

(2003) 09 PAT CK 0147

In the Patna High Court

Case No : Death Reference No. 4 of 2002 and Cr. Appeal No. 301 of 2002

Prabhat Kumar (c) Prabhavir Rai and Singheshwar Rai

APPELLANT

Vs

The State of Bihar
 The State of Bihar Vs Prabhat
Kumar (c) Prabhavir Rai and Singheshwar Rai

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Citation : (2003) 09 PAT CK 0147

Final Decision : Allowed

Judgement

S.N. Jha and B.N.P. Singh, JJ.—There are two Appellants in this appeal. They have been convicted under Sections 302, 364 and 201 of the Indian Penal Code and Section 27 of the Arms Act. For the offence u/s 302 they have been awarded death sentence. No separate sentence has been awarded for other offences.

2. The prosecution of the Appellant was set in motion on the fardbeyan of P.W.3, Champa Devi. On 23.2.98 14.11 a.m. she stated before S.I. Darrichan Ram, Officer-in-charge of Patori Police Station, that on the preceding day i.e. 22.2.98 at 4 p.m. the Appellants along with three unknown persons came and asked her son Panchu Paswan to accompany them to the market for buying medicine. Panchu Paswan declined to go. They left the place but returned after one and half hours and took away Panchu Paswan. When Panchu Paswan did not return home she along with her daughter-in-law Rita Devi started searching him. They searched for the whole night but in vain. In the morning she learned from a resident of village Kutubpur that a dead body was lying in the maize field at village Mohanpur. She along with villagers went there and found the dead body of her son. The body was riddled with injuries by gun shots on the temple. She stated that the cause of occurrence was that a day earlier on 21.2.98 Panchu Paswan had refused to carry goods of the Appellants which infuriated them and they had made sarcastic remarks against him.

3. The fardbeyan was sent by S.I. Darrichan Ram to Patori Police Station, where it was registered as Patori P.S. Case No. 24/98, and himself took up

investigation. He made inquest, sent the dead body for post mortem and recorded statements of the witnesses. After completing investigation he submitted chargesheet against the Appellants and they were thus put on trial.

4. At the trial the prosecution examined 9 witnesses to prove its case out of whom P.W. 2 Tilak Paswan, P.W.4 Hriday Paswan, P.W.5 Asharfi Paswan and P.W.6 Rajendra Rai turned hostile and did not support the prosecution case. The witnesses who supported the prosecution case on fact are P.W.1 Shambu Paswan, a co-villager and P.W. 3 Champa Devi, the informant herself. The doctor who held post mortem, namely, Dr. R.P. Rai was examined as P.W.7, S.I. Darrichan Ram, the Investigating Officer, was examined as P.W.8. Another S.I. Kishori Hazara was examined as P.W.9. The Appellants did not examine any witness in defence. At the end of trial the Appellants were convicted and awarded sentence in the manner stated at the outset. In view of the death sentence awarded to the Appellants, the trial court made reference u/s 368 of the Code of Criminal Procedure. The death reference was taken up along with the appeal preferred by the Appellants.

5. Shri Deo Narayan Yadav, Learned Counsel for the Appellant submitted that there is no eye witness to the occurrence and the case is based on circumstantial evidence. The circumstances alleged against the Appellants are not sufficient so as to complete the chain leading to the one and only conclusion of the Appellants guilt. Though the trial court has enumerated as many as nine circumstances for convicting the Appellants, the only circumstance which can at best be said to be proved is that the deceased was last seen with the Appellants which by itself does not warrant inference as to their guilt.

6. On behalf of the State it was submitted that apart from the last seen evidence there is evidence on the point of motive. The occurrence was proceeded by an altercation a day earlier when the deceased refused to carry the goods at the behest of the Appellants which made them angry and they made certain threatening comments. It was submitted that the informant was an innocent village-woman and there is no reason why she would make false accusation against the Appellants when there is no allegation of enmity between them. There being motive for the crime and the deceased having been last seen with the Appellants, followed by recovery of the dead body soon thereafter, the conclusion is irresistible that it is the Appellants who committed murder of the deceased.

7. In paragraph 23 of the judgment the trial court enumerated nine circumstances which in its opinion were sufficient to warrant inference of guilt of the Appellants. The circumstances are as follows:

(i) On 22.2.98 at 4 P.M. the Appellants along with three unknown persons went to the house of the informant and asked the deceased to accompany them to the market for purchasing medicine which he declined.

(ii) The Appellants returned from the informant's house but came back again

after one and half hours and insisted on the deceased accompanying them to the market and this time took him along on the pretext of purchasing medicine.

(iii) When the deceased did not return home the informant and the deceased's wife Rita Devi started searching him and in course of search went to the house of the Appellants and enquired about whereabouts of the deceased from them, they told that deceased had left their company near Durga Asthan.

(iv) The informant along with Rita Devi and co-villagers searched for the deceased for the whole night but no trace was found.

(v) In the next morning a rumour was afloat in the air about a dead body lying in a maize field.

(vi) The informant along with Rita Devi and others went to the maize field where the dead body of Panchu Paswan was found riddled with gun shot injury. From the maize field she along with some villagers went to the house of the Appellants but they were not found there.

(vii) The police recorded the fardbeyan of the informant who suspected the hands of the Appellants in killing her son. The dead body was removed to Sadar Hospital, Samastipur where it was subjected to microscopy and the doctor found as many as three injuries.

