
(1999) 05 PAT CK 0055

In the Patna High Court

Case No : Criminal Appeal (D.B.) No"s. 10 and 31 of 1987

Kamlesh Pandey and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 149, 302, 304

Citation : (1999) 2 BLJR 1259

Hon'ble Judges : Ravi Nandan Sahay, J;D.P.S. Choudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ravi Nandan Sahay and D.P.S. Choudhary, JJ.—There are five appellants in Cr. Appeal No. 10/87 and there is single appellant in Cr. Appeal No. 31/87. All the six appellants were tried before the 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 24/85. Madan Pandey, the appellant in Cr. Appeal No. 31/87 was charged u/s 302, I.P.C. for having intentionally and knowingly causing death of Ram Chandra Thakur on 24th May, 1984. The appellants in Cr. Appeal No. 10/87 were charged and tried u/s 302/149, I.P.C. for the act committed by Madan Pandey. All the appellants were further charged u/s 147, I.P.C.

2. By judgment delivered on 23rd December, 1986, learned trial Judge convicted all the appellants u/s 302 read with Section 149, I.P.C. and Section 147, I.P.C. and sentenced them imprisonment for life u/s 302/149, I.P.C. No separate sentence was passed for the latter offence.

3. The incident leading to the trial conviction of the appellants happened in village Paramjewar P.S. Hathauri in the district of Muzaffarpur in the evening of 24th May, 1984. The she-goat of Surendra Thakur had entered the field of appellant Madan Pandey. Appellant Ram Krishna Pandey, son of Madan Pandey, who was student aged about 16-17 years caught the she-goat in the field. Ram Chandra Thakur, father of Surendra Thakur went in the field and brought back

the she-goat and came to his Darwaja. After some time, all the appellants before us came to the Sahan of Ram Chandra Thakur where other witnesses were present. The case of the prosecution and the evidence is that the appellant Mundrika Pandey gave a lathi blow on the head of Ram Chandra Thakur, who fell down and then appellant Lal Babu Pandey caught his legs and appellant Kamlesh Pandey caught the head of Ram Chandra Thakur. Madan Pandey is alleged to have given hammer blow on the chest of the deceased causing instantaneous death of Ram Chandra Thakur on the spot. Madan Pandey was not armed when he came with other accused persons. He picked up the hammer lying at the door of the informant and struck the deceased. All these happened in presence of Nagia Devi, Ram Lakhan Thakur, Sushila Devi, Jageshwar Baitha and other persons.

4. There is some confusing evidence about the report of the occurrence being given at the police station. According to the S.I. Phulan Pd. Srivastava, Officer-in-charge of Hathauri Police Station, the Chowkidar had gone to the police station late in the evening and told him about the occurrence. He entered information in the Station Diary but unfortunately Station Diary was not produced at the time of trial nor the police officer stated as to what information was given by the Chowkidar.

5. The informant in his evidence has stated that he along with some other persons had gone to the Police Station in the night which fact has been denied by the Investigating Officer. The Officer-in-charge reached the village at 4.00 a.m.. The distance of the village from the Police Station is 9 kms. Surendra Kumar Thakur, son of the deceased gave fardbeyan of the occurrence. Formal F.I.R. was drawn at 9.00 a.m. and the F.I.R. was despatched to the Court of Chief Judicial Magistrate, Muzaffarpur by special messenger. The F.I.R. was received in the Court of Chief Judicial Magistrate on 28.5.1984. The delay in sending the F.I.R. give scope to the defence to argue that the F.I.R. has been ante-dated. According to the defence, the deceased Ram Chandra Thakur, had not been assaulted at the Darwaja as alleged by the prosecution but he died of injuries suffered by him when he had gone to Baswari for plucking leaves for she-goat.

6. Dr. B.K. Mehta, tutor S.K. Medical College Hospital, Muzaffarpur held Post-Mortem of the dead body of the deceased Ram Chandra Thakur at 11.30 a.m. on 25.5.1984 and following ante-mortem injuries were noticed on the dead body:

(i) Swelling 2" x 2" on the top of the head. On removal of scalp underlying tissues were found bruised. On further dissection brain and meniges were found congested.

(ii) There was blackening of an area around left eye with swelling. On dissection underlying tissues were found bruised.

(iii) There was swelling 2" x 1(1/2)" on left side of head 2" above the ear. On dissection underlying tissues were found bruised.

(iv) There was swelling 1(1/2)" x 1" on the side of the head 2" above the ear. On dissection underlying tissues were found bruised.

(v) There was one bruise 1(1/2)" x 1(1/2)" on the front of the chest. On dissection underlying tissues were found bruised.

(vi) Two bruises 3" x 1/2" each on the back of right side of chest. On dissection tissues were found bruised. According to the opinion of the doctor, the death occurred due to shock as a result of cumulative effect of the above-mentioned injuries. The doctor further opined that the injuries were caused by hard and blunt substance such as lathi and hammer. The doctor in his cross-examination has stated that if a man would fall from a bamboo in the Baswari, injuries like this can be possible.

