

(2011) 04 PAT CK 0250

In the Patna High Court

Case No : Criminal Appeal (DB) No. 463 of 2003

Ram Haridya Mukhiya @ Bikau Mukhia

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 04 PAT CK 0250

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

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Sharma and Gopal Prasad, JJ.—This appeal has been preferred against the judgment and order dated 22.07.2003 passed by Additional Sessions Judge, Fast Track Court No. 4, Darbhanga in Sessions Trial No. 361 of 2001 whereby the Appellant who was charged u/s 302/34 of the Indian Penal Code has been convicted u/s 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life.

2. P.W.2 Dinesh Mukhiya gave his fardbeyan on 30th April, 2001 is his village before the Officer-in-charge of Kamtaul Police Station stating that in the preceding night at 9.00 P.M. his father Mahendra Mukhiya after taking meal went to have sleep at his newly constructed house. When informant went to attend the call of nature at 6.00 A.M. in the morning then he heard the voice of Mohit Ram who was raising that someone has killed his father. Upon this information, P.W.2 (informant) along with villager Lalan Thakur went to the field and found his father lying dead having injuries over his face and hand. He also reported that one Mostt. Sanjhariya Devi was married with one Narayan Mishra. Narayan Mishra before his death had executed all his landed property in favour of his wife Sanjhariya Devi. After death of Narayan Mishra, his heirs started troubling Sanjhariya Devi and she had to struggle for even two square of meal. Then Most.

Sanjhariya adopted the informant's father Mahendra Mukhiya as her son with the aim that later will take care of her. She executed a deed of Basgit for two kathas in favour of Mahendra Mukhiya upon which a hut was constructed prior to the occurrence. After execution of deed, heirs of Narayan Mishra namely, Suraj Mishra, Chunnu Mishra, Munnu Mishra and Vijay Mishra, started threatening the informant's father that they would not allow the land to raze into pieces even then the hut was constructed though heirs of Narayan Mishra have hurled various threats to Mahendra Mukhiya. In the night the occurrence occurred, so the informant suspected that his father was killed by Suraj Mishra, Chuunu Mishra, Munnu Mishra and Vijay Mishra. The fardbeyan resulted into Jalley P.S. Case No. 38 of 2001 dated 30th April, 2001 u/s 302/34 of the Indian Penal Code. The matter was investigated into and after completion of investigation chargesheet was submitted against the Appellant only and the persons named in the fardbeyan were not sent up for trial. The court took cognizance of the offence and committed the case to the court of sessions where charge u/s 302/34 of the Indian Penal Code was framed and explained to the sole accused.

3. In order to prove its case, the prosecution examined altogether 11 witnesses. They are : P.W.1 Mohit Ram, P.W.2 informant Dinesh Mukhiya, P.W.3 Ram Snehi Mukhiya, P.W.4 Raj Kumari Devi, P.W.5 Raj Kishore Mishra, P.W.6 Ram Yad Mahto, P.W.7 Mohan Mishra, P.W.8 Sarsatiya Devi, P.W.9 Kanhaiya Singh, P.W.10 Dr.P.K.Das and P.W.11 Bijay Kumar Singh, the Investigating Officer.

4. Fardbeyan and formal F.I.R. have been marked as Ext. 2 and 4 respectively. Endorsement on the fardbeyan has been marked as Ext.3. The seizure list has been marked as Ext.1. Inquest report is Ext.5. Sketch map has been marked as Ext.6 and post mortem report is Ext.8.

5. On behalf of the defence, Ranjeet Kumar Mandal has been examined as D.W.1 and he has proved the initial signatures of Randhir Kumar Advocate on protest petition and have been marked as Ext.A to A/2 and full signature of Said Randhir Kumar Verma on the protest petition has been marked as Ext.B.

6. The trial court after considering the evidences brought on record came to the conclusion that the prosecution was able to prove that the charge has been established beyond the shadow of all reasonable doubts, so the order of conviction was passed.

7. This Court is required to see as to whether the prosecution has been able to prove the charge against the sole Appellant beyond the shadow of all reasonable doubt.

8. Before proceeding further, it would apt to discuss the nature of evidence of the witnesses. P.W.1 Mohit Ram has not supported the prosecution case, so he was declared hostile. P.W.8 Sarsatiya Devi who has been relied extensively by the prosecution has also been declared hostile. P.W.5 Raj Kishore Mishra has stated that he has not given any statement u/s 161 of the Code of Criminal Procedure. P.W. 2 is the son of the deceased and he is informant of the case. P.W.10 is Dr.

P.K. Das who conducted the autopsy of the deceased and found following anti-mortem injuries:

(i) Three incised wounds measuring 2"x 1/2"x leading into cranial cavity 1 1/2"x1/2"x leading into cranial cavity 2"x 1/2"x leading into left eye were found over right side of the head, right side of the forehead and left side of forehead. Underlying bones, meninges brain matter and left eye showed concomitant cuts. The adjoining tissues and muscles were infiltrated with blood and blood clots. The apthalmic cavity on left side and cranial cavity were foiled with blood and blood clots. The left eye ball was open and out.