(viii) Soon after the occurrence, the Appellants absconded. Appellant Singheshwar Rai was arrested on 6.5.98, Appellant Prabhat Kumar was apprehended on 23.10.98.

(ix) The absconion of the Appellant was suggestive of the fact that they had hand in killing the deceased.

8. It would appear that out of the above mentioned so called nine circumstances, only four i.e. the first, second, eighth and ninth circumstances connect that Appellants with the case. They can be clubbed as constituting two circumstances, that the Appellants had gone to the house of the informant i.e. deceased and took him away to the market. The deceased was thus last seen with the Appellants before his dead body was found in the maize field. Secondly, that the Appellants absconded for three months and eight months respectively after the occurrence.

9. On the point of last seen, P.W. 1 Shambhu Paswan and P.W. 3 Champa Devi, the informant herself stated said in their evidence that the Appellants along with three others came to the house of the informant/deceased and the deceased went to the market in their company. However, from the evidence of the Investigating Officer, P.W. 8, it appears that no such statement had been made by P.W. 1 before him. As per the Investigating Officer. P.W. 1 stated that he "learnt" about the Appellants visiting the house of the informant/deceased and taking him away to the market. Rita Devi, in fact, stated before the Investigating Officer that it was her hearsay statement. Thus, P.W. 3, the informant herself, is

the solitary witness on the point of last seen.

10. We have no reason to doubt the veracity of the evidence of P.W. 3 on the point that the Appellants visited her house in the evening of 22.4.98 and took the deceased away where after he was not seen until his dead body was found next morning. This circumstance however, does not necessarily lead to the inference of guilt of the Appellants. Counsel for the State in this regard place reliance on Gurnam Singh Vs. State of Punjab, From the facts of the case as noted in the judgment it appears that the deceased were forcibly taken away on the point of fire arms and soon thereafter their dead bodies were found. They were forcibly taken away between 9-10 P.M. The time when the dead bodies were found has not been mentioned in the judgment but there is finding that the dead bodies were recovered soon thereafter. The medical evidence regarding time of death tallied with the time of abduction of the deceased. On these facts the court held the fact that the Appellants took away the deceased and soon thereafter their dead bodies were found led to inference of their guilt.

11. The facts of the instant case are different. The Appellants came to the house of the informant at about 4 P.M. and when the deceased declined to accompanying them, they came back after one and half hours and this time the deceased went along with them. The deceased and the Appellants apparently knew each other. There is nothing in the evidence to suggest that any force was used to make the deceased agree to accompany them to the market. If the deceased left the house along with the Appellants at about 5.30 (one and half hours after the first visit of the Appellants at 4 P.M.) the recovery of the dead body in the next morning cannot be said to be in close proximity of time.

12. Regarding the second circumstance that the Appellants absconded after the occurrence, it is relevant to mention that when the informant went to the Appellants' house in search of her son in the night she found both the Appellants sitting there when she was told that they had separated near Durga Asthan. If they had already committed murder of the deceased and wanted to escape they would have left the village soon after. If they were not found after filing of the case, that might be for fear of being taken into custody. If the accused is not available at his residence after a case is filed against him, it may be a circumstance showing his intention to escape arrest which cannot necessarily be treated as a circumstance suggestive of his guilt. As observed above, if the Appellants had committed the crime and wanted to flee away they would have left his village in the night itself rather than stayed at their house. In this view of the matter, we are not inclined to attach much significance to the fact that the Appellants evaded the arrest for three months and eight months respectively.

13. The so called motive in the facts of the case appears to be quite weak so as to give rise to an inference against the Appellants. All that the prosecution suggests is that a day prior to the occurrence the deceased refused to carry some articles at the behest of the Appellants saying that he Was getting late and had to reach home early. Some comments allegedly coming from the mouth of

the Appellants following the deceased's refusal to carry the goods could be expression of anger but that cannot be said to be such as to constitute motive for committing the murder.

14. Counsel for the Appellants placed reliance on Kanhai Mishra @ Kanhaiya Misar Vs. State of Bihar, In that case the Appellant was alleged to have enticed a teen aged girl on the pretext of availability of flowers in an orchard suggesting to her that he could help in plucking the flowers. He thus allegedly enticed the girl to the orchard, committed rape and thereafter killed her in the orchard itself. The Appellant was convicted by the trial court which was upheld by the High Court on the basis of six circumstances. The Supreme Court on dissection of evidence held that five out of six circumstances were not proved. The all important circumstance that the deceased was last seen with the accused was also not proved in view of the conflicting evidence on the point. The Court reiterated that in a case of circumstantial evidence the whole endeavour and effort of the court should be to find out whether the crime was committed by the accused, and circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the accused. Unless the circumstances proved against the accused in a case are wholly inconsistent with the innocence of the accused and consistent only with his guilt, he is entitled to the benefit of doubt.

15. Adverting to the instant case, the only circumstance which can be said to have been proved against the Appellants is that the deceased was last seen in their company. There is positive evidence of none else than the informant herself that soon after the Appellants were seen sitting in their house and they had told her that the deceased had left them near Durga Asthan. The dead body was found in the next morning. On this solitary circumstance it cannot be said that it was the Appellants who committed the murder of Panchu Pawan. We are therefore of the view that the conviction of the Appellants cannot be sustained and he (sic-they?) is entitled to the benefit of doubt.

16. In the result, appeal is allowed. The conviction and sentence awarded to the Appellants are set aside and they are acquitted of the charges. They are directed to be released forthwith if not wanted in any other case. The reference stands answered accordingly.