
(2005) 07 PAT CK 0051

In the Patna High Court

Case No : Criminal Appeal Nos. 385 and 413 of 1997

Indradeo Singh and Others etc.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Citation : (2005) 07 PAT CK 0051

Judgement

Aftab Alam, J.—Both the appeals are directed against the same judgment and order passed By the trial Court. In Criminal Appeal No. 385 of 1997 there are three appellants, each of whom is convicted under Sections 302 and 452 of the Penal Code and sentenced to undergo rigorous imprisonment for life and for one year respectively for the offences of murder and house-trespass. In Criminal Appeal No. 413 of 1997 there are four appellants; all of them are convicted only u/s 452 of the Penal Code with the sentence to undergo rigorous imprisonment for one year.

2. Before the trial Court appellant No. 1 in Cr. Appeal No. 385 of 1997, namely, Indradeo Singh alias Indo Singh alone was charged u/s 302 of the Penal Code. All the remaining six appellants were charged u/s 302/149 of the Penal Code. All the seven appellants were further charged separately under Sections 452 and 380 of the Penal Code. At the end of the trial, however, they were convicted and sentenced as noted above.

3. The prosecution case was instituted on the basis of the statement of one Manoj Kumar (P.W. 6, the son of the deceased Ahliya Devi) recorded as fard-e-bayan (Ext. 7) by an Assistant Sub Inspector of Police of Barh P.S. at Barh hospital on 27-12-1994 at 8.30 p.m. the fard-e-bayan was incorporated in a formal FIR (Ext. 8) instituted on the same day at 9-30 p.m. The FIR appears to have been seen by the A.C.J.M., Barh on 29-12-1994.

4. In his statement before the police the informant Manoj Kumar stated that on that day (27-12-1994) at about 7.15 all the seven appellants along with another accused Kamo Singh came to his house at village Dahaur under Barh P.S. The

accused, who were variously armed with rifles and guns, entered his house and Kamo Singh asked the others to kill his father Ram Lagan Singh. At that time the informant was warming himself sitting near a fire by the side of his house. On seeing the accused going into his house with arms, he hid himself. The accused surrounded his father and started beating him. At this point his mother rushed there and fell upon him covering him under her body. Then, appellant Indradeo Singh alias Indo Singh inflicted Chhura blows to her and other accused too assaulted her with the butt of their rifles and guns as a result of which she fell down. The accused then went further inside the house and took away from there several boxes, food-grains and other house-hold articles. The informant and his family members were too frightened to protest or say anything. After the accused left, the informant, with the help of the neighbours, brought his mother and father to the hospital. The mother was in an unconscious state. With regard to the reason for the occurrence he said that on a piece of land he had sown gram and a few days later the accused had sown Khesari in the same land. After the seedlings came out, the informant un-rooted the Khesari crops sown by the accused earlier on that day. The accused were powerful and strong people and angered by his action they raided his house with arms and assaulted his mother causing grievous injuries to her and also looted away his house-hold articles and other things.

5. The FIR was initially instituted u/s 307 and other allied sections of the Penal Code but the informant's mother died during that night and hence, Section 302 of the Penal Code too was added to the case.

6. After investigation the police submitted charge-sheet against all the eight accused named in the FIR showing Kamo Singh as absconder and finally the seven accused were put on trial with the charges, as noted above, framed against them.

7. In support of its case the prosecution examined as many as fourteen witnesses out of whom P.Ws. 1 to 6 are on the point of actual occurrence. P.W. 10 is the doctor who examined and treated Ahliya Devi, the deceased and P.W. 9 is the doctor who held post mortem on her body. P.W. 11 is another doctor who had examined Ram Lagan Singh, the father of the informant and had found some injuries on his person. P.W. 12 is the I.O. P.W. 14 was the Officer Incharge of Barh P.S. at the material time and he had submitted charge-sheet against the accused to the case. P.Ws 7 and 8 were the witnesses of the inquest report and P.W. 13 was examined to prove same station diary entry.

