
(2010) 04 PAT CK 0183
In the Patna High Court

Karamdeo Singh @ Karndeo Singh and Others APPELLANT
Vs
Karu Singh (alias Parshuram Singh) and Kaili Devi RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 120, 120B, 201, 302, 34

Citation : (2010) 04 PAT CK 0183

Hon'ble Judges : Shyam Kishore Sharma, J;Gopal Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shyam Kishore Sharma and Gopal Prasad, JJ.—Both the above appeals have been heard together and are being disposed of by this judgment because they have arisen out of a common judgment dated 22.12.2003 passed by Sri S.Ahmad, Additional Sessions Judge, Fast Track Court No. III, Munger in Sessions Case No. 166 of 1995 whereby appellants of both the appeals were found guilty. The appellants Karu Singh and Kaili Devi (Cr.Appeal No. 55 of 2004) were found guilty under Sections 302 and 201/34 of the Indian Penal Code and were convicted thereunder. By order dated 23.12.2003 they were sentenced to undergo rigorous imprisonment for life only u/s 302 of the Indian Penal Code with a fine of Rs. 2000/- each and in default of payment of fine, they were further directed to undergo rigorous imprisonment for six months. The rest appellants i.e. appellants of Cr.Appeal No. 23 of 2004 were found guilty u/s 201/34 of the Indian Penal Code and they were convicted thereunder. They were sentenced by order dated 23.12.2003 to undergo rigorous imprisonment for seven years with a fine of Rs. 1000/- each and in default of payment of fine, they were further directed to undergo rigorous imprisonment for six months.

2. According to the prosecution case, on 19.01.1993 at about 4.45 P.M., the informant Angad Chaudhary gave his fardbeyan before the police of Tetia Bumar Out post that his daughter Anju Devi was married with co-convict Karu Singh son

of Chhedi Singh of village Barsanda, P.S.Sangrampur, District Munger in the year 1992 according to Hindu rituals. After marriage she went to the house of her in-laws and at the time of rukhsadi informant's son-in-law did not come but one Kaili Devi (co-convict) wife of Shankar Singh of village Barsanda came and she brought the informant's daughter (deceased) with her saying that she is just like the informant's sister. In Agahan month of Hindi calendar, the informant went to meet his daughter at his in-laws house where his daughter complained that as the husband of Kaili Devi resides at Calcutta, she has illicit relationship with her husband Karu Singh. His daughter further told that when she protested the illicit relationship with Kaili Devi, her husband threatened to eliminate her. The informant heard rumour on 19.1.1993 that his son-in-law with the help of other associates had killed Anju Devi in the night of 17/18.1.1993 and her dead body was disposed of. The informant later on came to know after reaching Barsanda that dead body of his daughter was lying near the well situated in Bahiyar. The police found the dead body in decomposed position. Both the hands and the legs were cut off and were separated from the body. The head was chopped off from the neck. The identification of the dead body was with the assistance of sari which the informant had given to her daughter. The information to the police resulted in a case under Sections 302, 201, 120B/34 of the Indian Penal Code. The case was investigated into and after completion of the same, chargesheet was submitted against all the eleven accused persons. Cognizance was taken and the case was committed to the court of sessions where the charges under Sections 302/120 and 302/34 of the Indian Penal Code were framed against ten accused persons and explained to them. They pleaded innocence and preferred to face the trial. One co-accused Rekha Devi was discharged at the time of framing of charge.

3. The defence of the appellants were of false implication and also that, in fact, the dead body of the informant's daughter was not recovered. The informant's daughter fled away from her matrimonial house and thereafter she remained traceless.

4. In order to prove its case, the prosecution has examined altogether nine witnesses. They are : P.W.1 Bibhuti Chaudhary, P.W.2 Angad Choudhary, the informant, P.W.3 Gyandeo Mandal, P.W.4 Niranjan Singh, P.W.5 Jawahar Singh, P.W.6 Kailash Singh, P.W.7 Mangal Singh, P.W.8 Shiv Shankar Thakur, ASI, Investigating Officer of the case and P.W.9 Dr. Arjun Prasad Mandal who has conducted the post mortem examination.

5. The prosecution also exhibited the signature of P.W.3 (Gayandeo Mandal) on the fardbeyan as Ext.1, another signature of Shiv Shankar Thakur (P.W.8) on the fardbeyan as Ext.2, F.I.R. as Ext.3, paragraph 13 of the case diary as Ext.4, inquest report as Ext.5 and post mortem report as Ext.6.

6. The defence has not examined any witness to defend its case.

7. The trial court after considering the entire evidence and other materials on

record found the accused persons guilty and sentenced them, as stated above.

8. This Court has to see whether the prosecution was able to prove the charge against the appellants beyond the shadow of all reasonable doubts or not.

9. Out of nine Prosecution witnesses, P.W.3 Gyandeo Mandal, P.W.5 Jawahar Singh and P.W.6 Kailash Singh were declared hostile by the prosecution. P.W.4 Niranjana Singh and P.W.7 Mangal Singh have not given any evidence in support of the prosecution regarding recovery of dead body of Anju Devi and they have declined to identify their signatures on the inquest report.

10. P.W.1 Bibhuti Choudhary is uncle of the deceased Anju Devi and P.W.2 Angad Choudhary is the informant and father of the deceased. Rather they are the material witnesses according to prosecution case, they are not the eye witness of the occurrence because they have come to know later on about the death of Anju Devi.

