

(2023) 07 PAT CK 0014

In the Patna High Court

Case No : Criminal Appeal (DB) No. 132 Of 2022

Mataru Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 323, 324

Citation : (2023) 07 PAT CK 0014

Hon'ble Judges : A. M. Badar, J; Harish Kumar, J

Bench : Division Bench

Advocate : Akash Raj, A.C.

Final Decision : Dismissed

Judgement

1. Appellant, the first informant who was examined as P.W.4 before the Trial Court being the victim of the crime in question is challenging the judgment and order dated 07.12.2021 passed in Sessions Trial No.223 of 2015 arising out of Sono P.S. Case No.62 of 2015 (GR Case No.563 of 2015) by the learned Additional Sessions Judge-I, Jamui, thereby acquitting the respondent nos.2 to 5 for the offences punishable under Section 147, 148, 149, 323, 324, 307 and 302 of the Indian Penal Code.

2. Heard the learned counsel appearing for the appellant. He drew our attention to the versions of the alleged eye-witnesses P.W.1, Vinod Yadav, P.W.2 Kailu Yadav @ Anil, P.W.3 Paviya Devi and P.W.6 Sugma Devi @ Sakuna Devi and argued that all these witnesses have deposed about witnessing this occurrence and seeing the accused persons killing the deceased Mohan Yadav by means of weapons. However, the learned Trial Court has wrongly acquitted those accused, who are named as respondent nos.2 to 5.

3. We have considered the submissions so advanced. We have also perused the records and proceedings.

4. The FIR of the subject crime was lodged by P.W.4 Matru Yadav the appellant

herein, on the day of the incident that is on 09.04.2015 itself resulting in registration of the crime in question. The incident took place at about 05:00 AM of that day. According to the prosecution case, Mohan Yadav (since deceased) who was resident of Balthar had gone for easing itself at about 05:00 AM of that day. The accused persons, who were armed with deadly weapons had formed an unlawful assembly with common object of commission of murder of Mohan Yadav, encircled Mohan Yadav and assaulted him and has caused his death.

5. During the course of the trial, the prosecution has examined in all ten witnesses. Out of them, as stated by the learned counsel for the appellant P.W.1, Vinod Yadav, P.W.2 Kailu Yadav @ Anil, P.W.3 Paviya Devi and P.W.6 Sugma Devi @ Sakuna Devi are the eye-witnesses to the subject crime. The learned Trial Court disbelieved them and by giving benefit of doubt had proceeded to acquit the respondent nos.2 to 5 of the alleged offences.

6. This is an appeal challenging acquittal of the respondent nos.2 to 5. It is well settled that in an appeal challenging acquittal, the Court is no doubt entitled to re-appreciate the evidence but once it is found that the Trial court had taken plausible view in the matter then even if another view is plausible, the Appellate Court is not justified in interfering the finding of the acquittal.

7. Let us examine the matter by keeping in mind this position of law.

8. The prosecution case itself shows that the incident of murder of Mohan Yadav took place when he had gone for easing himself at the outskirts of the village Balthar. The investigator has stated that place of occurrence was about five hundred meters away from the village Balthar and there is no reason to dispute this version of the investigator. On this backdrop, it is in evidence of P.W.1 Vinod Yadav that upon hearing commotion, he ran towards Eastern side of the house to witness that the accused persons along with eight others were assaulting Mohan Yadav. Similar is the version of P.W.2 Kailu Yadav @ Anil, who has also stated that after hearing commotion, he reached at the place of occurrence and noticed the accused persons/ respondent nos.2 to 5 along with others assaulting the deceased Mohan Yadav.

9. The learned Trial Court upon analysis of these statements made by these two alleged eye-witnesses and by comparing those statements with the version of the investigator has come to the conclusion that both these witnesses cannot be an eye-witnesses to the incident in question.

10. The learned Trial Court gave a finding that it is not possible for someone to hear the sound of commotion from such a long distance of five hundred meters and then to run to the spot of the incident and witness the assault. The incident as alleged by the prosecution took place at 05:00 AM. Both these witnesses were inside their houses which were at the distance of about five hundred meters from the scene of the occurrence.

11. In the light of this factual position emerging from record, we are of the

considered opinion that the view taken by the learned Trial Court to the effect that these two witnesses cannot be an eye-witnesses of the incident of murderous assault, is a plausible view in the light of the evidence on record. No perversity can be found in such a view taken by the learned Trial Court.

12. Then comes evidence of P.W.3 Paviya Devi and that of P.W.6 Sugma Devi @ Sakuma Devi.

13. P.W.3 Paviya Devi claimed that she was at the spot of the incident and after hearing the sought, she witnesses the incident. However, P.W.6 Sugma Devi has deposed that after hearing sought she firstly went to the house of P.W.3 Paviya Devi and taking her she had gone to the place of occurrence. Thus, P.W.6 Sugma Devi has falsified the version of P.W.3 Paviya Devi or rather has create reasonable doubt in respect of truthfulness of version of P.W.3 Paviya Devi regarding her witnessing the incident in question.

14. This appreciation of evidence of both these two witnesses by the learned Trial Court cannot be termed as perverse or contrary to record.

15. In this view of the matter, there is no scope of interference in the impugned judgment and order of acquittal of the respondent nos.2 to 5. Therefore, the appeal stands rejected.