

(2020) 10 PAT CK 0007

In the Patna High Court

Case No : Criminal Appeal (Db) No. 399 Of 2019

Namrata Kumari

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 2(wa), 372
Indian Penal Code, 1860 — Section 34, 302, 307

Citation : (2020) 10 PAT CK 0007

Hon'ble Judges : Dinesh Kumar Singh, J;Prabhat Kumar Singh, J

Bench : Division Bench

Advocate : Jitendra Narain Sinha, A.K. Sinja

Final Decision : Dismissed

Judgement

Heard learned counsels for the appellant and learned counsel for the respondents.

The present appeal has been preferred by Namrata Kumari, PW 7 (informant) under the proviso to Section 372 of the Cr.P.C. against the judgement and order dated 24.1.2019 and 28.1.2019, respectively, passed by the learned ADJ, Fast Track Court - I, Samastipur in S.T. No. 706 of 2017 arising out of Sarairanjan P.S. Case No. 100 of 2017 whereby respondent no. 2 Kanchan Devi has been acquitted of the charges under Sections 302/34 and 307/34 of the IPC. Hence, the appeal has been filed only to the extent of challenging the judgement impugned. However, the husband of respondent no. 2 namely Chandra Bhushan Singh has been convicted by the same judgement for the same charges and sentenced to imprisonment for life and a fine of Rupees Fifty Thousand.

As per the Fardbeyan, Namrata Kumari, P.W. 7 (appellant) is the daughter of the deceased Devki Prasad Singh, hence she comes within the ambit of victim under Section 2(wa) of the Cr.P.C. and hence, she has maintained the present appeal under the proviso to Section 372 of the Cr.P.C.

The prosecution case as per the Fardbeyan of P.W. 7 Namrata Kumari is that the

informant along with her mother Tara Devi, P.W. 5 were cleaning the water of the well, in the meantime, her neighbour, convict Chandra Bhushan Singh along with his family members came and raised protest on flowing water of the well towards their field. The informant and her mother conveyed to Chandra Bhushan Singh that they have left cow dung on their land, hence she should not make such protest. Thereafter Chandra Bhushan Singh gave life threat to the father of the informant Devaki Singh and left the place. Subsequently, on 25.5.2017 at about 4.00 P.M., the informant along with her father and brother were sitting near their door, in the meantime, convict Chandra Bhushan Singh, armed with Barchha, his wife Kanchan Devi, armed with lathi, his elder son, namely, Shivam Kumar, armed with Bhala and younger son, Shubham Kumar armed with sword, came along with 4-5 unknown persons armed with lathi and danda and started abusing the informant's side. Subsequently, on the order of the convict Chandra Bhushan Singh, his wife Kanchan Devi (respondent no. 2), his younger son Shubham Kumar caught hold of the father of the informant Devki Singh from both sides and convict Chandra Bhushan Singh gave Barchhi blow on his neck, as a result, the father of the informant fell down on the ground, then convict Chandra Bhushan Singh and his younger son Shubham Kumar pulled out Barchhi from the body of the victim Devki Singh which resulted into bleeding from his chest. When the younger brother of the informant Dhiraj Kumar came to rescue, then he was also indiscriminately assaulted by the convict Chandra Bhushan Singh and his elder son Shivam Kumar with danda and sword, as a result, he received bleeding injury and fell down. Thereafter, the informant and other family members came to rescue, they also were assaulted by all the accused persons, and thereafter, all the accused persons escaped from the scene. The injured Devki Singh was taken to Sadar Hospital, Samastipur, where he was declared dead.

On conclusion of investigation, chargesheet was submitted under Sections 302 and 307/34 of the IPC against Chandra Bhushan Singh, Kanchan Devi and Shivam Kumar. Subsequently, the trial of Shivam was split up as he was declared juvenile. On taking cognizance by the learned Magistrate, the case was committed to the Court of Sessions. The learned trial court vide order dated 12.10.2017 framed charges under Sections 302/34 and 307/34 of the IPC against Chandra Bhushan Singh and Kanchan Devi.