11. P.W.2, the informant, has stated in his evidence that his daughter Anju Devi was married with accused Karu Singh according to customs prevailing for Hindus. After marriage his daughter went to the house of her husband. There her husband threatened her because he was carrying illicit relationship with another lady. The informant later on came to know about the death of his daughter through a stranger. He informed the police and the police recovered a dead body and that dead body was of informant's daughter because informant identified the dead body with the assistance of sari which she was bearing at the time of recovery. This witness has stated that his daughter was killed because her husband was having illicit relationship with one of the co-accused Kaili Devi. 12. Similar is the evidence of P.W.1. Both P.W.2 and P.W.1, no doubt, have supported the factum of death of the deceased but they are not the eye witnesses of the occurrence and they have not given the details as to from whom they have come to know about her death. 13. P.W.9 is the doctor who conducted the post mortem on 4.2.1993. Post mortem was done presuming that the part of body was of the daughter of the informant. Both limbs and part of one upper limb (left) were presented for post mortem. The doctor has found the following injuries:

Skin pilled off at places, both feet and fingers of the left hand found corrugated. Both lower limbs severed at the level of infernal region margins were sharp left upper limb severed at the level of 3" below of shoulder joint, margins were sharp. Humorous bones were cut sharply. Both heads of the fingers were cut. The above injuries were post mortem in nature caused by sharp cut weapons.

14. Learned Counsel appearing on behalf of the appellants as Amicus Curiae has submitted that the identification of the part of the body was not established to be that of the daughter of the informant because except informant and P.W.1, no other independent witnesses have supported the factum of seizure of dead body. It has further been submitted that P.W.3 Gyandeo Mandal is closely related with the informant but he has declined that he has put any signature upon the inquest report of a portion of body. Another argument is that the post mortem was

conducted on two parts and two post mortem reports were prepared but on the record there is only one post mortem report and there is no explanation as to why second post mortem report has not been brought on record. Learned Counsel next submitted that in view of provision of Section 106 of the Evidence Act, the trial court was not justified in convicting the accused persons because the onus was upon prosecution to explain and they have failed to discharge its onus. So the presumption lies against the prosecution. From the evidence of P.Ws.1 and 2 it would appear that they have not disclosed the name of the persons who were said to have informed them that the dead body of the deceased was lying near the well in the field. From the circumstances which have come out from the evidence of P.Ws. 1 and 2 it appear that an incomplete and decomposed dead body was recovered and the said dead body was identified with the assistance of sari which, according to the informant, was given to his daughter. The post mortem report of a portion of the dead body which was recovered and alleged to be of informant's daughter is not the complete post mortem report, rather it was done on some part of the body which was alleged to have been recovered by the Investigating Officer in course of investigation. The definite case of the prosecution is that the means of identification of the dead body was of a sari. There is no evidence at all that the sari which was the sole means of identification of the dead body was brought on the record. So, the prosecution has miserably failed to prove that the recovered decomposed/mutilated dead body was of the informant's daughter. Once the identification goes, then it is very difficult to presume that the deceased was the daughter of the informant which has been alleged by P.Ws.1 and 2.

15. Another aspect of the case is that the case is of circumstantial evidence as there is no eye witness. In this case, all the witnesses are hearsay. If the case is based on circumstantial evidence, then the circumstances must show that it makes a complete change of events leading to one conclusion that it is the accused who has committed the offence. In the present case, most of the witnesses have been declared hostile. Except two witnesses, namely, P.Ws. 1 and 2, there is no other witness to support any part of the charges. Even P.Ws.1 and 2 are also not eye witnesses. Therefore, much reliance cannot be placed on their testimony. Whatever they have stated on the basis of information which they have gathered in the matrimonial village of the deceased but not even one witness from the matrimonial village of the deceased has come to say that he has informed P.Ws.1 and 2 regarding killing of the deceased by the appellants. The chain to link the circumstances to prove the guilt of the accused persons is thoroughly incomplete.

16. The trial court has noted the conduct of the Investigating Officer as he has mishandled the case and there are discrepancies in the evidence of P.Ws. 1 and 2 but the benefit of doubt which could have been given to the accused- appellants have not been given to them by the trial court and the order of conviction has been passed mainly relying upon the fact that the trial court has presumed that both parts of the body which were recovered were of the deceased and the post

mortem report has been proved but that is error of record as there is only one post mortem report which is also of small part of the body which remained unidentified.

17. Considering every aspect of the matters, we are of the view that the prosecution has failed to discharge its onus and the missing chain are too much for not relying upon the depositions of the witnesses and the benefit of same should have been given to the accused persons. Once it is held that the prosecution case suffers from absurdities in the circumstances and the prosecution has not fully proved its case, then the accused persons should have been given the benefit of the same. Accordingly, we are of the opinion, that the prosecution has not been able to prove the charges beyond the shadow of all reasonable doubts and as such the appellants deserve acquittal.

18. In the result, both the above appeals are allowed. The judgment of conviction and sentence of the appellants are set aside. All the appellants of both the appeals are acquitted and they (except Karu Singh who is in jail custody) are discharged from liability of their bail bonds. Appellant Karu Singh (in Cr.Appeal No. 55(DB) of 2004), who is reported to be in custody, is ordered to be released forthwith if not wanted in any other case.

19. As none was appearing on behalf of the appellants, Mr. Sunil Prasad, Advocate was appointed as Amicus Curiae to assist the court on behalf of the appellants and he has argued. The Secretary, High Court Legal Services Committee, Patna shall ensure payment of fee as prescribed to Mr. Sunil Prasad, Advocate for assisting this Court as Amicus Curiae.

20. Let a copy of this judgment be given to Mr. Sunil Prasad, Advocate for needful.