

(2019) 02 PAT CK 0004

In the Patna High Court

Case No : Criminal Appeal (DB) No. 371 Of 2012

Manoj Mehtar And Ors

APPELLANT

Vs

StateOf Bihar And Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307
CodeOf Criminal Procedure, 1973 — Section 313

Citation : (2019) 02 PAT CK 0004

Hon'ble Judges : Rakesh Kumar, J;Prakash Chandra Jaiswal, J

Bench : Division Bench

Advocate : Soban Asghar, Ajay Mishra

Final Decision : Allowed

Judgement

1. Heard Mr. Md. Soban Asghar, learned counsel for the appellants and Mr. Ajay Mishra, learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the Judgment and Order of conviction dated 10.02.2012 and Order of sentence dated 15.02.2012 passed by Additional Sessions Judge, F.T.C.-II, Madhubani in Sessions Trial No. 215 of 2010 arising out of Rajnagar P.S. Case No. 233 of 2009 whereby the learned trial court acquitted the accused Mosmat Munni Devi and Sudhir Mehtar of the charges levelled against them and convicted the accused Dilip Mehtar and Manoj Mehtar for the offence punishable under Sections 147, 148 and 302/149 of the Indian Penal Code and sentenced them to undergo R.I. for life under Section 302/149 of the Indian Penal Code. However, no separate sentence was passed under Sections 147 and 148 of the Indian Penal Code.

3. Factual matrix of the case is that Rajnagar P.S. Case No. 233 of 2009 was instituted under Sections 147, 148, 149, 307 and 302 of the Indian Penal Code against the accused Manoj Mehtar, Gulten Mehtar, Sudhir Mehtar, Chandan Mehtar, Munni Devi and Dilip Mehtar on the basis of the fardbeyan of Basant Lal

Ray, S/o Late Bhola Ray recorded by S.I. Ram Chandra Ram of P.S. Rajnagar on 08.11.2009 at 08:15 AM at Sadar Hospital, Madhubani with the allegation in succinct that on 07.11.2009 at around 4 PM while his father was regressing to his house after defecation and arrived in front of the house of Manoj Mehtar, he spotted dumping garbage by the children of the family of Manoj Mehtar in his field which is located adjacent to the house of Manoj Mehtar. On making complain with Manoj Mehtar about dumping of the garbage in his field, he slated him. Then his father regressed to his house and informed the matter to his neighbour. His neighbour assured him to get the matter settled sitting together tomorrow. Further allegation is that on the said date at around 7 PM, Dilip Mehtar approached his father and made protest against forbidding by him from dumping garbage in his field. In the meantime, when his father went for urination at the adjacent place, Manoj Mehtar, Sudhir Mehtar, Gulten Mehtar, Chandan Mehtar and Munni Devi arrived there and started slating him. Meanwhile, Dilip Mehtar exhorted them to assault his father, whereupon Manoj Mehtar assaulted on the head of his father by means of Kati while other accused persons assaulted him by means of lathi. Sustaining injury, his father fell down on the ground and started screaming and responding the same when he and other villagers rushed there, the accused persons had left the scene. He rushed his father to Rajnagar hospital and the doctor of the said hospital referred him to Sadar Hospital, Madhubani for better treatment. He took his father to the Madhubani Sadar Hospital. His father succumbed to his injury on 07.11.2009 at 12 PM in the night during course of treatment.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against five accused persons namely Manoj Mehtar, Gulten Mehtar, Sudhir Mehtar, Munni Devi and Dilip Mehtar keeping the investigation pending against absconding accused namely Chandan Mehtar.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in the seisin of Additional Sessions Judge, F.T.C.-II, Madhubani for trial.

6. Charge against all the aforesaid five accused persons was framed under Sections 147, 148 and 302/149 of the Indian Penal Code. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried. During the course of trial, accused Gulten Mehtar passed away on 05.03.2011, hence proceeding against him was dropped. Thus rest four accused persons faced further trial.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Yogendra Kamat as PW-1, Dr. Anand Kumar Jha who conducted the autopsy of the cadaver of the deceased as PW-2, Lochan Ram as PW-3, Md. Zakir as PW-4, I.O. Ramchandra Ram as PW-5, Phuleshwari Devi who happens to be wife of the deceased as PW-6 and the

