
(2011) 05 PAT CK 0045

In the Patna High Court

Case No : Criminal Appeal (DB) No. 671 of 2006

Motilal Pandit, Sarswati Devi and Sanjay Kumar Sanehi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 31
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2011) 05 PAT CK 0045

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Shyam Kishore Sharma and Gopal Prasad, JJ.—Above noted appeals preferred by the Appellants named above have been taken up together because these appeals have arisen out of one judgment dated 29th July, 2006 passed in Sessions Trial No. 126 of 2000 by the learned Additional Sessions Judge, F.T.C. No. I, Patna by which these Appellants have been convicted for the offences punishable under Sections 302/34 and 201/34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for life under Sections 302/34 IPC and five years rigorous imprisonment under Sections 201/34 of the Indian Penal Code. Sentences were ordered to run concurrently.

2. After recovery of a dead body of a woman on 19.2.1997 the case was registered on the basis of fardbeyan of Chowkidar, Kapil Prasad (PW 5) against unknown. In the morning of 19.2.1997 PW 5 heard rumor regarding lying of a dead body of a woman south of the new By-pass road near village Dhelwa. PW 5 went there and located the dead body of an unknown lady who appeared to be 25 years of age but no body could identify the deceased. The case was registered vide Phulwari P.S. Case No. 75 of 1997 dated 19.2.1997 under Sections 302/201 IPC. After investigation charge sheet was submitted and the case was committed to the Court of Sessions where the charges were framed against these five

Appellants under Sections 302/34 and 201/34 of the Indian Penal Code and explained to them to which they pleaded their innocence and trial proceeded.

3. Defence of the Appellants was that the dead body was not of the deceased Meena Devi, as claimed, rather the dead body was of a stranger and the Appellants were roped in on the basis of suspicion.

4. In order to prove the case, the prosecution has examined 7 witnesses before the trial court. PW 1 Devendra Thakur is a Government Photographer and he has taken photograph of the deceased. He has gone to the Mortuary at Patna Medical College and Hospital on the requisition and there three snaps (Exts. 1, 1/1 and 1/2) were taken. Material witnesses of the prosecution are P Ws, 2, 3, 4 and 5. PW 5, no doubt, is the informant but he is not a witness to the occurrence. It is he who brought the law into motion after informing the police after recovery of dead body of a lady. PW 6 is the Dr. Ashok Kumar Yadav who has conducted post mortem examination of the deceased. PW 7 is the Investigating Officer who initially investigated the case but soon thereafter the investigation was entrusted to Ramraj Singh. PW 7 handed over the investigation to one Ramraj Ram, Sub-Inspector of Police (PW 7 paragraph 12). Major part of investigation was thus conducted by Ramraj Ram but he has not been examined.

5. On behalf of defence Binod Kumar has been examined as DW 1.

6. Before proceeding further, it would be appropriate to deal with the evidence of PW 6, Dr. Ashok Kumar Yadav. This witness has stated that on 19.2.1997 one unknown dead body of a female aged about 25 years was brought by Constable No. 502, namely, Biswnath Singh (not examined) to the PMCH at 12.40 P.M. and the post mortem was conducted on the same day in the evening at 3.30 P.M. The doctor found rigor mortis present. The body was having three injuries. Injury No. 1 was abrasion 3"x1" on the middle side of the left elbow. Injury No. 2 was one abrasion 1/2" x 1/2" in size on the do some of the right hand between thumb and index finger and injury No. 3 was one ligature mark 7" long and 1/2" wide on the front of the neck above thyroid cartilage between lower part of both ears. Death was due to aforesaid ante mortem injuries. Major contributory to death was injury No. 3 because the death was due to Asphyxia and due to excess pressure on the neck. Therefore, the evidence of doctor shows that the cause of death of the lady was Asphyxia due to throttling.