The prosecution has examined altogether ten witnesses, namely, P.W. 1, Kanchan Kumari, daughter of the deceased, P.W.-2, Chandan Devi, wife of injured Dhiraj Singh, P.W.-3, Nand Kumar Singh, P.W.-4, Dhiraj Kumar Singh, P.W.-5, Tara Devi, wife of the deceased, P.W.-6, Dr. Umashankar Singh, who conducted the autopsy of the dead body of the deceased, P.W.-7, Namrata Kumari, the informant, P.W.-8, Bittu Kumar Singh, son-in-law of the deceased, P.W.-9, Dr. Hemant Kumar Singh, who examined the injured Dhiraj Kumar Singh and P.W.-10, Manoj Kumar Singh, the I.O. of the case. The prosecution has also exhibited documentary evidence.

The defence has not examined any witness.

The learned trial court, on analyzing the evidence, came to a finding that the consistent case of all the witnesses is that firstly Barchhi blow on the chest near neck, was given by convict Chandra Bhushan Singh and thereafter Shivam Kumar also gave one Barchi blow but during postmortem P.W. 6 Dr. Umashankar Singh found only one lacerated piercing injury just above the sternum. Hence, the learned trial court found that the prosecution has only proved the case against convict Chandra Bhushan Singh and not against others. Though the injury report of Dhiraj Singh has been brought on record but the same was never produced during investigation and due to inconsistency with regard to Dhiraj Singh being examined at Begusarai or at Samastipur, the said injury report has not been believed. With regard to injury of other family members of the victim, no injury report has been produced. Hence, the prosecution case with regard to other accused has been disbelieved by the learned trial court and accordingly the judgement of acquittal has been recorded.

Learned counsel for the appellant submits that the consistent evidence of prosecution witnesses is that both Chandra Bhushan and Shivam assaulted the father of the informant with Barchhi. The accused also assaulted Dhiraj Kumar Singh (PW 4), the son of the victim.

The order of acquittal so far as respondent no. 2 Kanchan Devi is concerned, it is against the weight of evidence. On the same set of evidence, Chandra Bhushan Singh has been convicted, whereas others have been acquitted when both were sharing common intention.

Learned counsel for the respondent no. 2 submits that the prosecution has failed to prove the case against respondent no. 2 as the specific case of the informant in the FIR is that on the order of convict Chandra Bhushan Singh, respondent no. 2 Kanchan and Shubham caught hold of Devki Singh, the father of the informant, but all the prosecution witnesses during trial have given a complete go-by to this accusation levelled in the FIR. In the FIR, it is alleged that only one Barchhi blow was given by Chandra Bhushan Singh and subsequently the barcha was jointly pulled back by Chandra Bhushan Singh and Shivam, whereas during trial the consistent case of all the prosecution witnesses was to the effect that both Chandra Bhushan Singh and Shivam gave two Barchha blows, causing two injuries to the victim, when only one injury has been found during postmortem. P.W. 4 Dhiraj Kumar Singh claimed to have been treated at Begusarai but the injury report of the doctor at Samastipur Sadar hospital has been produced in Court when no injury report was produced or was made available during investigation. With regard to other family members of the victim, no injury has been produced when they claimed that they all were examined at Samastipur Sadar hospital. Hence, the judgement of acquittal does not require any interference.

From the perusal of the evidence and material on record, it appears that the occurrence took place in the residential area but all the material witnesses who have been examined, are from the family of the victim. P.W. 7 Namrata Kumari,

the informant, who is daughter of the victim, P.W. 1 Kanchan Kumari is the second daughter of the victim, P.W. 2 Chandan Devi is wife of the injured Dhiraj (PW 4) and P.W. 8 Bittu Kumar Singh is son-in-law of the victim, P.W. 4 Dhiraj Kumar Singh is the son of the victim whereas P.W. 5 Tara Devi is wife of the victim. Hence, the only material independent witness being examined is P.W. 3 Nand Kumar Singh who is resident of a different village but he claims that on that day he was staying in the village of the informant. Not a single co-villager has been examined. In such a circumstance, the evidence of such interested witnesses has to be scrutinized with caution.

