

(2013) 04 PAT CK 0046

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 325 of 2001

Ramjee Das and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319
Penal Code, 1860 (IPC) — Section 147, 149, 302, 304, 319

Citation : (2013) 3 PLJR 724

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Jitendra Narain Sinha, for the Appellant; Sujit Kumar Singh, Assistant Public Prosecutor, for the Respondent

Judgement

Hemant Kumar Srivastava, J.—This criminal appeal has been preferred against the judgment of conviction and sentence order dated 19.9.2001 passed by the Presiding Officer, Additional Court, Samastipur in Sessions trial no. 128 of 1989/18 of 2001 by which and whereunder he convicted all the appellants for the offences punishable u/s 304 part II read with section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for four years under the above stated section. In brief, the prosecution case, is that P.W. 4, Jagsundari Devi gave her fardbeyan on 9.5.1988 at about 11 a.m. to RC. Singh, the then officer-in-charge of Rosera police station(D.W. 1), to this effect that on 8.5.1988 at about 6 p.m., all the appellants armed with lathi and fatta entered into her house and assaulted her husband Laxman Das by lathi and fatta and appellant Dinesh Sah gave one fatta blow on the head of her husband as a result of which her husband sustained head injury and blood started oozing out from his head and after that rest appellants assaulted him with lathi. Her husband, having sustained injury, fell down and became unconscious. After the occurrence, her husband was taken to hospital in unconscious state by tyre cart of one Satto Singh in next morning but her husband died at hospital in course of his treatment. She further stated that she also sustained injury in the aforesaid

incident and Baidnath Sao and others witnessed the aforesaid occurrence and saved her life. The reason behind the aforesaid occurrence is said to be a Dol.

2. On the basis of the aforesaid fardbeyan, Rosera P.S. case no. 84/1988 for the offences under sections 147, 323, 325 and 304 of the Indian Penal Code was registered and accordingly, FIR was drawn up against the appellants for the above stated offences. The matter was investigated by Investigating officer and after completion of investigation, Investigating officer submitted charge sheet against the appellant nos. 1 to 3 whereas appellant nos. 4 and 5 were not sent up for trial. The cognizance of the offences was taken and the case of the appellant nos. 1 to 3 was committed to the court of sessions, in usual way and accordingly, the appellant nos. 1 to 3 were put on trial and they were charged for the offences punishable under sections 302 and 302/149 of the IPC.

3. In course of trial, two prosecution witnesses were examined and in midst of their trial, a petition u/s 319 of the Cr.P.C. was filed for summoning the appellant nos. 4 and 5 and later on, the appellant nos. 4 and 5 were summoned u/s 319 of the Cr.P.C. and accordingly, they were also put on trial before the learned trial court. Appellant nos. 4 and 5 were also charged for the offences punishable under sections 302 and 302/149 of the IPC. All the appellants denied the charges.

4. In course of trial, prosecution examined, altogether, nine witnesses and the prosecution also got exhibited some documents. The statements of the appellants were recorded u/s 313 of the Cr.P.C. in which they reiterated their innocence.

5. Two witnesses were examined on behalf of the appellants and besides it, appellants also got exhibited some documents.

6. The learned trial court, having relied upon the depositions of prosecution witnesses, passed the impugned judgment of conviction and sentence order in the manner as stated above.

7. Learned counsel for the appellants challenged the impugned judgment of conviction and sentence order arguing that no independent witness was examined by the prosecution in course of their trial and all material prosecution witnesses are interested witnesses. He further submitted that all material prosecution witnesses made contradictory statements before the learned trial court and in course of trial, they developed their statements. He further submitted that Investigating officer of this case was produced by the appellants as defence witness no. 1 who brought contradictions of material prosecution witnesses on record and specifically, stated that neither the informant nor any other witness stated before him that fatta blow of appellant Dinesh Sah caused death of the deceased and, therefore, no reliance could have safely been placed upon the prosecution witnesses but in spite of that the learned trial court passed the impugned judgment of conviction and sentence order ignoring the contradictions occurred in the depositions of prosecution witnesses. He further submitted that there was no intention of the appellants to commit culpable

homicide amounting to death of the deceased but the learned trial court without any cogent material taking the aid of section 34 of the IPC, convicted all the appellants punishable u/s 304 part II read with section 34 of the IPC. He further submitted that even if it assumed that the appellants had intention to cause injury to the deceased, then also, at best, the case comes under the purview of section 325 of the IPC and therefore, conviction of the appellants for the offence punishable u/s 304 part II read with section 34 of the IPC can not sustain in the eye of law.

