
(2000) 01 PAT CK 0106
In the Patna High Court
Case No : Criminal Appeal No. 256 of 1989

Chandreshwari Prasad Yadav and Another	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision : 24-01-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2000) CriLJ 1542

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Chandeshwar Jha, for the Appellant; Rudra Deo Kumar Sinha, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—The abovenamed appellants were convicted by Sri Anirudha Prasad Choudhary, 2nd Additional Sessions Judge, Madhopura in Sessions Trial No. 38 of 1986 dated 17-6-1989, u/s 304, Part II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years. Earlier they were charged under Sections 300 and 302 of the Indian Penal Code and the lower Court found them guilty u/s 304, Part II of the Indian Penal Code and accordingly convicted and sentenced them.

2. The prosecution case, as alleged in the fardbeyan of one Moti Yadav was to the effect that on 27-12-1983, he was at his home and heard the sound of cutting of bamboo from bamboo clump, so he came out on the pretext of easing himself and on coming near the bamboo clump, he found that the aforesaid two appellants, namely, Chandreshwari Prasad Yadav and Kamleshwari Prasad Yadav were cutting bamboo from bamboo, clump, he protested to the latter, but the latter did not pay any heed and continued to cut the bamboo. The informant Moti Yadav tried to restrain them physically but he was subjected to assault with lathi by both the accused appellants. The informant Moti Yadav fell down as a result of the assault on the road by the side of the bamboo clump. On alarm being raised,

Golai Yadav and others came to the place of occurrence. Subsequently, the injured was brought to home from where he was carried to police outpost at Parmanandpur where his fardbeyan was recorded by A.S.I. S. Lal.

3. The accused appellants pleaded innocence and alleged false implication.

4. In the lower Court, 2 witnesses were examined by the prosecution to prove its case. Out of the witnesses examined, P.W. 9 is the I.O., P.W. 8 was the compounder who gave first aid to deceased Moti Yadav and P.W. 7 was Parmanand Yadav, who was present at the Phanri (police outpost) where the informant came and gave his fardbeyan. He learned about the aforesaid occurrence from Moti Yadav, the informant. In cross-examination by the accused, this witness made significant disclosure that the accused appellants and the informant's family had effected partition of their property and this partition was on oral partition. P.W. 6 was the witness who was tendered and this witness in cross-examination by the accused stated that Subdhi Yadav (P.W. 1) was the brother of Moti Yadav who was the ploughman of Gulal Yadav (P.W. 2). P.W. 5 was Dr. B.N. Mishra who conducted autopsy on the dead body of Moti Yadav, P.W. 4 was a formal witness who brought on record the fardbeyan of the informant. P.W. 3 was Sita Devi wife of the deceased informant Moti Yadav, P.W. 2 was Gulal Yadav, the independent witness and P.W. 1 was Subdhi Yadav who was admittedly brother of the informant Moti Yadav. The evidence of P.Ws. 1, 2 and 3 is to the effect that there was hulla raised at the place of occurrence, which was due to cutting of bamboo from bamboo clump of the informant Moti Yadav. On protest by Moti Yadav and Subdhi Yadav, both the accused appellants assaulted Moti Yadav with lathi. Moti Yadav fell down and subsequently he died as a result of the assault. So far as the evidence of these three witnesses, which was on the material particulars of assault is concerned they have remained unshaken, P.W. 5, the doctor, found one lacerated wound 1 1/2" x 1/2" x 1/2" posteriorly situated on the left side of the scalp. The doctor said that this injury was sufficient to cause death in ordinary course of nature. He had further stated that death was caused by contusion of the brain. The doctor further said in cross-examination by the accused appellants that the above injury did not permit of such bleeding.