It is settled legal position that the FIR is not the encyclopedia of the entire case but at the same time it contains the basic accusation. The specific case of informant P.W. 7 is that on 25.5.2017 at 4.00 P.M. the informant along with her deceased father and brother Dhiraj were sitting near the door in the meanwhile, convict Chandra Bhushan Singh armed with Barchhi, his wife Kanchan Devi armed with lathi, son Shivam with bhala and younger son Shubham armed with katta came along with 4-5 unknown persons with lathi and danda and started abusing the informant's side. Chandra Bhushan aimed the barcchi towards the father of the informant, namely, Devki Singh, whereupon Kanchan Devi (respondent no. 2) and the younger son Shubham caught hold of the father of the informant from both sides and thereafter convict Chandra Bhushan gave Barchhi blow near the neck of Devki Singh, as a result he fell down and then Chandra Bhushan and Shivam together pulled back the Barchhi from his chest, leading to profused bleeding. Thereafter, P.W. 4 Dhiraj Kumar Singh came to rescue who was also indiscriminately assaulted by Chandra Bhushan Singh, his elder son Shivam, and consequently, he received bleeding injury on his head. The informant and other family members were also assaulted by the accused persons. Contrary to this, P.W. 7 Namrata Kumari and other witnesses, namely, P.W. 1, 2, 3, 4, 5 and 8 who are all family members of the victim have given a go-by to the accusation that Kanchan Devi and Shubham caught hold of the deceased. Their consistent evidence is that Chandra Bhushan Singh gave Barchhi blow on the neck of the victim Devki Singh and thereafter his son Shivam also assaulted with Barchhi on the neck of the victim, but this consistent evidence gets clouded with the postmortem report. P.W. 6 Dr. Umashanakar Singh has conducted autopsy on the dead body of the deceased and found only one lacerated injury piercing deep over the neck just above the sternum which has been marked as Ext. 1 which reads as follows:

"I. External - 1 1/2" x 1/2" lacerated wound piercing deep over the neck just above the sternum. The wound is piercing in the theracic cavity.

II. Internal: left lung is raptured Mediastinal cavity -Full of blood. Plural cavity left - full of blood. All viscera pale. Time since death within 24 hours.

III. Cause of death is haemorrhage and shock, caused by sharp pointed and hard substance."

Hence, the medical evidence creates doubt about the credibility of the prosecution witnesses and it thus appears that the witnesses being interested ones have given tutored version.

It is trite law that medical evidence cannot override the ocular evidence but when it completely negates the ocular evidence, then it changes its character from opinionative to direct evidence. Ordinarily the value of medical evidence is only corroborative, as has been held by the Hon'ble Supreme Court in the case of Solanki Chimanhbai Ukabhai Vs. State of Gujrat, reported in (1983) 2 SCC 174. Paragraph 13 of the judgement reads as follows:

"13. Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence."

Further, it has been held by the Supreme Court in the case of State of U.P. Vs. Hari Chand (2009) 13 SCC 542 that unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy. Part of paragraph 13 of the judgement reads as follows:

"13..... In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy."

When the ocular evidence is totally inconsistent with the medical evidence then it amounts to fundamental defects in the prosecution case as has been held in the case of Ram Narain Singh Vs. State of Punjab, reported in (1975) 4 SCC 497. Paragraph 14 reads as follows:

"14. Where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case. In Mohinder Singh v. State [AIR 1953 SC 415 : 1950 SCR 821] this Court observed in similar circumstances as follows:

"In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it is doubtful whether the injuries which are attributed to the appellant were caused by a gun or by a rifle."