7. Learned trial Judge has assessed and evaluated the evidence of the material witnesses, namely, Surrendra Kumar Thakur (P.W. 12), Ram Lakhan Thakur (P.W. 1), Batohi Thakur (P.W. 2), Nagia Devi (P.W. 3) and Sushila Devi (P.W. 4) in paragraphs 9 to 13 of the judgment. Surrendra Kumar Thakur, who is son of the deceased is most important witness in this case. He reiterated the earlier version given by him before the police. He further stated that he had gone to the Police Station in the night but that has not been admitted by the Investigating Officer. Suggestion was given to this witness that the appellant Mundrika Pandey was falsely implicated at the instance of Bathoi Thakur because Batohi Thakur was aggrieved with Mundrika Pandey as Mundrika Pandey had not deposed from the side of Bathoi Thakur in a criminal case brought by him against Ram Sagar and others. Learned trial Judge was of the view that suggestion should have been given to Bathoi Thakur but no such suggestion was given to him nor any document had been filed to show that Mundrika Pandey had been cited as a witness in a case filed by Batohi Thakur. This witness further denied that his father had died on account of accidental fall. Learned trial Judge has held that he was a natural witness and his evidence could not be rejected only because he was son of the deceased.

8. Ram Lakhan Thakur (P.W. 1) has also deposed on the same line as stated by Surrendra Kumar Thakur. This witness is cousin of Batohi Thakur and neighbour of the informant.

9. Batohi Thakur (P.W. 2) named only Mundrika Pandey and Mads a Pandey as the assailants of the deceased. He has not stated about the participation of other appellants. This witness stated that Mundika Pandey gave a lathi blow on the head of the deceased. Appellant Madan Pandey gave a hammer blow on the chest of the deceased. According to this witnesses, he caught the waist of the appellant Madan Pandey and prohibited him from doing so. According to this witness, the deceased had received two lathi blows. In his cross-examination, he went on saying that the deceased had received four lathi blows. Learned trial Judge has held that the evidence of Bathoi Thakur was not consistent with the evidence of other witnesses.

10. Nagia Devi (P.W.3) is also F.I.R. witness. She is wife of Ram Lakhan Thakur. She has fully supported the prosecution case. This witness only named Mundrika Pandey and Madan Pandey.

11. Sushila Devi (P.W.4) is wife of younger brother of the deceased Ram Chandra Thakur. She came out of the house on hearing hulla and found the deceased lying on the ground. Appellant Lai Babu Pandey and Kamlesh Pandey had caught leg and head of the deceased. Appellant Madan Pandey had given a hammer blow on the chest of the deceased. She further deposed that the other accused persons were standing at the place of occurrence.

12. Kaushalya Devi is the widow of the deceased Ram Chandra Thakur. She has not stated anything about the occurrence.

13. On review of the entire evidence, we are left with no other option but to hold that appellant Madan Pandey and Mundrika Pandey had assaulted the deceased as alleged by the prosecution witnesses. We are of the view that the conviction of the remaining appellants is not warranted since two of the eye-witnesses had not named appellants Kamlesh Pandey, Ram Krishna Pandey, Bilas Pandey and Lai Babu Pandey. There is no doubt some minor discrepancies in the evidence of the witnesses but in view of the consistent evidence of so many witnesses, the infirmities can be ignored. The first infirmity is non-examination of the Chowkidar, who according to the Investigating Officer had visited the P.S. but what information was given by him was not on record. We also feel that, the informant had not gone to the Police Station as asserted by him in his evidence. There is some delay in despatching of the First Information Report but this is not very unusual feature in our State. The first Investigating Officer was probably taken to task by superior officer as he was not properly investigating the case. He was replaced by Deo Muni Rai (P.W. 13), who came after the investigation was over.

14. The defence examined Krishna Nandan Sahay, D.S.P. posted at Muzaffarpur in order to show that the occurrence had not actually taken place as testified by the witnesses. It is not clear as to how the D.S.P. recorded the statement of the witnesses who is not on record. The evidence of the D.S.P. shows that the occurrence had not actually taken place in the manner as alleged by the prosecution.

15. There was no reason to falsely implicate the appellant Madan Pandey and Mundrika Pandey. The plea of alibi was taken by Madan Pandey and documents were also filed before the Investigating Officer but he did not try to examine the plea of alibi. It is to be noticed that this plea was taken after three months of the occurrence and that too appellant Lal Babu Pandey had gone to the Police Station and stated that he and Madan Pandey were at Bhagalpur on the day of occurrence. It was also argued that the medical evidence is not consistent with the evidence on record. The question regarding manner of assault has been considered by the trial Judge in para 18 of the judgment. Learned trial Judge has

held that the other injuries might have been caused when the deceased fell down.

16. On giving our anxious consideration on all the aspects of the matter, we hold that the appellant Mundrika Pandey and appellant Madan Pandey had assaulted the deceased resulting in his death. We are not satisfied that the injuries were caused with an intention to cause death of Ram Chandra Thakur or to cause bodily injury likely to cause death. The deceased had died due to cumulative injuries caused by the appellants. There is no fracture of skull or chest. We have no hesitation in coming to the conclusion that the appellant Madan Pandey and Mundrika Pandey can be convicted u/s 304 Part-II of the Indian Penal Code.

17. In the result, appellants Madan Pandey and Mundrika Pandey are acquitted of the charges u/s 302, I.P.C. and are convicted u/s 304, Part-II of the Indian Penal Code. So far as sentence is concerned, appellant Madan Pandey was in custody for long. His sentence is reduced to the period already undergone by him. Appellant Mundrika Pandey was granted bail at the stage of investigation. His sentence is also reduced to the period already undergone by him. He is also sentenced a fine of Rs. 2,000/- and in default, he shall suffer imprisonment for six months. The fine, if realised, shall be paid to the widow of the deceased. The remaining appellants, namely, Kamlesh Pandey, Bilas Pandey, Ram Krishna Pandey and Lai Babu -Pandey are acquitted of the charges giving them benefit of doubt. They are discharged from the liability of their bail bonds. Appellants Madan Pandey and Mundrika Pandey are also discharged from the liability of their bail bonds. Both the appeals are dismissed with modification in sentence as indicated above.