
(2008) 02 PAT CK 0115
In the Patna High Court
Case No : Criminal Appeal No. 484 of 2003

Lakshaman Mandal

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 302, 304, 341, 448

Citation : (2008) 56 BLJR 1939 : (2009) 3 PLJR 725

Hon'ble Judges : Shiva Kirti Singh, J; Shailesh Kumar Sinha, J

Bench : Division Bench

Advocate : Shrinandan Prasad Singh and Ashok Kumar, No. 1, for the Appellant;
Ashwini Kr. Sinha, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh and Shailesh Kumar Sinha, JJ.—The sole appellant has been convicted for the offences under Sections 302, 448 and 341 of the Indian Penal Code by the judgment and order dated 19.09.2003 passed by learned Additional Sessions Judge, Supaul in Sessions Trial No. 11 of 1987 arising out of Supaul P.S. Case No. 72(5) of 1981. By order dated 20.09.2003 he has been awarded life imprisonment, one year simple imprisonment and one month simple imprisonment respectively for the aforesaid offences.

2. In this appeal the point arising for determination is what would be the effect of delay of about 23 days in giving information to the police of the alleged occurrence and whether such delay, in the facts and circumstances of the case, would be fatal to the prosecution case.

3. According to the prosecution case, the deceased Deo Sundri Devi wife of P.W.1 was alone in her house with two infant children on 27.04.1981 at about 10 AM. Her husband had gone to supaul in connection with some case. Allegedly, at that time, the appellant Lakshaman Mandal came into her "Angan" and started abusing as to why they had not vacated his land and had not removed their

house from the concerned land. On her replies, he lost his temper and when she wanted to raise alarm he pressed her mouth, threw her on the ground, poured some liquid from a bottle over her body and threw a lighted match-stick on her which caused burn injuries to her. Thereafter he ran away. She claimed in her Fardbeyan recorded on 20.05.1981 at 19.30 hrs. by A.S.I. Jaleshwar Prasad Singh of Supaul P.S. at Supaul Hospital that because of burn injuries she became unconscious and did not know who brought her to hospital and when she gained consciousness on that date (20.05.1981) then she came to know that she is in Supaul Hospital and then she was giving her fardbeyan before the police officer. Thus, for the occurrence of 27.04.1981 the Fardbeyan of the deceased was recorded in hospital on 20.05.1981. Admittedly, the husband of the deceased, Ram Sunder Sah (P.W.1) had informed the police on 20.05.1981 that her wife was lying in the hospital in burnt condition and on such information police came and recorded the Fardbeyan.

4. It is further case of the prosecution that when the condition of the victim deteriorated, her dying declaration (Ext.2) was recorded by Dr. Ramdeo Jha of Supaul Hospital (P.W.3) on 28.05.1981 at 4.15 PM. Admittedly, it was recorded in presence of a large number of persons who have signed on the said dying declaration. Subsequently, the victim died on 6.6.1981. On account of such development, Section 304 of the Indian Penal Code appears to have been added to the offences under Sections 341, 448 and 307 of the Indian Penal Code in the relevant column of the first information report under the orders of learned S.D.J.M. dated 05.07.1981.

5. After investigation, police submitted charge sheet against the sole appellant and charges were framed against him for all the three offences for which he has been finally convicted. He pleaded not guilty to the charges, and was therefore tried leading to conviction and sentence, as noticed above.

6. The defence of the appellant is that he has been falsely implicated on account of dispute over the land because over his land the husband of the deceased had been living after making some construction and had not vacated inspite of requests as is appearing in the Fardbeyan.

7. The prosecution in order to prove the charges has examined altogether eight witnesses. P.W.1 Ram Sundar Sah, is husband of the informant (deceased). He was admittedly not present at the time of alleged occurrence. He has claimed that his wife was brought to hospital by Ram Chandra Sah (P.W.6) and Sita Ram Sah (P.W.8) for treatment of burn injuries on 27.04.1981. On receiving information, he went to the hospital and found her unconscious. She gained consciousness in the hospital on 20.05.1981 and then he learnt about the occurrence through her. Thereafter he went to village home and got a Panchayati convened with the participation of Amrit Lal Mandal (P.W.2) Ram Chandra Sah (P.W.6) and others. In that Panchayati the father of the appellant, Kailu Mandal allegedly admitted the occurrence and for treatment he gave Rs. 80/- and also promised to bear further expenses of treatment, but later he refused to give

further money. Then he went to Supaul police station and that led to filing of case against the appellant when the A.S.I. came to Supaul hospital and recorded fardbeyan of the injured Deo Sundari Devi. He has deposed that dying declaration of his wife was subsequently recorded in the hospital on which he also signed. Afterwards his wife died. The motive for the alleged occurrence was alleged to be land dispute because Lakshaman Mandal was asking P.W.1 to remove his house from over his land and for which P.W.1 had already assured Lakshaman Mandal that he would remove his house after arranging for another land.