It is obvious that where the direct evidence is not supported by the expert evidence, then the evidence is wanting in the most material part of the prosecution case and it would be difficult to convict the accused on the basis of such evidence. While appreciating the evidence of the witnesses, the High Court does not appear to have considered this important aspect, but readily accepted the prosecution case without noticing that the evidence of the eyewitnesses in the Court was a belated attempt to improve their testimony and bring the same in line with the doctor's evidence with a view to support an incorrect case."

The specific case of the prosecution witnesses is that the son, two daughters and wife of the informant, all were assaulted but not a single injury of any person, except PW 4 Dhiraj Kumar Singh has been produced, that too on submission of chargesheet. P.W. 4 in his evidence has stated that he and his father were taken to Samastipur Sadar hospital and he was referred to PMCH, Patna for treatment but he was treated at Galazo Hospital, Begusarai. P.W. 8 Bittu Kumar Singh, the son-in-law of the deceased in his evidence has stated that in the night of incident after admitting the injured Dhiraj in Galazo hospital, Begusarai, he returned to his sasural. The injury report of P.W. 4 Dhiraj Kumar Singh (Ext.3) has been issued by Dr. Hemant Kumar, a doctor of Sadar hospital, Samastipur who found three lacerated injuries but has recorded that he referred him for CT Scan at Begusarai, which is not available on record, however, on re-examination of refer slip (Ext.4) it transpires that P.W. 4 Dhiraj Kumar Singh was treated at Samastipur Sadar hospital on 25.5.2017 at 7.15 P.M. and he was referred for CT scan to DMCH, Darbhanga and PMCH, Patna but on the basis of CT scan by some private agency, injury report was prepared by P.W. 9. Such unreasonable conduct of P.W. 4 Dhiraj Kumar Singh, suggests that the CT scan report was procured, just in order to prove that the injury was grievous and just to create some injury to prove the case.

PW 8 Bittu Kumar Singh, the son-in-law of the deceased, in his evidence has stated that he was never examined before the police and similar is the evidence of P.W. 10, who is the I.O, has admitted in his evidence that P.W. 3 Nand Kumar Singh who was the only independent witness examined, has not claimed before the I.O. that he is an eye witness to the occurrence. Hence, the whole prosecution case has been sought to be proved by only the nuclear family of the deceased whose evidence are not only inconsistent with the FIR but their evidence is also untrustworthy.

The I.O. in his evidence has admitted that the blood stained soil and the clothes were not sent for chemical examination. The I.O. P.W. 10 received information about the incident through phone and made Sanaha diary entry but the same has not been accepted. Hence, from the meticulous examination of the evidence, it appears that the prosecution has exaggerated their case during trial and the prosecution has failed to prove the guilt of respondent no. 2 beyond the shadow of reasonable doubt.

The cardinal principle of criminal jurisprudence pertaining to burden of proof is

that the same is on the prosecution. The guilt of accused must be proved beyond reasonable doubt. However, the burden on the prosecution is only to establish his case beyond reasonable doubt and not all doubts. The reasonable doubt has been defined by the Hon'ble Supreme Court in the case of State of U.P. Vs. Krishna Gopal and Anr., reported in (1988) 4 SCC 302. Paragraph 25 of the judgment reads as follows:

"25. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another a learned Author says [See: "The Mathematics of Proof-II" : Glanville Williams: Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] :

"The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."

Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over-emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice."

The inconsistency in the evidence of prosecution witnesses creates substantial

doubt as to the guilt of the accused.

There is no doubt that the appellate court does have the power to review the evidence upon which the order of acquittal has been recorded. The Hon'ble Supreme Court in the case of Sanwat Singh and Ors. Vs. State of Rajasthan, reported in AIR 1961 SC 715 lays down the parameters for exercise of jurisdiction by the appellate court when judgment of acquittal is under challenge. Paragraph 9 of the judgment reads as follows:

"9. The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup case [LR 61 IA 398] afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons", are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified."

It is trite view that the judgement of acquittal further re-enforces the innocence of the accused.

In view of the discussions made above, we do not find any perversity in the judgement of acquittal.

Accordingly, this appeal is dismissed.