5. The evidence was criticised on the ground, firstly, that the I.O. (P.W. 9) did not find any blood at the P.O. Moreover, P.W. 1 was admittedly the brother of the informant who was the plough man of P.W. 2, the so-called independent witness, and thus all the witnesses in this case were interested ones. However, I am of the opinion that P.W. 2 specifically said in chief itself that he had his house just near the bamboo clump and, therefore, he had gone there on hearing the noise, so he was a natural witness and simply because P.W. 1 was his plough man, I do not think, P.W. 2 would be tainted with interestedness. The ploughmen are paid by their masters. So he may not be under any obligation to depose falsely in their favour. In this view of the matter, the evidence of P.W. 2 was not unworthy of reliance. P.W. 3, the wife of the informant, was also a natural witness because she rushed to the P.O. on hearing the alarm. It has also come in evidence that

the accused appellants and the informant's family are agnates. Therefore, I do not think, the informant's family would be implicating them in a false case without any rhyme or reason. Undoubtedly, P.W. 1 Subdhi Yadav submitted at paragraph 3 that there was an occurrence of dacoity in the house of Kano Yadav, accused, before the occurrence of this case in which this witness was made an accused. This admission may not shake the evidence of P.W. 1 because I do not think, agnates would implicate agnates in a false case of murder on account of pre-existing enmity, rather the probability of the accused appellants assaulting the informant on account of this inimical position is also very such there.

6. The evidence was next criticised on the ground that P.W. 1 admitted that bamboo clump was joint clump over which the accused appellants had also laid their claim. This, however, also may not derogate from the prosecution case because claims and counter claims of a particular piece of land or bamboo clump may naturally lead to a situation which may result in assault etc.

7. It was further argued on behalf of the appellants that the doctor who examined the deceased first could not find any serious injury on his person and, therefore, there was no case u/s 302, IPC, nor u/s 304, IPC. In this connection, evidence of P.W. 8 is relevant. He has stated in his chief itself that on 27-12-1983 Moti Yadav came to his dispensary and he had found only scratch on his head, but the postmortem examination has revealed that the deceased had sustained an injury, as described by me above, which resulted in his death on account of contusion of the brain. If any body is assaulted on his head with a hard blunt substance, there may not be such visible injury, though there may be internal haemorrhage resulting into contusion of the brain and so the death on account of the injuries cannot be ruled out.

8. It was further submitted before me that, as stated in the fardbeyan, the informant had sustained lathi blows on his head and other parts of his body but not on hand. But I find that P.W. 5 has found three injuries on the person of the deceased. Injury No. 2 was swelling on the back of right hand and the third injury was swelling on the left ankle. In this connection, I am of the opinion that the fardbeyan is not encyclopaedia of the entire case and there may be some misstatement on account of confusion and so the chance of the deceased having sustained injury on his right hand, as the doctor (P.W. 5) found, cannot be ruled out.

9. So far non-finding of blood etc. at the P.O. is concerned, witnesses may in their enthusiasm make over statement but the doctor's evidence in this connection is highly significant and it is naturally so because assault with blunt substance may not result in profuse bleeding. The P.O. which was the site of the bamboo clump must be a place which would be used by passers by, so the chance of the blood being washed off cannot be ruled out. There was objective finding of bamboo being cut from the bamboo clump according to the evidence of P.W. 9 the I.O.

10. The above discussion on the entire gamut of evidence reveals that there was an occurrence of assault upon Moti Yadav at the hands of the accused which subsequently resulted in his death. Of course, the assault took place in a sudden heat of passion and there was no pre-meditation or pre-planning for committing the murder. So the accused appellants cannot be said to have any intention to kill the informant (deceased). However, the assault which they resorted to resulted in death of the victim just in a day or two. So, I do not think, they can escape from the liability of their culpable act. Naturally, therefore, the Additional Sessions Judge I found them guilty u/s 304 Part II of the Indian Penal Code.

11. So far sentence is concerned, that may be reduced to 7 years in the ends of justice. As per law the accused appellants suffered prior to and during the trial which may be set off against the period of sentence.

12. In the result, this appeal is dismissed with the above modification in the sentence.