8. The material witnesses, that is to say, P.Ws. 1 to 6 can be broadly classified into three groups. P.Ws. 1 and 2 are two villagers who came to the informant's house after the assault was over. P.W. 1 stated that on hearing hulla he went to the house of the informant where he found Ram Lagan Singh and his wife lying on the Osara (verandah) in an injured condition. Injuries on their persons were caused by (butts of) rifles and guns and chhura. Manoj Kumar (the informant) told him that they were assaulted by the accused, namely, Kamo Singh and the

present appellants. P.W. 2 is similarly another villager who arrived. at the informant's house on hearing hulla. He saw the eight accused, including Kamo Singh, variously armed, going away from there. On going inside the house, he found Ram Lagan Singh and his wife lying on the ground in an injured condition.

9. The rest of the six material witnesses are the inmates of the house, P.W. 6 being the informant and P.W. 5 being his father who was the first target of the accused. The other two witnesses, namely, P.Ws. 3 and 4 are respectively the sister and the wife of the informant. Both P.Ws. 3 and 4 fully support the prosecution case but on the point of actual assault both P.Ws. 3 and 4 deposed before the trial Court that all the accused started beating Ram Lagan Singh with the butts of their respective guns and rifles. As a result of the assault, he fell down on the ground. Then his wife went to the spot to protect him and laid herself down so as to cover him under her body. Then, Indradeo Singh gave a Chhura blow on her head and another by the side of her eye-brow. The other accused also hit her with the butts of their respective guns and rifles as a result of which she became unconscious.

10. We next come to the depositions of Ram Lagan Singh, P.W. 5 and the informant, P.W. 6. On the point of actual assault, their version was slightly different from the statements of P.Ws. 3 and 4. According to the informant and his father, first Kamo Singh asked the other accused to kill Ram Lagan Singh on which Maheshwari Singh (appellant No. 2 in Cr. Appeal No. 387 of 1987) hit him on his shoulder with the butt of his gun; Sundeshwar Singh, appellant No. 3 hit him on the heel by the butt of his rifle as a result of which he fell down. At this stage his wife came to protect him. Sundeshwar Singh hit her on fore-head by the butt of his rifle. Maheshwar Singh also hit with the butt on her fore-head. As a result, she fell down on him. It was at that stage that Indradeo Singh gave Chhura blows to her one of which hit her above the eye-brow and the other on the left eye below the eye-brow. Apart from the Chhura blow the accused also hit her with butts of their fire-arms.

11. Coming to the medical evidence, it may be noted that P.W. 10 who examined and treated Ahliya Devi found the following injuries on her person :

"(i) Lacerated wound size 3" x 1/2" x bone deep and of bone fracture on forehead.

"(ii) Lacerated wound size 1" x 1/2" x bone deep on forehead.

"(iii) Penetrating wound size 1/2" x bone deep above left eye.

"(iv) Penetrating wound size 1/2" x 1/2" x bone deep on forehead.

"(v) Difused bleeding from nose, mouth and wounds.

"(vi) Swelling 1" x 1" on chest.

"(vii) Swelling 1" x 1" on left fore arm."

12. Next, P.W. 9, the doctor who held post-mortem on the dead body of Ahliya

Devi described his findings as follows :

"(i) Three stiched wounds over the forehead vertical in position 1" in length.

"(ii) Abrasion over the nasal-bridge 1/4" in length nasal bone fractured and depressed.

"(iii) Ecchymosis present surrounding both eyes.

"(iv) Bleeding from mouth and nostrils. On dissection :

"(a) Skull was found cracked with fracture of frontal bone of skull; haematoma present and brain matter congested.

(b) ...

(c) ...

(d) ... "

13. As regards the cause of death he stated that death had resulted due to shock and the above described injuries caused by hard and blunt substances.

14. Further, P.W. 11, the doctor who examined Ram Lagan Singh found the following injuries on his person :

"(i) Abrasion with swelling on back of neck 3/4" x 1/4" x 1/6".

"(ii) Abraison on anterior aspect of lower part of right ankle including dorsum of foot 1/2 x 1/2".

