

(2012) 11 PAT CK 0002
In the Patna High Court
Case No : Criminal Appeal (U/S) No. 2 of 2002

Kapildeo Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)
Penal Code, 1860 (IPC) — Section 323, 379

Citation : (2012) 11 PAT CK 0002

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Madhuri Lata, Amicus Curiae, for the Appellant; Nand Lal Kumar Singh, Advocate for the Respondent Nos. 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. The present appeal has been filed u/s 378(4) of the Code of Criminal Procedure in pursuance of the leave granted by this Court on 25.2.2002 in S.L.A. No. 49 of 2001. The appeal is directed against the judgment of acquittal dated 30.7.2001 passed in Complaint Case No. 49C of 1993 by Sri P.K. Sharma, Judicial Magistrate 1st Class, Lakhisarai. In the complaint case, it has been alleged that while the complainant/appellant was getting his chillies dried on 11.2.1993, the accused persons named in the complaint came to his "Khalihan" and started filling their bags with the chillies kept there. The complainant/appellant protested against the accused persons. This resulted into a scuffle between the parties in which, the complainant/appellant sustained injuries. The complainant raised hue and cry, as a result of which, several persons rushed to the place of occurrence. They rescued the complainant/appellant from the wrath of the accused persons. However, respondent no. 3 Shila Devi and respondent no. 5 Dangur Mahto carried away bags filled with chillies on their head while running away from the place of occurrence. It is further alleged that earlier also

the accused persons had stolen maize (Bhutta) from the "Khalihan" of the complainant/appellant on 2.5.1992. On 11.2.1993, the matter was reported to the Manikpur Police out post but, the constable present at the outpost told him to approach the Superintendent of Police, Munger. The complainant/appellant, thereafter, sent written complaint by registered post on 12.2.1993 to the Superintendent of Police, Munger, the Deputy Superintendent of Police, Lakhisarai and the Officer-in-Charge, Suryagarha. It has further been alleged that on 23.2.1993 at about 5 p.m. while the complainant was working in his "Khalihan" accused no. 4 Jeetan Mahto along with an unknown person came to his "khalihan" pointed pistol towards him and told that he would kill him.

2. On the basis of aforesaid allegations, the complaint petition was filed in the court of the Sub-Divisional Judicial Magistrate, Lakhisarai, Munger on 24.2.1993.

3. The alleged occurrence had taken place on 11.2.1993. As per the complaint, an information in this regard was given to Manikpur Police Station O.P. but, no F.I.R. was registered. Subsequently, on 24.2.1993 complaint was filed in the court and after examining the complainant on oath and inquiring into the matter, the learned Magistrate took cognizance of the offence. In course of trial, charges were framed u/s 323 of the Indian Penal Code against respondent no. 2 Ram Prasad Mahto and respondent no. 4 Jeetan Mahto and u/s 379 of the Indian Penal Code against respondent no. 3 Shila Devi and respondent no. 5 Dangur Mahto. The accused persons pleaded not guilty and claimed to be tried and, thus, the trial commenced.

4. In course of trial, on behalf of the prosecution, in all, four witnesses were examined.

5. Learned Amicus Curiae submits that there was sufficient material to bring home the charges levelled against the accused persons. However, the trial court ignored relevant materials and on the basis of conjectures and surmises acquitted the accused persons.

6. On the other hand, learned counsel appearing on behalf of respondent nos. 2 to 5 submits that the trial court has given cogent reasoning for coming to the conclusion that the prosecution has failed to bring home the charges levelled against the accused persons.

7. I have heard the parties and perused the evidence on record. It appears that while being examined on oath, the complainant/appellant did not speak a word regarding the incident which is alleged to have taken place on 23.2.1993. In the complaint, it is alleged that when the police personnel present at Manikpur Police Station Out Post, told the complainant on 11.2.1993 to report about the matter to the Superintendent of Police, Munger, then, he informed the Superintendent of Police, Munger, Deputy Superintendent of Police, Lakhisarai and the Officer-In-Charge, Suryagarha in writing by registered post regarding the incident. However, while being examined in court, the appellant/complainant states that when he was told at the police out post that the case would not be registered

and he may approach the Superintendent of Police, Munger, he filed the complaint.

8. I further find that there is great variation in the statement of the complainant made on oath and the complaint petition filed in the court. I further find that in cross-examination the complainant/appellant admits that in Sessions Case No. 646/86, instituted by Respondent No. 3 Shila Devi, for the alleged murder of her husband, he has been convicted and sentenced to undergo R.I. for life.

9. I find that in further cross-examination, the complainant/appellant has admitted that Respondent No. 2 Ram Prasad Mahto had deposed against him in the aforesaid criminal case.

10. It is apparent from record that in the complaint, the complainant has cited 8 persons as witnesses to the occurrence. However, in course of trial, out of the 8 witnesses, only two were examined. There is no explanation for non-examination of the other six witnesses.

11. I also find that P.W. 1 is a chance witness. He is a resident of different place. P.W. 2 is brother of the complainant/appellant. P.W. 3 is a formal witness and was not produced for cross-examination in course of trial.

12. From the evidence on record, it transpires that in the complaint petition, the place of occurrence is village-Manikpur, whereas, P.W. 1, in his examination-in-chief states that the place of occurrence village is Khaira Mushahari. P.W. 2 and P.W. 4, while deposing in court, have not uttered a word about the place of occurrence.

13. I find that there is no other independent witness on behalf of the prosecution in course of trial. The trial court has considered the entire aspect of the matter. It has recorded clear, cogent and convincing reason in recording acquittal. The findings of the trial court are neither erroneous nor perverse. It is well-settled that if two reasonable conclusions are possible on the basis of evidence on record, the appellate court would not disturb the finding of the acquittal recorded by the trial court. Thus, I find no merit in the present appeal. It is dismissed, accordingly.