
(1996) 03 PAT CK 0003

In the Patna High Court

Case No : Criminal Appeal No. 213 of 1985

Rameshwar Ram, Muneshwar Ram, Munm Ram and Laxmi
Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-03-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1996) 2 PLJR 117

Hon'ble Judges : Dharmpal Sinha, J;D.S. Dhaliwal, J

Bench : Division Bench

Advocate : Manoj Kumar, No. 1, for the Appellant; Kamta Prasad Gupta, for the Respondent

Final Decision : Allowed

Judgement

Dharmpal Sinha and D.S. Dhaliwal, JJ.—This appeal is directed against judgment and order dated 29.7.1995 passed by Sri Sadaquat Hussain, Sessions Judge, Samastipur in Sessions Trial No.160 of 1984 whereby the learned Session Judge has convicted all the four Appellants in this appeal of the offence punishable u/s 302 of Indian Penal Code and has sentenced each of them to undergo imprisonment for life.

2. The occurrence is said to have taken place at about 10 P.M. on 12.8.1984 and a Fard-beyan about the occurrence was recorded at 11.30 A.M. on 13.8.1984. According to the case made out in the Fard-beyan (Ext. 2) the Informant Nirmalia Devi (P.W. 5) her Gotinis Samia Devi (P.W. 1) and Gulia Devi (P.W. 2) and her husband were present in their house situated at village Musapur, Police Station Sarai Ranjan within the District of Samastipur and nearly at 10 P.M. one Kusuma Devi rushed into the house and implored Namo Lal Ram (the deceased) for giving her protection against the Appellants who were after her. In the meantime, all the four Appellants also entered into the house. Appellants Rameshwar Ram and Muneshwar Ram were armed with Chhiura (daggers)

Appellant Munni Ram was armed with a Bhala and Laxmi Ram was armed with a Lathi They were abusing Nemo Lal Ram saying that he had protected the lady who was ill-famed. Previously there was some illicit relationship of Kusuma Devi with one Bindeshwar Rai and due to that she had been out-casted, but a few days before the occurrence she had been taken Into caste. But even then she did not stop meeting Bindeshwar Rai and so she was being chased by the Appellants. When the Appellants entered into the house and abused Nemo Lal Ram for concealing Kusuma Devi, Nemo Lal Ram Who happened to be the husband of the informant, tried to calm them down, saying that on the following day a Panchayati may be called for considering the same matter. The Appellants, however, were highly emotional and the informant, anticipating some trouble pushed her husband Nemo Lal Ram into a room of the house and put a chain from outside. The Appellants, however, unchained the room and entered into the room and inflicted injuries on Nemo Lal Ram with the arms which they were holding and Nemo Lal Ram died in the room. After recording the Fard-beyan on the basis of the statement made therein the case was registered by drawing of a formal F.I.R. (Ext. 4). Some other persons, namely, Mahabir Rai (not examined) and Kamal Rai were cited as witnesses who had seen the occurrence.

3. The Fard-beyai was recorded on the statement of P.W. 5 by one Hari Shankar Pandey, officer-in-charge of the Police Station and he investigated into the case and eventually charge-sheet was submitted. The defence of the Appellants was a complete denial that they had committed the alleged acts constituting the said offence.

4. In course of the trial, the prosecution produced before the Court only six witnesses. Out of them, P.W. 1, P.W. 2, and P.W. 5 figured as eye-witnesses to the occurrence. P.W. 3 Kamal Ram figured as a witness who had seen the Appellants running away, when he was going to the house of the Informant on hearing commotion, P.W. 4, Dr. R.L. Prasad is the C.A.S. who had done postmortem examination on the deadbody of the deceased Nemo Lal Ram and P.W. 6 is the Police Officer who had Investigated into the case. The learned trial Court on consideration of the evidence has found the Appellants guilty and convicted and sentenced them as already indicated above.

5. The learned Counsel for the Appellants has assailed the findings of conviction arrived at by the trial Court by making Submissions which may be summarised as for lows.