15. The testimonies of P.Ws. 1 to 6 coupled with the medical evidence leaves hardly any scope for doubt that an occurrence as alleged by the prosecution took place and Ahriya Devi died as a result of the injuries caused to her by some of the accused. The trial Court, however, proceeded on the basis that having regard to the reason behind the assault, the common object of the unlawful assembly could have been to cause grievous injury or even the death of the informant himself or, by stretching the point, of his father. Since the attack by the accused was motivated by the informant's action in up-rooting the Khesari sown by them, the object of the unlawful assembly could not have been to cause the death or even grievous injuries to his mother, Ahliya Devi. Further, the Court below seems to have given not much credence to the testimonies of P.Ws. 3 and 4 on the point of actual assault where they said that Ahliya Devi was hit and assaulted by all the accused. On the point of actual assault the trial Court has, rather, accepted the testimonies of P.W. 6, the informant, and his injured father P,W, 5 that specific blows were given first by Maheswar Singh and Sundeshwar Singh by the butts of their firearms and then Chhura blows were given to Ahliya Devi by Indradeo Singh. It is on that basis that the trial Court convicted those three appellants alone u/s 302 of the Penal Code without the aid of any Section 149 of the Penal Code and let. off the other four appellants (in Cr. Appeal No. 413 of 1997) of the charge under Sections 302/149 of the Penal Code.

16. The reasoning on which the trial Court has based its judgment is not entirely free from doubt and the trial Court seems to have over-looked certain decisions of the apex Court to the effect that the original common object may be abandoned and a fresh common object developed in course of the activities of the assembly on the spot itself; and in such cases except those members of the assembly who proved that they did not share the common object and were not parties to the commission of the offence, all other members would be liable. See *Mehtab Singh and Others Vs. The State of Madhya Pradesh*, . But the issue is only of academic interest as there is no appeal by the State against the acquittal of the four appellants with regard to the charge under Sections 302/149 of the Penal Code.

17. Coming to the merits of the two appeals, the defence set up in the case was a complete denial of the alleged occurrence. On behalf of the accused it was suggested that Ahliya Devi had sustained the injuries found on her person as a result of a fall from the stairs inside her house. Though no defence witness was examined in this regard, that was the consistent suggestion given to the prosecution witnesses, including the doctors. We are afraid, however, that there is absolutely nothing even to seriously consider such a suggestion.

18. Mr. Ajay Kumar Thakur, learned Counsel appearing on behalf of the appellants tried to assail the appellants' conviction on a number of grounds. We enumerate them here simply for the sake of the record :

(i) The informant's father had four brothers and one of them was admittedly living in another portion of the house. But none of the members from the other branches of the family came forward to depose with regard to the occurrence,

(ii) Since there was no mention of P.Ws. 3 and 4 either in the informant's fard-e-bayan or in the depositions of P.Ws. 1 and 2, their presence at the place of occurrence was doubtful. The doubt with regard to their presence in the house was further strengthened since they did not accompany the injured to the hospital.

(iii) In the fard-e-bayan the informant had said that at the time of occurrence he was out-side the house and he hid himself on seeing the accused variously armed entering into his house. He, therefore, could not have witnessed the alleged assault taking place inside the house.

(iv) The manner of occurrence was not described to P.Ws. 1 and 2 when they arrived at the place of occurrence, that is to say, they were not told by anyone as to which individual accused gave blow on which part of the body of the victims, standing in which position.

(v) P.W. 5 Ram Lagan Singh was not examined by a doctor immediately after the occurrence but he was examined only on the following day.

(vi) The medical evidence did not conclusively rule out the possibility of the injuries being caused to Ahliya Devi, as a result of fall from stairs.

(vii) The prosecution did not produce any document to show that she was admitted to the hospital.

(viii) The F.I.R. was ante-dated since it was shown to have been recorded at 9.30 on 27-12-1994. The inquest report did not bear the case number even though it was prepared the following morning. Further, the F.I.R. was produced in Court after a delay of two days and it was seen by the A.C.J.M. on 31-12-1994.