(ii) Three incised wounds measuring 6"x1/2"x leading into oral cavity 4 1/2"x2"x leading into mouth 2 1/2"x2" x leading into mouth are found over left side of nose including hard palate. On left side of chik and on left chin. The face and issues on oral cavity were completely disorganized due to deep concomitant cut over these places. Superficial cuts were seen over left elbow, left wrist, right little finger and right wrist. There were varying in sizes between 2"x3"x1/4" to 1/2"x 1/8" to 1/6". The underlying soft tissues and muscles should concomitant cuts with infiltration of blood and blood clots.

9. According to opinion of the doctor, the death was on account of those injuries which were caused by heavy sharp cutting weapon or instrument. The post mortem was propounded on 30.04.2001 and the doctor has found that it was within 12 to 18 hours. There is nothing in the cross-examination of the doctor which can create any doubt regarding manner of death of Mahendra Mukhiya. So the death by use of sharp cutting weapon has been proved beyond the shadow of all reasonable doubts.

10. Now the evidence of witnesses have to be examined so that the court can arrive at some conclusion. The evidence of the informant is being discussed firstly.

11. The informant in his evidence has stated that one year prior to the occurrence he was inside his house. His father had gone to the newly constructed hut after taking meal. His father has acquired land from Sanjhariya Devi who was treating the informant's father as her adopted son. One day prior to the occurrence, accused Ram Hirday Mukhiya, Satiya Devi, Vijay Mishra, Chuunu Mishra, Munnu Mishra and Suraj Mishra had threatened the informant's father that they would not allow to live in hut. In the same night, his father was found killed and it was suspected that his father might have been killed by them and his dead body was thrown. Informant received information about killing of his father through P.W.1 Mohit Ram. Thereafter the informant along with other villagers went to the place of occurrence and found the dead body of his father lying in the field of Lalan Thakur who has not been examined. Fardbeyan of the informant was recorded at the place of occurrence. This is the entire evidence of the informant, according to which he is not a witness of the occurrence. He has not even seen the trifle part of the occurrence. His information was only on the

basis of suspicion on account of enmity. Therefore, the evidence of the informant is of no help to the prosecution case.

12. P.W.3 Ram Snehi Mukhia has deposed that one day prior to the occurrence informant's father Mahendra Mukhiya was threatened and on the day of following his dead body was found. He has stated a new fact in his evidence that a panchayati was organized in the village which had participants of many villages. In that panchayati, accused Ram Hirday Mukhiya confessed that he committed the crime. The evidence of this witness is to the extent that the Appellant had confessed his guilt before the panches. There is no date when the panchayati was organized. It is also not there who participated in the panchayati and the name of the panches has not been disclosed. So the evidence of P.W.3 is sketchy and only to the extent that a panchayati was organized in which the accused/Appellant had accepted his role in the murder of informant's father.

13. P.W.4 Raj Kumari Devi has deposed regarding antecedent of the deceased Mahendra Mukhiya. She has stated that Mahjendra Mukhiya was a man of bad character and he has to tease the ladies and for such teasing he was punished several times. She has cited the example of wife of Sonfi Mukhiya who has been examined as P.W.8 and this witness has stated that P.W.8 protested the teasing of Mahendra Mukhiya but P.W.8 has been declared hostile and she has not supported that she was ever teased by Mahendra Mukhiya. So the evidence of P.W.4 is vertically contradicted by wife of Sonafi Mukhiya regarding her teasing by the deceased. Therefore, this part of the evidence of this witness is not liable to be accepted. Regarding confession of the accused before the Panches, she has stated that three months after the occurrence, the Appellant accepted his guilt before the Panches. She has not given the date, time , name of the panches and the place where panchayati was organized. Therefore, the evidence of P.W.4 has not roped the accused with the guilt.

14. P.W.5 Raj Kishore Mishra has stated that he has not seen any part of assault. He has stated that a panchayati was organized in which he has stated that the Appellant had killed Mahendra Mukhiya by use of Dabiya. He later on found Dabiya before the Panches. He has stated that later on police came and the accused was handed over to the police. This witness is a sole witness on the point of alleged recovery of Dabiya. According to this witness, panchayati was organized on 31.7.2001 at noon. He has given the names of the panches who were Ram Yad Mahto, Radhe Shyam Mandal, Jagannath Mishra, Ram Suresh Mishra, Bikau Mochi and this witness and others. But none of them has been examined and no paper was prepared in course of panchayati. This witness in paragraph 10 admits that the Officer- in-charge had taken the statement in course of investigation. Therefore, the evidence of this witness has come for the first time before the court when he was examined as witness. Such witnesses cannot be said to be reliable.

15. P.W.6 Ram Yad Mahto has stated that he came to know through P.W.8 Satya Devi that deceased Mahendra Mukhiya has teased her and on her cry, accused

Bikau Mukhiya asked Mahendra Mukhiya to leave the lady but he entered into scuffle with the accused. Meanwhile Satia Devi escaped. The scuffle led to the occurrence. This witness is not the eye witness. He has later on stated that the accused himself confessed his guilt before the panches. He has stated that in the fardbeyan, the named accused persons were initially doubted but later on another story was developed that it is the appellant who has killed Mahendra Mukhiya. Therefore, the evidence of this witness is of no help in any manner to the prosecution, rather he has denied that he has stated before the Panches that Dabiya was produced by Bikau Mukhiya.