informant Basant Lal Ray as PW-7. Prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. Accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, convicts Dilip Mehtar and Manoj Mehtar have preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that PW-1 Yogendra Kamat, PW-3 Lochan Ram and PW-4 Md. Zakir are not the eye witnesses of the occurrence. PW-6 Phuleshwari Devi who happens to be the wife of the deceased is also not the eye witness of the occurrence as she has stated in her examination-in-chief that at the time of occurrence she was sitting along with her husband (deceased) at the place of occurrence, but there is no such prosecution case and the informant Basant Lal Ray (PW-7) has also not divulged about presence of PW-6 Phuleshwari Devi at the place of occurrence at the time of occurrence. The informant Basant Lal Ray (PW-7) also does not happen to be eye witness of the occurrence as PW-6 has not divulged about presence of the informant along with the deceased at the place of occurrence at the time of occurrence and moreover in the fardbeyan itself, the informant has stated that he and other villagers had arrived at the place of occurrence responding screaming made by his father after falling on the ground sustaining injury inflicted at the hand of the appellants. Then all the accused persons left the scene. It is further submitted that as per the prosecution case and statement of the witnesses, Manoj Mehtar gave Kati (dabiya) blow on the head of the deceased and I.O. has also found incised wound on the head of the deceased as adumbrated in the inquest report, but the doctor conducting the autopsy of the cadaver of the deceased has found only two lacerated injuries on the head of the deceased and he has not found any incised wound caused by sharp cutting weapon. Thus, the ocular evidence of unreliable witnesses of the prosecution also does not stand corroborated by the medical evidence. It is also submitted that as per the witnesses' account, blood was fallen from the wound of the deceased at the place of occurrence but I.O. has not seized the blood stained soil and prepared seizure list. Thus no objective evidence has been brought on record by the prosecution. It is also submitted that as per the account of the informant,

there is animosity between the parties and appellants have been falsely implicated in the case by the prosecution due to the aforesaid animosity. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, aforesaid judgment and order of conviction and sentence passed against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP for the State advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the informant happens to be eye witness of the occurrence. He has supported the prosecution case in toto. Other material witnesses also happen to be eye witness of the occurrence and they have corroborated the prosecution case. Consistent ocular evidence of the prosecution also stands corroborated by the medical evidence and learned trial court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this criminal appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the record, it appears that to substantiate its case, the prosecution has examined altogether five material witnesses in the case. Though PW-1 Yogendra Kamat, PW-3 Lochan Ram and PW-4 Md. Zakir have made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case as adumbrated in the fardbeyan claiming themselves to be eye witness of the occurrence that responding hulla they arrived at the place of occurrence and witnessed Dilip Mehtar, Sudhir Mehtar, Chandan Mehtar, Gulden Mehtar, Munni Devi and Manoj Mehtar slating Bhola Rai. Dilip Mehtar exhorted them to assault whereupon Manoj Mehtar gave Kati blow on the head of Bhola Ray inflicting bleeding head injury to him while other accused persons assaulted him by means of lathi. Sustaining injury, Bhola Rai fell down on the ground and on arrival of the people he was rushed to Rajnagar hospital and from where he was rushed to Sadar Hospital Madhubani, where he succumbed to injury at around 12 PM, but PW-1 Yogendra Kamat in Para-6 of his cross-examination has stated that Bhola Ray had fallen on the ground by the time of his arrival at the place of occurrence sustaining head injury. His brain material was protruded from the skull and accused persons had left the scene on hulla. Aforesaid statement of the said witness indicates that at the time of his arrival at the place of occurrence Bhola Rai had fallen down on the ground sustaining head injury and the accused persons had left the scene. Meaning thereby that the said witness had arrived at the place of occurrence after culmination of the occurrence and decamping of the accused persons and he has not witnessed the occurrence. In para-5 of his cross-examination he has further stated that when he arrived at the place of occurrence, there was none else barring the informant and the accused persons. Other persons had arrived there within 10 minutes of his arrival there. PW-3

Lochan Ram in Para-4 of his cross-examination has also corroborated the said statement of PW-1 by stating in the said paragraph that Yogendra Kamat (PW-1), Md. Zakir (PW-4) and Phuleshwari Devi (PW-6) had arrived there preceding to his arrival at the place of occurrence and Bhola Ray had fallen on the ground senseless and his head was bleeding. Aforesaid statement of PW-1 and PW-3 also rules out witnessing of the occurrence by PW-3 and PW-4. As once PW-1 had not seen the occurrence as he had arrived at the place of occurrence after falling down of Bhola Ray on the ground sustaining injury and decamping of the accused persons, there is no question of witnessing of the occurrence by PW-3 and PW-4 who had arrived later to the arrival of PW-1 at the place of occurrence and moreover PW-3 has also stated in Para-4 of his cross-examination that when he arrived at the place of occurrence, Bhola Ray had fallen on the ground senseless and his head was bleeding. PW-4 Md. Zakir has stated in para-5 of his cross-examination that he had arrived at the place of occurrence along with Yogendra Kamat (PW-1) and Lochan Ram (PW-3), but said Yogendra Kamat and Lochan Ram have not corroborated the factum of arrival of PW-4 at the place of occurrence along with them. Thus in view of aforesaid testimony of PW-1, PW-3 and PW-4 and discussion made by me hereinabove, they do not happen to be eye witness of the occurrence and their testimonies are not worth credence and reliable.