7. PW 2 is the brother of Meena Devi who was married with Appellant Vijay Kumar Mitra on 28.4.1977. She was living with her in-laws. Subsequently her husband got employment at Kahalgaon and he was transferred to Domchanch. Meena Devi has passed her initial days after marriage quite happily at her matrimonial house but as soon as her husband came into job, he married with Sheela Devi. When the torture was started upon her then the matter was brought before the caste panchayat where Vijay Kumar Mitra assured for proper behavior henceforth. This witness has further stated that on 23.2.1997 he came to his sister's house where she was found missing. The members were present

in the house they were Moti Lal Pandit, Sanjay Kumar Sneh, Uday Kumar, Sarswati Devi. They told that Meena had gone with her husband to Domchanch. PW 2 went there but he found only accused Vijay Kumar and Sheela Devi. They could not give any satisfactory reply regarding whereabouts of Meena Devi rather they told that she was residing at the house situated at Mahavir Nagar, Patna. PW 2 came to his father and told about the occurrence. Sometimes thereafter, he, his brother and father went to inform the police where a photograph of a dead body was shown and that photograph (Exts. 2, 2/1 and 2/2) was of his sister. PW 2 told that the dead body was thrown on the new by-pass road. Therefore, the evidence of this witness is to the extent that his sister was married with Vijay Kumar Mitra on 28.2.1977 and the photograph produced by the officer-In-charge was of his sister. Later on he denied the suggestion that the photograph was not of his sister. Similarly PW 3 has supported the case in entirety to the statement of PW 2 with regard to marriage and other versions which has been given by PW 2.

8. PW 4 also stated the same line of evidence as of PW 2 and she has merely supported the version of PW 2 that Meena Devi was married with Vijay Kumar Mitra in the year 1977 and when the photograph was shown then she identified the same to be of her daughter Meena Devi. These are the evidences which have been brought by the prosecution.

9. The trial court after considering the evidences to be sufficient and came to the opinion that the circumstances enumerated by the prosecution had given a conclusive proof that these Appellants were the persons who were responsible for causing death of Meena Devi.

10. Learned Counsel for the Appellants has assailed the judgment and it has been submitted that besides other technicalities there are substantive error in the judgment. It has been submitted that the inquest report has not been brought on the record. Investigating Officer who has conducted major part of investigation has not appeared. Attention has been drawn towards the fact of the judgment that the photograph which the witnesses are claiming to be of Meena Devi are not of Meena Devi rather that is a different photograph and the Appellants have been roped in only on the basis of photograph which was never of Meena Devi. Attention has been drawn towards the fact that when the accused persons are being roped in on the basis of photograph of stranger then at the very initial stage they filed petition before the court of the learned S.D.J.M. on 2.12.1999 in which they stated that the photograph which has been produced by the prosecution be compared with admitted live photograph of Meena Devi by the expert but this was overlooked and they filed a petition before this Court. One petition which was filed on 12.7.200 before the trial court is on record wherein they have prayed that the photograph which has been produced by the prosecution is not of Meena Devi, and therefore, additional evidence u/s 31 Code of Criminal Procedure is mandatory in the present case to ascertain the identity of the dead body which according to the prosecution, was the dead body of

