. Injured Nirmal Ram was taken to hospital where he succumbed to his injury. The motive of the occurrence was that brother of the deceased, namely, Nagina Ram was married with the sister of Bal Bahadur Ram against his will due to which there was enmity between the deceased and the appellants.

3. On the aforesaid fardbeyan formal first information report was registered and investigation was taken up. On completion of investigation, charge-sheet was submitted and the case was committed to the Court of Session for trial. The trial Court convicted the appellants as indicated above.

4. The defence of the appellants was that they have falsely been implicated in this case and they were innocent,

5. The prosecution in support of its case examined six witnesses. P.W. 1 is a formal witness who proved signature of Manendra Singh on the formal first information report, Ext. 2. P.W. 4, informant, and P.W. 5 were declared hostile. P.W. 3 is a doctor, who held post-mortem over the dead body. P.W. 6 is Investigating Officer. P.W. 2 claimed to be an eyewitness to the occurrence.

6. Entire case is based on the evidence of P.W. 2, who claimed to be an eye-witness. She stated in her evidence that she was going to her house after taking bath in the river. In the lane Nirmal Ram, the deceased, was ten steps ahead. Lal Bahadur, Baleshwar and Bal Bahadur @ Karak came from behind and Lal Bahadur and Baleshwar caught both the hands of Nirmal. Bal Bahadur @ Karak gave dagger blow on his chest. Nirmal fell down on the ground and the appellants ran away. She raised hullah and thereafter she became senseless. She regain sense at about 12 O'clock in the night and found herself in her house. She stated about the occurrence to her husband. Nirmal died at the spot. Bal Bahadur and Bahadur are sons of Baleshwar. In cross-examination, the witness stated that informant Panchratan Ram was also by her side. She had no talk with the informant. The appellants were in between her and the deceased. Her statement was recorded on the next day of the occurrence. She did not state before the police that she was ten steps behind the deceased, Nirmal. She also did not state in the Court that she was ten steps behind the deceased. She also did not say before the police that she became senseless after the occurrence and the appellants had gone to Nirmal from behind.

7. Learned Counsel for the appellants submitted that evidence of P.W. 2, the solitary witness to the occurrence is not wholly trustworthy and as such conviction and sentence of the appellants is bad in law. In this regard, it is necessary to scrutinise the evidence of P.W. 2. P.W. 2 claimed to be present at the place of occurrence. She stated in her evidence that the informant was also there but in the first information report name of P.W. 2 has not been stated as witness to the occurrence. She stated in her evidence that the deceased died at the spot but it is evident from the evidence of P.W. 6, the Investigating Officer, that the deceased was alive in the hospital but he died before he reached the hospital. She stated in examination-in-chief that she became senseless after the occurrence and she regained sense in the night at about 12 O'clock and found herself in her house but in the cross-examination, she stated that she did not state before the police to the aforesaid effect. The witness stated in her evidence that Lal Bahadur and Baleshwar caught both the hands of the deceased but before the police she did not state to the aforesaid effect which is evident from

the evidence of P.W. 6, the Investigating Officer. The witness stated in her evidence that when she regained her sense at about 12 O'clock in the night she narrated the incident to her husband but surprisingly her husband has not come to support the version of P.W. 2. She stated in her evidence that she was examined on the next day of the occurrence but learned Counsel for the the State after going through the record stated that her statement was recorded on the same day of the occurrence. It is well settled rule of law that conviction can be maintained on the evidence of solitary witness, provided the evidence of such witness on critical test appears to be wholly trustworthy and in a case where the evidence of solitary witness is neither wholly reliable nor wholly unreliable then corroboration is necessary for sustaining the conviction.

8. In the instant case, as discussed above, we find that evidence of P.W. 2, the solitary witness, is not wholly trustworthy due to the reasons as stated above nor there is any evidence on the record to corroborate her evidence.

9. Thus, on consideration, we find not safe to sustain the conviction of the appellants. Accordingly, this appeal is allowed and the judgment and order of conviction and sentence are hereby set aside. The appellants are discharged from the liability of their bail bonds.