
(2013) 12 PAT CK 0042

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 39 of 1999

Pramod Prasad, Nand Keshar Mahto @ Naneshar Mahto and
Ushna Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-12-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 325, 34, 448

Citation : (2013) 12 PAT CK 0042

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Madan Mohan Pd. Singh, for the Appellant; R.B. Roy "Raman", Assistant Public Prosecutor for the State and Mr. Sunil Kr. Thakur and Mr. Mahbub Asraf, Advocates for the Informant, for the Respondent

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 304 Part II /34 I.P.C. and 448 I.P.C. and sentenced to R.I. for seven years and three months respectively by a judgment dated 15.2.1999 and 16.2.1999 passed by the Additional Sessions Judge IV, Munger in Sessions case No. 10 of 1997. The case of the Informant Manoj Kumari (P.W. 1) is that on 12.4.1996 at about 9 P.M. when her father-in-law Nageshwar Mahto was sleeping on the roof, her agnates i.e. the present Appellants started to abuse her father-in-law. He protested at their abuse, at which the Appellants threw pieces of bricks upon him from their terrace, on account of which he sustained injuries on his head and fell down and became unconscious and later died. Charge sheet was submitted u/s 302 /34 I.P.C. and the Appellants were put on trial for the said offence but acquitted of the said charges and instead sentenced as mentioned above.

2. During trial the prosecution examined ten witnesses in all. P.W. 1 Manoj Kumari, the Informant, stated that at 9 P.M. her father-in-law was sleeping on the terrace and she was in her room, suddenly she heard some noise upon which

she came out and saw that the Appellants abusing her father-in-law, to which her father-in-law protested. Then brick bats were thrown upon her father-in-law, which hit him on the head, on account of which he fell down unconscious. He was removed to the Hospital from where he was referred to P.M.C.H., but unfortunately on the way he died. The reason for the occurrence was a quarrel among children.

3. P.W. 2 Krishna Mahto is a neighbour, who reached the place of occurrence and saw the deceased in an injured condition. The Informant and her family members told him that he had been injured by the present Appellants.

4. P.W. 3 Dilip Kumar is the son of the deceased, who repeated the manner of occurrence as narrated by the Informant P.W. 1. He stated that apart from injury on the head the deceased had not sustained any other brick bat injury.

5. P.W. 4 Murari Prasad is also another son of the deceased, who stated that the Appellants on being rebuked for abusing the deceased threw brick bats towards him, on account of which his father fell unconscious and was taken to the Hospital but unfortunately he died.

6. P.W. 5 Janki Devi is the wife of the deceased, who repeated the earlier version of the family members with regard to the manner of occurrence.

7. P.W. 6 Ashok Kumar, P.W. 7 Ganesh Prasad and P.W. 10 Dinesh Jha are formal witnesses.

8. P.W. 8 Dr. Ramprit Singh performed the postmortem of the deceased and found three lacerated wounds, two on the head and one on the leg. In cross examination he stated that one injury on the head may cause fracture to communicate to the other side and injury No. 1 and 2 on the head are communicated fractured, suggesting that both the injuries were caused by one blow.

9. P.W. 9 Chandrika Prasad is the Investigating Officer, who examined the place of occurrence and found small pieces of bricks at the place of occurrence, which he seized.

10. On going through the evidence of the witnesses, I find that the consistent suggestion to them is that in fact the deceased had died while having fallen down from the bamboo stair case used for climbing the terrace, to which they denied. I find that the witnesses have consistently stated that the Appellants had thrown the pieces of bricks towards the terrace of the deceased which had hit the deceased on his head. The Investigating Officer also found small pieces of bricks at the place of occurrence. From the manner of occurrence, narrated by the witnesses that brick bats were pelted by the Appellants from the terrace and size of the brick pieces, it would be difficult for this Court to conclude positively that the Appellants had the knowledge that their brick batting would have caused the death of the deceased if it would hit him on a vital portion. Hence, in the facts of the case, the conviction of the Appellants is converted to one u/s 325 I.P.C. and

the sentence is reduced to one already undergone by him during trial. In the result, the appeal is dismissed with the aforesaid modification in conviction and sentence.