16. P.W.7 Mohan Mishra is a seizure list witness of Dabiya. He has stated that Bikau Mukhiya has stated before the panches that he has killed Mahendra Mukjha with Dabiya. This witness has not been declared hostile, so his evidence that Bikau Mukhiya has stated before the panches regarding killing remains intact.

17. The seizure list is on the record. It was prepared on 31st July, 2001 i.e. after more than three months of the occurrence. According to seizure list, Dabiya was produced by the appellant. Seizure list bears signature of Raj Kishore Mishra and Mohan Mishra. The Investigating Officer in his evidence has stated that the accused has confessed his role in killing and on his confession he along with witnesses went to the house of the accused and Dabiya was taken out and produced.

18. There are two types of contradictory evidence regarding manner of production of Dabiya. One set of evidence is that accused has confessed his guilt before the panches and he had produced Dabiya but the Investigating Officer has contradicted it and has stated that he went with the accused to his house where Dabiya was kept in a hut. It has also come in evidence that Dabiya is a common articles which are being used by the villagers. Therefore, the availability of Dabiya in the house of the accused-Appellant has no meaning because it was kept for the purpose of personal use. Only evidence is the confession before the villagers and that confession has been contradicted when the Investigation Officer has stated that Dabiya was not produced before the Panches, rather it was taken out by the accused from his house in his presence. There is nothing in the evidence that whether Dabiya was having any blood stains, rather it has come that it was without butt. Only evidence connecting the Appellant with the offence becomes doubtful because of two type of contradictory evidences regarding manner of seizure of Dabiya. These two types of evidence adduced by the prosecution creates a big hole in the prosecution version.

19. The evidence has come that the deceased was trying to outrage the modesty of a lady and in retaliation of that, the Appellant killed Mahendra Mukhiya. When the said lady was examined, she flatly refused that the deceased ever teased her. Therefore, this evidence of the witnesses remains of no use for the prosecution. The very basis of the prosecution case gets shattered.

20. The second set of evidence is of the Investigating officer who has stated that

he apprehended the accused and at that time, the Appellant confessed his guilt and produced Dabiya. This statement is contradicted by the villagers before whom the Appellant allegedly confessed his guilt. Therefore, the place and manner of seizure of Dabiya which was allegedly used as weapon in the offence has also not been proved. Even after one Dabiya is seized from the house of the Appellant, then no evidence has been brought on record as to whether Dabiya was used in the offence or not. The normal course after seizure would have been that the said Dabiya should have been sent for chemical examination so that it can be linked with the offence as means of attack which led to killing. No incriminating circumstances has been brought on record by the prosecution which can create any confidence that seizure of Dabiya from the house of the accused was treated as means of weapon. Not only that the delay of three months between the occurrence and the alleged confession of the accused creates a big doubt. It appears that the prosecution has twisted its case which shows that there was no intention to nab the real culprits who were named in the fardbeyan, rather it created a monster who was no doubt roped with the offence.

21. Learned Counsel for the Appellant has submitted that contradictory evidences with regard to manner of recovery of Dabiya has not been proved. It has also been submitted that nothing has been brought on record to show that Dabiya was ever material evidence before the court and no evidence has been gathered to prove that the said Dabiya was ever used by the accused.

22. On the other hand, learned Additional Public Prosecutor appearing on behalf of the prosecution has supported the prosecution case and has submitted that the case is based on circumstantial evidence though there are some missing links in the prosecution version but the prosecution was able to prove the charge.

23. We have heard the submissions and analysed the evidences. It appears that contradictory evidences have been brought on record by the prosecution with regard to seizure of Dabiya. There is also nothing on the record from which it can be said that the prosecution has been able to prove that seized Dabiya was used as weapon in the offence. There is no categorical explanation as to why Dabiya was seized after more than three months of the occurrence. Admittedly, nobody has seen the occurrence. The entire case is based upon the circumstances. In a case relying upon the circumstantial evidence, the onus shifts heavily on the prosecution to prove that the circumstances are so connected with each other that all the analysis of the circumstances would lead to only conclusion that it was the accused alone who was responsible for commission of crime. This type of circumstantial evidence has not been brought on record. So many holes have remained to be filled up the circumstances for proving the prosecution case which entitles the Appellant to get the benefit of the same.

24. In view of the above discussions, we are of the view that the prosecution has not been able to prove the charge beyond the shadow of all reasonable doubts. Once the doubt is created in the prosecution version, then according to criminal jurisprudence, the benefit of the same will go to the accused. As such the

Appellant deserves to be acquitted.

25. In the result, the appeal is allowed and the judgment of conviction and order of sentence is set aside. The Appellant is acquitted of the charge. The Appellant, who is reported to be in custody, is directed to be released forthwith from the jail if he is not required in any other case.