8. P.W.2 Amrit Lal Mandal is not an eye witness of the occurrence and he has deposed that being the Sarpanch he participated in the Panchayati. He has also claimed that he was present at the time of recording of dying declaration over which he also signed. According to this witness Panchayati had taken place 15-20 days after the occurrence at about 7 in the morning. According to this witness P.W.1 was present in the Panchayati and the Panchayati had been convened on the request of P.W.1 made one day earlier to holding of the Panchayati. According to this witness, Kailu Mandal accepted to bear cost of treatment of Deo Sundari Devi but did not admit anything in Panchayati. He has claimed to be present in the hospital at the time of recording of dying declaration on the plea that he had gone to meet the doctor i.e P.W.3 for his own treatment but this fact has not been supported by P.W.3.

9. P.W.3 Dr. Ram Deo Jha has claimed to have recorded the dying declaration of the deceased on 28.05.1981 on the authorization/request of S.D.J.M., Supaul. He has proved the dying declaration as exhibit-2 which is on the same lines as the Fardbeyan of the victim. He has deposed that he admitted the injured Deo Sundari Devi in the hospital and got her treated for which a bed head ticket is available in the hospital. He has further deposed that while admitting her on 27.4.1981 he did not give any information to the police about her burn injuries because Ram Sundar Sah (P.W.1) being her husband told him that she had sustained burn injuries while cooking food due to an accident. He claimed that such statement of Ram Sundar Sah (P.W.1) is noted down in the bed head ticket of the injured whose number is 1243 dated 27.04.1981. He clarified that such statement on the bed head ticket was in his pen. He has also deposed that the injured Deo Sundari Devi (deceased) began to take diet of the hospital after the day of her admission. He has deposed that the injured always talked to him about her condition. On recall the witness has proved the injury report of the injured as Exhibit-4 which shows that the injured had 70-80 per cent burn injury on the whole body and the injury was grievous in nature. It was about one month old at the time of examination. The injury report is dated 21.05.1981.

10. From the evidence of P.W.3 it is clear that since her admission, the injured was taking her food because she was in her senses and he used to talk to her. He has given full details of the circumstances in which he did not inform the police and has also given out that all such details are mentioned in the bed head ticket

number 1243 which is available in the hospital. However, the prosecution has chosen not to produce that bed head ticket in course of trial.

11. P.W.4 Dr. J. Lal conducted autopsy on the body of the deceased on 7.6.1981. The post mortem report has been proved as exhibit-3 and it shows that the deceased had died within 24 hrs. due to septic and toxemia of wounds caused by burn.

12. P.W.5 Suresh Pathak was a dresser/staff in Supaul Sub-divisional Hospital. He has admitted his signature over the inquest report and also over the dying declaration of Deo Sundari Devi. He has deposed that after admission into the hospital the injured Deo Sundari Devi regained her consciousness and senses after 1-2 days and began taking meals. He has claimed that he used to administer medicines and food to the injured in the hospital. He has also admitted that details of medicines and diet are mentioned on the bed head ticket in the hospital.

13. P.W.6 Ram Chandra Sah is one of the persons who allegedly took the injured to hospital on 27.04.1981. He has been simply tendered for cross examination.

14. P.W.7 Kamta Prasad Gupta is a witness of same kind as P.W.2 Amrit Lal Mandal. He is also not an eye witness. He has claimed to have signed on the dying declaration of the deceased, as a witness. He has also claimed to have participated in the Panchayati, which according to him was held on 10.05.1981 and according to him the father of the appellant had agreed to give money towards cost of treatment of the deceased. This witness has admitted that he was witness in a case against the appellant and was party to a proceeding u/s 107 of the Code of Criminal Procedure in which father of the appellant was one of the opposite parties.