15. Informant Basant Lal Ray (PW-7) and wife of the deceased Phuleshwari Devi (PW-6) have also made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case claiming themselves to be the eye witness of the occurrence as adumbrated in the fardbeyan, but from perusal of their testimony, it appears that they also do not happen to be eye witness of the occurrence as as per the statement of the informant Basant Lal Ray (PW-7) given by him in Para-1 of his examination-in-chief at the time of occurrence, he was at his door. He listened hulla from his land. Responding the same he rushed there and witnessed the occurrence of slating and assaulting his father by the accused persons during the course of urination and wife of the deceased namely Phuleshwari Devi (PW-6) has stated in her examination-in-chief that at the time of occurrence she was sitting with her husband on crossing road and witnessed the occurrence but PW-7 has not stated about presence of PW-6 at the place of occurrence at the time of occurrence and likewise PW-6 has also not stated about presence of PW-7 at the place of occurrence at the time of occurrence. PW-1 and PW-4 have also not stated about witnessing PW-6 at the place of occurrence at the time of occurrence. Aforesaid aspect of the case creates serious doubt about their presence at the place of occurrence and witnessing of the occurrence by them. Moreover, as per the prosecution case as adumbrated in the fardbeyan, after falling down of his father sustaining injury and on screaming informant along with the villagers rushed there. Then the accused persons left the scene. But as discussed by me hereinabove, villagers, PW-1, PW-3 and PW-4 who are said to have arrived at the place of occurrence are not the eye witnesses of the occurrence rather they had

arrived at the place of occurrence after falling down on the ground by the deceased sustaining injury and decamping of the accused persons from the place of occurrence. Hence aforesaid aspect of the case also rules out witnessing of the occurrence by the informant (PW-7). In view of the aforesaid aspects of the case, testimonies of PW-6 and PW-7 also do not appear to be worth credence and reliable.

16. As per the prosecution case and account of the witnesses, Manoj Mehtar assaulted on the head of the deceased by means of Kati (dabiya) inflicting bleeding head injury to him and as per the account of PW-1 as given by him in Para-6 of his cross-examination brain material of the deceased was protruded from his skull and I.O. Ramchandra Ram (PW-5) has also divulged in para-9 of his cross-examination about finding of only one sharp cut injury on the head of the deceased and he has also mentioned the same in the inquest report. But from perusal of the post mortem report (Exhibit-1) and the statement of the Dr. Anand Kumar Jha (PW-2) who has conducted the autopsy of the cadaver of the deceased, it appears that the doctor has found only two lacerated wound, one on the right parietal region and other on the left parietal region of the deceased as anti mortem injury. Doctor has not found any sharp cut injury on the head of the deceased. He has also not found brain material protruded from the skull of the deceased. Thus the aforesaid unreliable ocular evidence of witnesses does not stand corroborated by the medical evidence and the said medical evidence also completely rules out the prosecution case and witnessing of the occurrence by the said witnesses.

17. As per account of PW-4 as given by him in Para-6 of his cross-examination, blood was fallen on the ground from the wound of Bhola Rai and I.O. Ramchandra Ram (PW-5) has also stated in Para-3 of his examination-in-chief that he had found blood stain at the place of occurrence. Informant (PW-7) has stated in Para-9 of his cross-examination that I.O. had seized blood stained soil and attire of the deceased from the place of occurrence but I.O. (PW-5) has stated in Para-10 of his cross-examination that he had not prepared seizure list of the blood stain at the place of occurrence. Thus objective evidence of the case has also not been brought on record by the prosecution.

18. Informant has stated in Para-4 of his cross-examination that there is land dispute with the accused persons. Aforesaid statement of the informant indicates that the appellants are on inimical terms with the informant. Though animosity cuts both the edge, but in view of not reliability of material witnesses of the occurrence, not happening of any eye witness of the occurrence, not corroboration of the ocular evidence by the medical evidence and not bringing on record the objective evidence by the prosecution, false implication of the appellants at the hand of the prosecution party due to aforesaid animosity cannot be ruled out.

19. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case

and bring home the charges levelled against the appellants beyond all reasonable doubts by adducing consistent, convincing, reliable and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellants is set aside and the appellants are acquitted of the charges levelled against them giving them benefit of doubt. As the appellant Manoj Mehtar is in custody, he is directed to be released forthwith, if not wanted in any other case, while as the appellant Dilip Mehtar is on bail, he is discharged from the liability of his bail bonds.

20. Accordingly, this criminal appeal is allowed.