19. We find no merit in any of the points and see no reason for a detailed discussion on those points.

20. On going through the materials on record and on hearing Mr. Thakur, counsel appearing on behalf of the appellants and Mr. Jaiswal, learned A. P. P. representing the State, we are satisfied that insofar as Indadeo Singh alias Indo Singh is concerned, his conviction and sentence under Sections 302 and 452 of the Penal Code is fully justified on the basis of the materials on record and the judgment and order of the trial Court insofar as he is concerned, warrant no interference in appeal. Similar is the position with regard to the four appellants in Cr. Appeal No. 413 of 1997 who are convicted only u/s 452 of the Penal Code. Their conviction too is unexceptionable and calls for no interference by this Court in appeal.

21. However, so far as Maheshwar Singh alias Mahesh Singh and Sindeshwar Singh alias Sindeshwari Singh, the other two appellants in Cr. Appeal No. 385 of 1997 are concerned, the position appears to be somewhat different. And it appears to us that some serious lapses have been made in the trial proceedings causing grave prejudice to those appellants with regard to their conviction u/s 302 of the Penal Code. It has been noted at the out-set that apart from Indradeo Singh, all the other accused including these two appellants were charged under Sections 302/149 of the Penal Code. We find that at the stage of Section 313, Cr.P.C. the question put to them were very inappropriately and unhappily framed. Since all the accused (apart from Indradeo Singh) were charged u/s 302 read with Section 149 of the Penal Code, the Court seems to have mechanically asked all of them as follows :

"There is evidence against you that on 27-12-1994 you entered in the house of Ahliya Devi and made exhortations with the intent to kill her and on your exhortation accused Indo Singh hit Ahliya Devi as a result of. which she died."

22. All the accused Including those two appellants were asked this question and they gave their answers in the negative.

23. Now, the aforesaid question suffers from two grave errors; first, it was misleading to the accused insofar it represented to him that he is liable to be convicted not for causing murder himself but for incurring the vicarious liability for the murder caused by another accused Indo Singh on his exhortation. Secondly, the question is factually incorrect as there is absolutely no evidence on record that either Maheshwar Singh or Sundeshwar Singh made any exhortation

or urged the other accused to cause the death of Ahilya Devi. On this issue we have gone through the evidences of all the material witnesses and we are fully satisfied that there is no evidence to this effect. Thus, as observed above, the question is quite unfounded and actually based on no evidence.

24. For this grave error in the trial proceeding, the conviction of these two appellants u/s 302, I.P.C. simpliciter becomes quite unsustainable and the two appellants are entitled to the benefit arising from the incurable irregularity in the trial proceeding. Their conviction and sentence u/s 302 of the Penal Code is accordingly set aside. But their conviction u/s 452 of the Penal Code remains undisturbed.

25. The two appellants Maheshwar Singh alias Mahesh Singh and Sundeshwar Singh alias Sindeshwari Singh (in Cr. Appeal No. 385 of 1997) and three appellants, namely, Bindeshwari Singh, Vijay Kumar and Sudhir Singh alias Subodh Singh (in Cr. Appeal No. 413 of 1997) have all spent over one year in jail. They have, thus, already completed the sentence awarded to them u/s 452 of the Penal Code. One appellant, namely, Yugeshwar Singh alias Yugo Singh in Cr. Appeal No. 413 of 1997 has remained in jail for about eight months. His sentence u/s 452 of the Penal Code is modified to the period of imprisonment already undergone by him. All the appellants (with the exception of Indradeo Singh who continues to be in jail) are discharged from the liabilities of their bail bonds.

26. The appeal on behalf of Indradeo Singh is rejected and he will come out after serving the sentence awarded to him by the trial Court which is hereby affirmed.

27. The two appeals are accordingly dismissed subject only to the modification in the conviction of Maheshwar Singh alias Mahesh Singh and Sundeshwar Singh alias Sindeshwari Singh in Cr. Appeal No. 385 of 1997 and the modification of sentence of Yugeshwari Singh alias Yugo Singh in Cr. Appeal No. 413 of 1997.

Sadanand Mukherjee, J.

28. I agree.