15. P.W.8 Sita Ram Sah has claimed to be present at his house on the date of occurrence. At about 8-9 AM he heard sound of crying from the house of the injured and allegedly saw Lakshaman Mandal, the appellant running from that place. He went inside the house of the injured and saw her in burning condition. He claimed that P.W.6, Ram Chandra Sah was also with him and they attempted to extinguish the fire. According to them the injured was alone in the Angan. They brought her to hospital on a cart and informed her husband who was at Supaul. According to him the doctor was hesitating to treat the injured and began treatment only when the husband of the injured gave something in writing. He has admitted his signature over the Fardbeyan which he claims to have been recorded 20.05.1981 in his presence.

16. According to this witness the deceased had not gained consciousness before giving such statement. He has also claimed that a Panchayati had been held in which the father of the appellant agreed to bear the cost of treatment and gave Rs. 80/-, but later did not pay any further money. He has also stated that the doctor recorded the dying declaration of the deceased. He has admitted that he went to Supaul after the occurrence and office of Dy. S.P. as well as police station

are situated at Supaul. He remained there till evening hours when the treatment had commenced but he or Ram Chandra Sah (P.W.6) did not inform the police station or any other person either on that date or on any later date.

17. On behalf of defence two witnesses have been examined. D.W.1 Deena Nath Pathak is local Mukhiya. He has claimed to know the deceased as well as her husband. He has deposed that the husband of the deceased had informed him that the deceased had sustained burn injuries due to accidental fire while cooking. This witness had also gone to hospital and seen the injured who was being treated by P.W.3. He has deposed that P.W.1 informed the doctor also about the accidental fire during cooking. He has claimed that in the hospital he also met Ram Chandra Sah (P.W.6) and Sita Ram Sah (P.W.8) and they had also told him that the deceased had sustained fire injuries while cooking. He has stated that the name of the appellant was never mentioned by any body that he had caused burn injuries to the injured. He has further disclosed that Surji Devi, mother-in-law of the deceased had given her statement before the police in his presence to the effect that she was coming from Supaul Bazar and in the way she saw her daughter-in-law being taken for treatment on a block-cart and thereafter she also went with her to hospital. He has admitted that he had come to the Court for deposition without notice on the asking of the accused.

18. D.W.2 Hare Krishna Mandal is a co-villager and he has been examined to depose that the deceased had sustained fire injury while cooking, as an accident and this witness along with some others had extinguished the fire and brought her to Supaul Hospital on a block-cart. He has admitted that he had come to depose on the request of the accused.

19. The main argument on behalf of the accused-appellant is on account of delay of 23 days in lodging of Fardbeyan. It is submitted that from the evidence of doctor (P.W.3) as well as the dresser (P.W.5) it is clear that the injured gained consciousness and started taking food within a day or two of her admission in the hospital. It has further been shown from the evidence of other witnesses on the point of Panchayati that the husband of the deceased has tried to create a false impression through his deposition that Panchayati was convened on the date when the deceased gained consciousness in hospital and Fardbeyan was lodged on the same day. It has been shown that according to other witnesses Panchayati had been convened earlier. It has been submitted that no Panchayati could have been convened and the father of the appellant would not have attended such Panchayati unless something about the alleged occurrence was known to the parties before 20th May, 1981.

20. On going through the evidence of Dr. Ramdeo Jha (P.W.3) and Suresh Pathak (P.W.5), who are independent witnesses being the doctor and dresser of the hospital, it is found that the prosecution claim that the deceased gained consciousness on 20.05.1981 and therefore Fardbeyan could be lodged only on that date after a delay of 23 days is a false claim and the deceased was conscious soon after the occurrence and had been taking meal and medicines in

the hospital. She had also been talking to the doctor and dresser. Hence, it is found that the delay of 23 days in lodging of Fardbeyan in this case has been attempted to be explained by the prosecution on a plea which is false and unsustainable. Such inordinate delay in lodging of Fardbeyan renders the prosecution case highly doubtful. Such false explanation has not been furnished only by the witnesses particularly P.W.1 but is also noticeable in Fardbeyan given by the injured much before recording of her dying declaration which is also on same lines. Hence, besides the aforesaid finding that the prosecution has failed to explain inordinate delay of 23 days in lodging the Fardbeyan, it is also found that the deceased while in injured condition was under influence of others and had not given correct narration of events and had falsely claimed that she gained consciousness only on 20.05.1981. In such circumstances it is not found safe to rely upon the dying declaration of the injured recorded on 28.05.1981, about nine days prior to her death.

21. In view of aforesaid discussion and finding, we have no option but to hold that the appellant deserves to be given the benefit of doubt and on that basis he has acquitted of all the charges. The appeal is allowed. Since the appellant is in jail, he is directed to be released forthwith from custody, if not required in connection with any other case.