Meena Devi. If the identity of the deceased is not challenged then the entire evidence produced by the prosecution becomes non est. Attention has been drawn towards the very fact that the marriage of Meena Devi with Vijay Kumar Mitra was performed on 28.4.1977 and the occurrence is of 1997 i.e. after 20 years of marriage of Meena Devi. The deceased is said to be aged about 25 years from the version of the informant which is the first version of the occurrence. Though the inquest report is not on record but the learned Counsel for the Appellants submitted that the same is available in the case diary and in which the Investigating Officer has also ascertained that the deceased appears to be of 25 years. Attention has been drawn towards the evidence of the doctor who has conducted the post mortem examination of the deceased. The doctor has found the age of the deceased to be 25 years. These are the independent assessment of the age of the deceased. In the present case age of the deceased has been assessed by three persons: first the informant, second the Investigating Officer and the third by the doctor who conducted post mortem examination. All the three have assessed the age of deceased to be 25 years. If the version of the prosecution is presumed to be correct then the case becomes quite doubtful because the married lady of 1977 cannot be supposed to be 25 years of age in the year 1997 because these facts would show that Meena Devi must have been of 5 years at the time of marriage which is hypothetical assessment and this cannot be presumed so the dead body would not of the wife of Appellant Vijay Kumar Mitra rather it was of stranger with whom these Appellants have been roped in. Regarding other prosecution laches it has been submitted that PW 1 in his evidence has stated that he got requisition and thereafter, he went to PMCH and took three snaps of the deceased but the Investigating officer has given different version of the occurrence and according to him, the photography was done at the place of occurrence itself. These two are quite contradictory facts because the prosecution case is only to the extent that the photography was done at one place and not at both places. Therefore, the very fact that the photograph was taken at the place of occurrence or at PMCH itself is doubtful. It has been also pointed out that the Appellants prayed that the photograph of the deceased of the present case should be matched by the experts and for that admitted photograph of Meena Devi was produced. These facts were overlooked which were essential in the circumstances of the present case and those facts could have gone to the root of the matter. So it has been argued that benefit on this count must go to the accused persons because they were consistent since the beginning that the photograph was not of the deceased rather her photograph was different. This question regarding identification of the photograph was put before all the material witnesses.

11. On the other hand, learned Counsel appearing on behalf of the informant has submitted that no serious challenge has been given regarding identity of the deceased and if there is any minor lacuna the benefit of the same should not go to the defence.

12. We have perused the entire evidence. Not even one witness has stated that

he had seen any part of the occurrence. There is no witness either of killing or of throwing the dead body. When there is no witness to the occurrence then also the case can be proved on the basis of circumstantial evidence and such circumstantial evidence must be cogent. In the present case eye witness is at all lacking. The circumstantial evidences are also not brought on the record because no body has come to depose that he has seen any part of the occurrence. The trial court in paragraph 22 of the judgment has enumerated 8 circumstances. First circumstance is that Meena Devi was married with Vijay Kumar Mitra on 28.4.1977 and at that time he was unemployed. With regard to this circumstance it would be said that this cannot be a ground for presumption of the crime. Second circumstance is that Vijay Kumar Mitra got his employment in the year 1982. Third circumstance is that without divorcing his first wife he performed another marriage in the year 1990 with Sheela Devi. Fourth circumstance is that Meena Devi was being tortured. Fifth circumstance is that the dead body of Meena Devi was found throwing on the by-pass road. Sixth circumstance is that the photographs were of deceased Meena Devi. Seventh circumstance is that Meena Devi was strangled to death and 8th circumstance is that no information was given to the police after disappearance of Meena Devi. These circumstances are also inconsistent and these cannot be relied upon for the purpose of conviction. These circumstances even if proved, could not make a case beyond the shadow of all reasonable doubt. The circumstantial evidence which can prove the case must be of clinching nature and the circumstances must form a chain upon which only inference could be drawn that the accused and accused alone are responsible of commission of offence. The circumstances relied upon by the trial court were not the circumstances which would only mean that it was the accused alone who were responsible for commission of offence of killing of the deceased and disposing of the dead body.

13. The entire evidences as discussed above, show that there is no circumstance at all pointing out guilt of any of the Appellants. In the result, we are of the view that the prosecution has not been able to prove the charges against the Appellants beyond the shadow of all reasonable doubts. Accordingly, the judgment of conviction and sentence is set aside and these appeals are allowed. All the Appellants except Appellant No. 4 are on bail. They are discharged from the liabilities of their bail bonds. Appellant No. 4 Vijay Kumar Mitra is directed to be released forthwith if not wanted in any other case.