
(2010) 02 PAT CK 0061
In the Patna High Court

Manoj Kumar Verma

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2010) CriLJ 3073 : (2010) 4 Crimes 125

Hon'ble Judges : Rakesh Kumar, J; Dharnidhar Jha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dharnidhar Jha and Rakesh Kumar, JJ.—The appellant, Manoj Kumar Verma, was tried by the learned Sessions Judge, Buxar, in Sessions Trial No. 05 of 2002 and by his Judgment and order of conviction dated 23.7.2003 the appellant was found guilty of committing offences under Sections 302 and 201 of the Indian Penal Code. After hearing the appellant on sentence, the learned Sessions Judge found the case not as one of the rarest of the rare cases and directed the appellant to suffer rigorous imprisonment for life for conviction u/s 302 of the Indian Penal Code and also rigorous imprisonment for three years u/s 201 of the Indian Penal Code. As regards the operation of sentence u/s 201 of the Indian Penal Code, the same was made inoperative. The appellant has questioned the above finding and sentence through the present appeal.

2. The prosecution case emanates from Ext.2, which is the fardbeyan of Prabhu Nath Singh (P.W.3) who happened to be the father of deceased Mamta Devi, who undisputedly was married to the appellant. It was alleged that the son of P.W.3, namely, Sanjay Kumar Verma (P.W.4) informed him on 15.2.2001 that Mamta Devi had been killed by the present appellant in Buxar at the appellant's residence. Accordingly, P.W.3 came to Buxar from his village and learnt from Mohalla people that the appellant brutally assaulted Mamta Devi in the preceding night and had thereby killed her and had taken the dead body for cremation to the cremation ground. P.W.3 further stated that on earlier occasions also, the

appellant used to ill-treat and torture the deceased in similar manner and as a result thereof the informant had taken the deceased to his house. The informant has alleged that Mamta Devi, aged about 25 years, was married to the appellant 8-10 years ago. The informant used to provide financial assistance to the appellant so as to improving his economic condition, but still the appellant used to physically torture the deceased.

3. Illustrative example was also cited by P.W.3 in the fardbeyan (Ext.2). It was stated that about three months prior to the incident, the deceased had been similarly treated, as a result of which she went to Bhola Prasad Verma(P.W.7).

4. On the basis of Ext.2, the F.I.R. of the case (Ext.2/1) was registered by P.W.6 S.I. Arbind Kumar Rai and the investigation was initiated. P.W.6 came to the cremation ground with the informant and P.W.7 and took the dead body in his custody and after holding inquest upon it, prepared inquest report (Ext.3). P.W.6 has stated that he along with the present appellant went to the appellant's house at Mohalla Nalband Toli in Buxar and recorded the description of the place of occurrence in the case diary. He also questioned the present appellant and his neighbours and after finding sufficient materials sent the appellant up for his trial.

5. The defence of the appellant was of complete denial of his participation in the occurrence. He pleaded that in fact, the lady had died a natural death on account of having colic-pain while she was being shifted to the hospital.

6. The prosecution examined as many as eight witnesses in support of the charges out of whom P.W.1 Lal Babu Verma, P.W.2 Lilawati Devi, mother of the appellant, P.W.5 Kiran Devi, a land lady of the house in which the accused and the deceased were residing as tenant, turned hostile, though they stated that the deceased Mamta Devi had been murdered. P.W.3 informant Prabhu Nath Prasad, P.W.4 Sanjay Kumar Verma and P.W.7 Bhola Prasad Verma have supported the charges. P.W.8 Dr. Upendra Narayan Sinha had held the postmortem examination on the dead body, but could not find any external or internal injury except the fracture of cervical bones, which in his opinion was not the cause of death. In fact, P.W.8 could not conclude as to what was the cause of death of Mamta Devi and preserved the viscera for chemical analysis which was never brought on record.

7. The learned trial Judge held the charges proved and found the appellant guilty and, thus, sentenced the appellant.

8. We have heard Sri Nil Kamal, learned Counsel appearing for the appellant and Sri Ashwini Kumar Sinha, learned A.P.P. for the State. We have gone through the evidence of three witnesses supporting the charges, namely, P.W.3 and his son Sanjay Kumar Verma (P.W.4) and the sala of the informant (P.W.7) with whom he came to the police Station and gave his fardbeyan, as may appear from the evidence of S.I. Arbind Kumar Rai (P.W.6). So far as the evidence of P.W.7 Bhola Prasad Verma is concerned, he has admitted in paragraph 6 of his evidence that his statement was not recorded by any of the police officers. It was contended

that the evidence of such a witness, who never gave any evidence during the course of investigation before any officer or the Investigating agency, could not be taken into account for recording the conviction of the appellant as it was inadmissible. In support of the contention, the learned Counsel has cited a decision of this Court reported in 1985 BLJ 44 Mega Ram Rajak v. State of Bihar, in which it has been held that, as may appear from the finding recorded in paragraph 3 of the Judgment, the evidence of witness in the court without having been examined by the police during the investigation has to be excluded from consideration. P.W.7 has admitted in paragraph 6 that he had not given any statement during the course of investigation either to the Investigating Officer of the case or to the Dy. Superintendent of Police or the Superintendent of Police or any other police officer. We exclude the evidence of P.W.7 from consideration

