

(2012) 07 PAT CK 0073

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 149 of 1996

Balroop Yadav and Lallan Rai

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 161(3)
Penal Code, 1860 (IPC) — Section 302, 304, 307, 323, 337

Citation : (2012) 07 PAT CK 0073

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Sanjeev Ranjan, for the Appellant; Ajay Mishra, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. The appellants have preferred the appeal against the judgment and order dated 16.07.1996 passed by the learned Xth Additional Sessions Judge, Patna in Sessions Trial No. 242 of 1991/242 of 1996 by which they have been convicted u/s 304 Part-II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. The prosecution case is based on the oral statement of Parvati Devi (P.W.4), the widow of the deceased Ram Swaroop Yadav. The alleged occurrence is said to have taken place on 06.10.1989. The informant has stated in the fardbeyan that the deceased Ram Swaroop Yadav and the appellant Balroop Yadav were full brothers. They were also residing in the same house which was partitioned between the family by raising a wall. The further case of the informant is that on 06.10.1989 at about 12 noon, the informant and co-accused Kismatia Devi, wife of the appellant Balroop Yadav were engaged in wordy duel for a piece of land situated behind their house. In the meantime, the deceased Ram Swaroop Yadav came and tried to pacify them. Immediately, thereafter, the appellants Balroop Yadav and Lallan Rai armed with lathi came at

the spot. The appellant Balroop Yadav is alleged to have caught hold of Ram Swaroop Yadav and on his command the appellant Lallan Rai assaulted him with lathi all over his body. The informant further alleges that co-accused Kishmatia Devi, Meena Devi and Shushila Devi also came and brick bated upon her and the deceased Ramswaroop Yadav due to which they sustained severe injuries. The informant in her fardbeyan further states that with the help of her Samdhi, Ramanand Yadav(P.W.3) the victim Ramswaroop Yadav was taken to Phulwarisharif police station.

2. On the basis of the oral statement given by the informant Phulwarisharif P.S.case No. 273 of 1989 was registered under Sections 323, 307, 342 and 337/34 of the Indian Penal Code on 06.10.1989 at 3 p.m. and investigation was taken up. The police sent requisition to the Medical Officer, Govt. Hospital, Phulwarisharif for examining the two injured on 06.10.1989 itself. Both the injured were then taken to Phulwarisharif State Dispensary where P.W.9 Dr. Lila Singh examined them and issued injury reports. However, in course of the treatment, the victim, Ram Swaroop Yadav, died. The Investigating Officer, Bipin Kumar (P.W.10), thereafter, prepared the inquest report and sent the dead body to P.M.C.H. for postmortem examination. On 07.10.1989 Dr. Bishundeo Prasad(P.W.11) held the postmortem examination on the dead body of the deceased at P.M.C.H. Patna.

3. The Investigating Officer, in course of investigation, inspected the place of occurrence, recorded the statement of witnesses u/s 161 (3) of the Code of Criminal Procedure and after receipt of the postmortem report, submitted chargesheet under Sections 342, 323 and 304/34 of the Indian Penal Code against the accused persons. The learned Chief Judicial Magistrate after taking cognizance of the offence committed the case to the court of Sessions for trial.

4. The defence is complete denial of the occurrence. According to the defence, the prosecution case is false and baseless. The deceased was an old and infirm person who received injury on account of fall which he sustained while going to defecate. As stated above, apart from the two appellants, three others were also put on trial. The trial court framed charge against all the five accused persons u/s 302 of the Indian Penal Code and apart from the appellants, the three lady accused, namely, Kishmatia Devi, Meena Devi and Sushila Devi were further charged for the offence punishable u/s 337 of the Indian Penal Code. The accused persons denied the charge framed against them and claimed to be tried.

5. In course of trial, the prosecution examined eleven witnesses, they are; 1. P.W.1 Kiran Devi and P.W.2 Punam Devi, daughters of the deceased, P.W.3 Ramanand Yadav, Samdhi of the victim, P.W.4 Parvati Devi, widow of the deceased, P.W.5 Jawala Prasad, declared hostile, P.W.6 Mundrika Ram, declared hostile, P.W.7 Hriday Prasad, tendered for cross-examination, P.W.8 Dr. Bishundeo Prasad, P.W.9 Dr. Lila Singh, who had examined the two injured in hospital and issued their injury reports, P.W.10 Bipin Kumar, the Investigating Officer and P.W.11 Dr. Bishundeo Prasad, who held the postmortem examination.

6. The prosecution has proved signature of Ramanand Rai and Ramayan Rai as witnesses to the inquest which have been marked as Exts-1 and 1/1 respectively. The injury reports of Parvati Devi and Ramswaroop Yadav have been proved and marked as Exts-2 and 2/1 respectively. The formal FIR has been proved and marked as Ext-3. The requisitions of police sent to the medical officer, Phulwarisharif for issuance of the injury report of Ramswaroop Yadav and Parvati Devi have been proved and marked as Exts-4 and 4/1 respectively. Ext-5 is the inquest report and Ext-6 is the postmortem report of the deceased Ramswaroop Yadav.

