
(2014) 10 PAT CK 0025

In the Patna High Court

Case No : Criminal Appeal (DB) No. 156 of 1992

Faguni Sahni

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

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

Citation : (2015) CriLJ 474

Hon'ble Judges : Dharnidhar Jha, J;A.K. Lal, J

Bench : Division Bench

Advocate : Uma Kant Prasad, Advocate for the Appellant; Ajay Mishra, APP, Advocate for the Respondent

Judgement

Dharnidhar Jha, J.—The appellants were placed on trial in Sessions Trial No. 159 of 1979 by the learned 3rd Additional Sessions Judge, Motihari after indicting them with commission of offence under Section 302/ 34 IPC and by the judgment dated 08th April, 1992 they were held guilty of committing the said offence. The appellants were heard on sentence on 10.04.1992 and each of them was directed to suffer rigorous imprisonment for life. The appellants have preferred the present appeal to question the correctness and propriety of the judgment of conviction and order of sentence.

2. The incident had occurred in the night intervening 11-12th of August, 1978. The prosecution story was that informant Sita Devi along with her deceased husband, namely, Gopal Bhagat was sleeping in her house. Gopal Bhagat felt an urge to urinate and came out of the house. The informant stated that she heard some cries and when came out to find that her husband was being beaten up by lathi by the accused persons as a result of which he had fallen down. The deceased was bearing bleeding injuries.

3. The deceased was shifted to Malahi Primary Health Centre where P.W. 7 Dr. Babban Bihari Prasad was posted as Medical Officer Incharge and he did neither admit the deceased nor given any treatment to him and referred him to Sadar

Hospital, Motihari. Accordingly, the deceased was brought to Motihari where he died.

4. P.W. 6 Ram Nihora Thakur was the Officer-in-Charge of the concerned police station and he took up the investigation after drawing up the FIR and after close of the same submitted the chargesheet for the trial of the appellants which ultimately ended in their conviction.

5. The defence of the appellants was that deceased Gopal Mahto had taken the lady Sita Devi as his concubine and on account of that he had earned some enemies and some of them who could not be identified nor could be known, had assaulted him in the cover of darkness as a result of which he died.

6. Out of nine witnesses P.Ws. 1, 2, 3, 4 and 5 were the persons who had been attracted to the scene of occurrence and their evidence was that they did not find any one at the scene of occurrence after having arrived there and they had been told by Sita Devi that the present set of appellants were the persons who had committed the offence. Thus, one of the appellants, namely, Mahanth Bhagat (P.W. 4) had stated that he had not been told anything about Sita Devi and he did not find any one present there. The court below considered the solitary evidence of Sita Devi and held her a trustworthy witness and passed the impugned judgment. What is urged before us is that the very use of the solitary evidence of Sita Devi, who was not only an interested persons who appear also not to have seen the occurrence in its real part, was completely illegal as the lady was not a wholly reliable evidence.

7. It appears after scrutinizing the evidence of P.W. 8 Sita Devi that she had herself admitted that when her husband exited from the room to urinate she remained inside lying in the bed and that she could come out only after she had picked up some commotion. P.W. 8 Sita Devi claimed to have arrived at the scene of occurrence and she had found that her husband had been given blows with lathi by all the three appellants. During cross-examination P.W. 8 was elaborating the number of blows which has been given by each of the appellants. She had stated, as may appear from perusal of her evidence at page-31 of the paper book that appellant Faguni Sahni had given three lathi blows to her husband, all the blows having fallen on the vault of the deceased. Appellant Mankeshwar Bhagat had given solitary blow and that blow had also landed on the same part of the head of the deceased. The blows given by appellant Bhola Bhagat had also landed on the head of the deceased. During her cross-examination she was candid in admitting that she was earlier married to one Ram Prasad and after he was dead she married the deceased Gopal Bhagat. Some of the witnesses had stated that the lady had deserted Ram Prasad during his life time and had gone with deceased Gopal Bhagat with whom she was carrying an amorous relationship. The lady was cross-examined as may appear from her evidence at page-30 on the point. P.W. 8 further admitted in paragraph-31 of her evidence that the accused persons were on litigating terms or had some dispute definitely with the deceased in respect of certain land though no case was taken to the

Court. Thus, what appears is that, on the one hand the lady was living with deceased Gopal Bhagat as his mistress and on the other the accused persons were disposed inimically with her husband. In cross-examination the lady was suggested by being cross-examined to her previous statement that she had never seen the occurrence and in fact when she came she found her husband lying in an injured condition which fact was strongly denied by the lady (P.W. 8). We find from the inquest report which was marked as Ext-1 that there blows with lathi were given to the forehead of the deceased and the number of blows could be multiple. However, it appears from the evidence of P.W. 8 that her arrival at the scene of occurrence was such as could not have made it possible for her to see as to who had assaulted her husband. The lady had stated that she came after the deceased had been assaulted and that blows were given while he was sitting to urinate. In our considered view the size of injuries which was recorded in the inquest report could not have been possible specially when it was on the forehead. If the deceased had been assaulted in a position while he was urinating one may suppose that the deceased could have been assaulted in the sitting position only from his back and the injuries on the forehead or on the areas in front of the head of the deceased makes the prosecution story unacceptable.

8. In the above view, we find that P.W. 8 Sita Devi could not be a wholly reliable witness and considering this we find merit in the present appeal, which is allowed. The judgment of conviction and order of sentence are hereby set aside. The three appellants are acquitted of the charges they had been held guilty of. They are on bail. They shall stand discharged from the liabilities of their bail bonds.