All the three eye witnesses, P.W. 1, P.W. 2 and P.W. 5 are Gotinis, wives of deceased and his brother and they are interested witnesses and their evidence is tainted for this reason. The place of occurrence has not been proved and the Investigating office (P.W. 6) who categorically stated that he did not find any blood mark or mark of violence at the alleged place of occurrence and that throws a serious doubt. The evidence of that so called eye-witnesses is not specific about the manner of occurrence as to which (sic) the Appellants inflicted injuries by which means and at what place of body. Kusum Devi who according to

the prosecution, had come to the house of the deceased seeking protection from the latter when the occurrence is said to have taken place, has not been examined and she was, according to the submission, the most material witness in the case. Some other-witnesses named (sic) F.I.R., namely, Mahabir Ram who according to the witnesses of the informant was a brother of the deceased was also not (sic) examined and the evidence of Kamal Rai (P.W. 3) is absolutely unreliable inasmuch as (sic) has given a story as if he had come to place of occurrence on two occasions and When he first came he heard commotion and saw the culprits and went back to house and so he could not possibly be a witness even of running away because his house, which, according to his own evidence is at a distance of 1 ½ Rassi away from the place of occurrence.

6. Learned A.P.P. has submitted that although the Police Officer had not stated to have found any blood mark and mark of violence at the place of occurrence, that by itself cannot be considered sufficient to throw away the prosecution case. According to him, the three lady witnesses are most natural and probable witnesses who were likely to be present in the house which is the place of occurrence and so their testimony has rightly been accepted by the trial Court.

7. We have carefully gone through the evidence on record and considered the submission and we are of the opinion that the finding of the trial Court holding the Appellants guilty of the offence punishable u/s 302 of the Indian Penal Code cannot be said to be justified and warranted on the evidence on record. No doubt three lady witnesses, P.W. 1, P.W. 2 and P.W. 5 have consistently stated that Kusuma Devi had come to the house at about 10 P.M. and implored with Nemo Lal Ram for her Protection and thereafter the Appellants also reached there and there was exchange of word whereafter the informant made her husband Nemo Lal Ram to enter into a room and closed the door from the outside and yet the Appellants went into the room. But none of them has stated as to what happened inside the room. If the Appellants (sic) inflicted injuries with Chhura and Bhala with which the three of them were armed it could be expected that there would be profuse bleeding inside the room. The evidence of the Doctor (P.W. 4) discloses that on doing autopsy on the dead body, of Nemo Lal Ram he had found beside abrasions, cut wounds and a deep penetrating wound and there can be little doubt that if such injuries had been inflicted there would have been copious bleeding, but the Investigating Officer has categorically stated (vide paragraph 10) that he did not find any blood either in the room which was said to be the place of assault or even in the verandah where the dead body, according to the evidence of the eye witnesses, had been subsequently kept by the ladies. It may also be noticed that no body went to the police station to lodge information and although, according to the informant, she had sent the brother of the deceased namely Mahabir Ram to the police station, he has not been examined. If the witnesses had seen the actual assault by the Appellants on the deceased and known the name of the assailants it was most likely that some body would have proceeded at least in the next morning for the police station to lodge information. It, however, appears from the evidence that only when the

Investigating Officer happened to reach there the informant gave her statement. The Investigating Officer says that he had received information of some sort of rumour and then he proceeded for the village after recording a Sanha entry. The Sanha entry has not been brought on record. The non-examination of Kusuma Devi, who according to the eyewitnesses rushed to their house at an odd hour of night and sought protection from the deceased who was killed when he has tried to persuade the Appellants to abstain from assault, is in our opinion a serious lacunae in the facts and circumstances of the case. No male member of the house of the informant was also examined and the three lady witnesses are definitely closely related and are likely to support any case made out by any of them. Learned counsel for the Appellants also appears to be right in saying that the evidence of Kamal Rai is not at all reliable. This witness said that his house is at a distance of 1 ½ Rassi east and he had heard hulla from the house of Nemo Lal Ram and when he went there he found exchange of words between the Appellants and the deceased but he went back in his house and only later he again came. This sort of conduct of a neighbour is not very convincing. He clearly admitted that he did not see any occurrence nor did he say that he had seen Bhala and Chhura in the hands of the Appellants when he had seen them running away. According to him, he had seen Munni Ram also armed with Lathi which is not the prosecution case.

8. Taking into consideration the nature of evidence we are of the considered opinion that the prosecution cannot be deemed to have established the charge against the Appellants and at least the Appellants are entitled for benefit of reasonable doubt. The learned trial Court does not seem to have properly appreciated the aforesaid features of the case and curiously enough he had found all the four Appellants guilty of the offence punishable u/s 302 of the Indian Penal Code even if there is no specific evidence that any of the Appellants had inflicted any fatal injury on the deceased and even the eye witnesses have not stated any thing specifically.

9. In the result, for the reasons, indicated above, we allow this appeal and set aside the conviction and sentence passed against the Appellants. The Appellants are acquitted of the charge for the offence u/s 302 of the Indian Penal Code and they are discharged from the liability of their bail bonds.