7. The trial court on appreciation of evidence on record acquitted the three lady accused put on trial along with the appellants but by the same judgment convicted the appellants u/s 304 Part-II of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years.

8. P.W.1 Kiran Devi and P.W.2 Punam Devi are daughters of the deceased. P.W.1 states in her examination-in-chief that on the date of occurrence she was present in the house when altercation took place between her mother and the mother of appellant Lallan Rai. In the meantime, appellant Balroop Yadav caught hold of her father and ordered appellant Lallan Rai to assault, upon which, appellant Lallan Rai assaulted her father with lathi. The accused Kishmatiya Devi, Meena Devi and Sushila Devi also assaulted her father with brick. The accused persons, after assaulting her father, fled away. Her father was taken to Phulwarisharif police station by the neighbours and from there he was taken to hospital where he died.

9. In cross-examination she admits that she is already married and the information regarding the occurrence was transmitted to her in her matrimonial home. She further admits that she did not accompany her father at the police station and was not present at the time of recording of the fardbeyan. She also admits that her sister Punam Devi was also married prior to the occurrence and her Sasural is at a distance of about five kos(about ten kilometers).

10. P.W.2 Poonam Devi also states in her examination-in-chief that she was present at the time of occurrence. However, in her cross-examination she admits that prior to her recording the statement in court her statement was never recorded by the police. She further admits that she was not with her mother at the time of recording of her fardbeyan by the police.

11. P.W.3 Ramanand Yadav is Samdhi of the deceased. He has supported the allegations as made in the FIR. He is also a witness to the fardbeyan. He has identified his signature over the inquest report which has been marked as Ext-1. He has also identified the signature of Ramnarayan Rai on the inquest report which has been marked as Ext-1/1. In cross-examination he has denied the suggestion of the defence that he was not present when the occurrence took place. His attention was drawn towards his previous statement made to the police u/s 161 of the Code of Criminal Procedure in which he had stated himself

to be a hearsay witness. However, he denied the defence suggestion. On the other hand when P.W.10 Bipin Kumar, the Investigating Officer of the case was examined, he was confronted with the previous statement of P.W.3 Ramanand Yadav and P.W.10 Bipin Kumar admitted that in course of investigation P.W.3 did not claim himself to be an eye witness. He made his statement only as a hearsay witness.

12. P.W.4 Parvati Devi is the informant of the case and wife of the deceased. She is the most important witness in this case. In her examination-in-chief she states that the acquitted co-accused Kishmatia Devi entered into an altercation with her. Her husband intervened and said as to why they were quarreling. In the meantime, the appellant Balroop Yadav ordered appellant Lallan Rai to kill her husband. She further states that appellant Balroop Yadav caught hold of her husband whereas the appellant Lallan Rai made indiscriminate assault with lathi on him as a result of which her husband fell down and thereafter Kishmatiya Devi, Meena Devi and Sushila Devi assaulted him with bricks and stones. Her husband became unconscious and thereafter the accused persons fled away. The witnesses came and took her husband to the police station and from there he was taken to hospital. In course of treatment he died.

13. In cross-examination P.W.4 states that the appellant Lallan Rai made indiscriminate assault with lathi on her husband. She admits that there was no previous land dispute between the parties. She denied the suggestion of defence that nobody had assaulted her husband with lathi and he sustained injury as he fell down due to poor vision. However, this witness admits that her husband was not blind but had a poor vision. She also admits that the Investigating Officer did not inspect the place of occurrence.

14. P.W.5 Jawala Prasad and P.W.6 Munarik Ram have been declared hostile by the prosecution.

15. P.W.7 Hridaya Prasad has been tendered by the prosecution for cross-examination.

16. P.W.8 Dr. Bishundeo Prasad, son of Sri Sunder Mahto seems to have wrongly been examined as a witness in the present case as his name resembles with P.W.11 who had conducted the postmortem examination of the dead body of the deceased. P.W.8 clearly stated that on 07.10.1989 he was not the posted in P.M.C.H. and was not the author of the postmortem report.

17. P.W.9 Dr. Lila Singh was posted at Phulwarisharif State Dispensary as Medical Officer on 06.10.1989. On that day at 4.15 p.m. she examined the informant and found the following injuries on her person:-

(i) Bruise on back 3 c.m. x 1 c.m.

(ii) Abrasion 2 cm x 1" cm on right wrist joint.

18. According to the doctor the injuries were simple caused by hard blunt object

such as brick bat. She has proved the injury report of the informant which has been marked as Ext-2. On the same day at about 4.15 a.m. she examined the deceased, Ram Swaroop Yadav and found the following injuries on his person:-

(i) Haematoma 2 cm x 2.5 cm over left scapular region to tenderness and swelling over left scapular region.

(ii) Lacerated wound 1" cm x 2.5 cm in between left little finger and ring finger.