9. That leaves us to consider the evidence of two witnesses P.W.3 Prabhu Nath Prasad, the informant of the case, and P.W.4 Sanjay Kumar Verma, as may appear from narration of the prosecution case, the whole story is as per information received by P.W.3 from P.W.4 Sanjay Kumar Verma, who has stated in his evidence in Court that he had informed his father after having learnt about the murder of his sister. He has further stated that he himself went to the house of appellant and found that the dead body of his sister was lying at the door of the present appellant, whereafter he went to inform his father who came and learnt from Mohalla people that the dead body had been taken to cremation ground for cremation. Thereafter, P.W.3 Prabhu Nath Prasad, P.W.4 Sanjay Kumar Verma and P.W.7 Bhola Prasad Verma went to the Police Station and from there to the cremation ground and found that preparation were being made for cremating the dead body. The Investigating Officer who was accompanying them took the dead body in his possession. P.W.4 has also stated that financial condition of the appellant was bad and, as such, he used to ask for money from P.W.3. To a court question, P.W.4 stated that he had seen a black mark on the throat of the deceased but in his reply to another question during the cross-examination in paragraph 7 at page 23 of the evidence, P.W.4 has stated that in fact he had never made such statement either before the Investigating Officer or the Dy. Supdt of Police. In his reply to another court question in paragraph 8, he has stated that he did not remember as to what statement was given by him to the police at the time of investigation. He has further stated in reply to another question that he did not make any inquiry from the Mohalla people as to how his sister had died. From the reading the above lines of P.W.4, it would not be appropriate to rely upon the evidence of P.W.4 in as much as on the one hand he stated that he had gathered from Mohalla people that his sister had been murdered but in cross-examination he simply takes a u-turn and states that he had not made any query about the cause of death of his sister from Mohalla people. Besides, there appears an attempt made by P.W.4, which is serious in nature of creating circumstances of finding a black mark on the throat of the deceased. This appears to us an after thought, which was invented by the prosecution when it could find after perusing the postmortem examination report

that 2nd and 3rd cervical bones were found fractured by P.W.8.

10. Upon consideration of the evidence of witnesses, especially P.W.4 in paragraph 2, which is his examination in chief, he has stated that the dead body was brought to the hospital by a tractor. It was rightly contended by the learned Counsel for the appellant that possibility may not be ruled out that the neck bone was fractured on account of being twisted in the state of presence of rigor mortis while the same was being loaded on the tractor.

11. We have already noted that P.W.8, the doctor who had held postmortem examination did not conclude as to what could be the cause of death of Mamta Devi. He did not find any external injury, Thus, the claim of P.W.4 that he had seen external injury of black mark on the throat on the deceased also creates doubt in the light of the evidence of P.W.8, who had the occasion of perusing the dead body thoroughly for finding out any injury on it.

12. So far as the evidence of informant (P.W.3) is concerned, after having considered the same we find that, in fact, the story of demand of money from him by the appellant may also not be acceptable. To a series on court questions, P.W.3 has replied that he used to give money to his son-in-law, daughter-in-law or grand-children only, as may appear from the reply of this witness in paragraph 11. Likewise, the witness has admitted in his evidence that the deceased had left behind three daughters and one son. The marriage was, as stated in the F.I.R., solemnized about 8-10 years ago which appears to us reasonably correct inasmuch as giving birth to four children after marriage could be reasonably acceptable within such a span of time. The evidence of P.W.3 to us appears not acceptable on many reasons, one of such reasons being that while stating the period for which the deceased Mamta Devi was married to the present appellant he gave it as 8-10 years in the fardbeyan but while giving the evidence in the court, he appears conscious of the fact that it may be creating seriousness in the allegation, and as such, he appears giving three consecutive periods as six, seven or eight years since the deceased was married. Besides, his evidence in paragraph 10 indicating wrong ages of his grand children also touches upon the credibility of him as a witness. The witnesses have stated that he collected the information about the occurrence from many Mohalla people. Two such persons have been examined as P.W.1 and P.W.5. P.W. 5 was none else but the landlady of the house in which the appellant was residing as tenant. She appears not supporting the prosecution story along with P.W.1 Lal Babu Verma that the appellant was unkind to his wife and used to torture mentally and physically and further that in the night of the occurrence he had been extremely cruel to her so much so as to assaulting her to death.

13. While we were perusing the postmortem report and the evidence of P.W.8 we came across the fact that the uterus was found gravid indicating that the lady was carrying a four month foetus in her womb. The deceased had already four children. She was married, in our opinion for the last 10 years before or before that period to the appellant. On many occasions unwanted child may lead to

developing depression and suicidal tendency in the ladies. We have sufficient reasons to record basing the same upon the evidence of P.W.8 that he might have swallowed poisonous substance. P.W.8 has stated in his evidence, as may appear from paragraph 3, that the stomach contained liquid of brownish black colour which smelled foul. This appears to us one of the circumstances of poisoning and prosecution does not alleged that the lady had been poisoned. We are inclined to take a view that the lady might have committed suicide on account of carrying an unwanted child in her womb.

14. After having considered the evidence and inference coming out of them, we find that the conviction of the appellant was, thus, not justifiable, and as such, not sustainable in the light of the evidence available to us on the record of present appeal. The conviction of the appellant and sentence passed on him is hereby set aside.

The appeal is allowed. The appellant is in custody. He shall be released from custody forthwith, if not wanted in any other case.