19. The opinion regarding nature of injury with respect to injury No. 1 was kept reserved in absence of X-ray report. However, injury Nos. 1 and 3 were held to be simple caused by hard and blunt object such as lathi. The injury report of the deceased was proved and marked as Ext-2/1. In cross-examination P.W.9 states that the injuries found on the person of the informant were superficial in nature and could be possible due to fall on hard surface. She also admits that she did not receive the X-ray report of the deceased and thus she cannot say regarding the nature of injury No. 2 found on the person of the deceased.

20. P.W.11 Dr. Bishundeo Prasad, as stated above, is the doctor who conducted the postmortem examination on the dead body of the deceased on 07.10.1989 at P.M.C.H., Patna. He found the following ante-mortem injuries on the dead body of the deceased:-

(i) Abrasion size 1 x 1/2" was present on the left shoulder, 1" below the tip of shoulder joint. (ii) Abrasion of size 1" x 1" on dorsum of left hand.

21. In the opinion of the doctor, the cause of death could not be ascertained. However, viscera was preserved for chemical analysis. According to the doctor, the death had taken place within 24 hours. He has proved the postmortem report which has been marked as Ext-6 in course of trial. In cross-examination he admits that abrasion was possible even by fall on rough substance. He also admits that the injuries were quite superficial.

22. The Investigating Officer of the case, namely, Bipin Kumar has been examined as P.W.10 in the present case. In his deposition, he has stated that on the date of occurrence he was posted as Sub-Inspector of Police in the Phulwarisharif police station. He recorded the fardbeyan of the informant and put his signature over it. The officer-in-charge of the police station had also signed over the fardbeyan. The fardbeyan has been proved and marked as Ext-3. He has further stated that he took up the investigation. He sent requisition to the Medical Officer, Phulwarisharif State Dispensary for examining the informant and her husband and issuing respective injury reports. He has proved the requisitions sent to the Medical Officer which have been marked as Ext-4 and 4/1 respectively. When the victim died he prepared the inquest report which has been marked proved and marked as Ext-5 in course of trial. He inspected the place of occurrence, recorded the statement of witnesses, received the injury reports and postmortem report and on conclusion of investigation, submitted chargesheet in the case.

23. I have heard the parties and perused the record. Apparently, P.W.1 Kiran Devi and P.W.2 Poonam Devi have not witnessed the occurrence. They are daughters of the deceased who were married much before the occurrence. The evidence is that they were in their respective matrimonial home on the date of occurrence and after receiving information regarding the incident they came to their parental home. P.W.2 has clearly admitted in cross-examination that her statement was never recorded by police during investigation. She deposed as a witness for the first time in court. Similarly, when I closely look to the evidence of P.W.3, I further find that he has been contradicted by the Investigating Officer in material particular. The Investigating Officer admits in cross-examination that in course of investigation P.W.3 had not claimed himself to be an eye witness to the occurrence. To the contrary, he had stated that he came to know about the occurrence from others. The prosecution gets no help from the evidence of P.Ws.5, 6, 7 and 8. Thus, I find that apart from the official witnesses, the case rests on the sole testimony of the informant Parvati Devi(P.W.4) who also happens to be the wife of the deceased. She has consistently stated that the appellant Balroop Yadav caught hold of the deceased whereas the appellant Lallan Rai repeatedly assaulted him with lathi. The acquitted three accused also assaulted her husband with bricks and stones. When I look to the deposition of the doctors, I find that the oral testimony of P.W.4 is not corroborated by medical evidence. The deceased had sustained only two superficial abrasions. Both the doctors who issued injury report and postmortem report respectively admits in cross-examination that the injuries found on the person of the deceased were possible due to fall on rough surface. A definite suggestion has been given to P.W.4 that her husband was blind and he sustained injury as he fell down due to blindness. P.W.4 has denied the suggestion that her husband was blind but she admits that he had a poor vision. In such circumstance, the defence of the appellants cannot be ruled out. The manner of assault alleged by P.W.4 is not corroborated by medical evidence. If she is to be believed her husband sustained countless number of lathi blows. He also sustained injuries at the hands of three lady accused persons who are said to have assaulted him with bricks and stones but the doctor could notice only superficial injuries on his person. Thus, the manner of occurrence alleged by P.W.4 also becomes doubtful. If the reliability of the evidence of P.W.4 is doubted, nothing remains in the case on the basis of which an order of conviction can be sustained. I further find that P.W.4 has not uttered a word in her deposition regarding the assault made to her by the accused persons.

24. In sum and substance, what emerges from the discussion made hereinabove is that the witnesses who deposed on behalf of the prosecution are highly interested and closely related to the deceased and the informant. The three independent witnesses, namely, P.W.5 to 7 have not supported the prosecution case. Out of the four material witnesses examined on behalf of the prosecution P.Ws.1 to 3 are not witnesses to the occurrence. They came to the place of occurrence after the occurrence had already taken place. The injury report and

the postmortem report do not support the ocular testimony of the informant. Under such circumstances, in my view, it can safely be said that the prosecution has failed to prove its case beyond reasonable doubt. In the result, the appeal is allowed. The judgment and order of conviction dated 16.07.1996 passed in Sessions Trial No. 242 of 1991/242 of 1996 by learned Xth Additional Sessions Judge, Patna is set aside.