8. On the other hand, learned Addl. Public Prosecutor appearing for the State, supported the impugned judgment of conviction and sentence order arguing that material prosecution witnesses including the informant, who happens to be injured of this case, supported the prosecution case and the aforesaid ocular evidence is corroborated by the medical evidence. He further submitted that there is no ground for this court to disturb the findings of the learned trial court.

9. As stated above prosecution has examined, altogether nine witnesses, out of them, P.W. 5, Kan Kumar Singh is a formal witness whereas P.W. 6 namely, Dr. Hari Sharan Prasad Singh conducted post mortem examination on the corpus of the deceased Laxman Das. Similarly, P.W. 7 Laxman Prasad is also a formal witness who proved inquest report as exhibit 4. P.W. 9 is also a formal witness who proved injury report of P.W. 4 Jagsundari Devi as exhibit 5.

10. P.W. 3, Sushila Kuwar is daughter of the deceased. P.W. 1, Naresh Das is son of the deceased, P.W. 2, Umesh Das is another son of the deceased, P.W. 4, Jagsundari Devi is wife of the deceased and P.W. 8, Baidnath Sah is said to be eye-witness of alleged occurrence.

11. P.W. 3, Sushila Kuwar stated that appellant Gango Das was abusing her mother and in the meantime, her father came there and forbade him to do so and in the meantime, rest appellants also came there and after that appellant Dinesh Sah gave fatta blow causing injury on the head of her father whereas rest appellants assaulted him with lathi. She further stated that her mother came running to rescue to her father but she was also assaulted by lathi by the aforesaid persons. She further stated that after having sustained injury, her father fell down on the earth and after that he was taken to hospital by tyre cart of one Satto Singh. She further stated that her father had sustained two fatta blows and several lathi blows. She further stated that P.W. 8 Baidnath Sah and others brought her father to hospital. The attention of this witness was drawn towards her previous statement and she stated that she had made statement to this effect that appellant Dinesh Sah had given fatta blow to her father.

12. P.W. 1, Naresh Das is son of the deceased Laxman Das. This witness also stated that it was appellant Dinesh Sao who gave fatta blow on the head of the deceased whereas rest appellants assaulted his father with lathi. The attention of this witness was drawn towards his previous statement that he had not made statement before police to this effect that it was the appellant Dinesh Sah who

gave fatta blow to the deceased.

13. P.W. 2 Umesh Das also stated that appellant Dinesh Sah gave fatta blow on the head of his father as a result of which blood started oozing out from his head. He further stated that appellant Dinesh Sah assaulted him with fatta. The attention of this witness was drawn towards his previous statement and this witness, specifically, stated that in his previous statement, he had stated that appellant Dinesh Sah had given fatta blow on the head of his father.

14. P.W. 4, Jagsundari Devi also supported the prosecution story and stated that appellant Dinesh Sah gave fatta blow on the head of her husband whereas rest appellants assaulted him with lathi. She further stated that after the occurrence, the deceased was taken to hospital on tyre cart but in course of treatment, he died in the next morning. She further stated that she was also assaulted by the appellants by means of lathi when she came to rescue to her husband. This witness further said that her statement was recorded at hospital and statement was read over to her and having found and understood the statement true, she put her thumb impression on her fardbeyan. She admitted this fact that appellant Ramjee Das and her husband were full brothers and the partition had already taken place. She further stated that at the time of occurrence only Baidnath Sah (P.W. 8) came running and except the aforesaid Baidnath Sah, none had come on the place of occurrence at the time of alleged occurrence. She further stated that one Dr. Laxmi Rai gave treatment to the deceased and after that he was brought to hospital where he died. She further stated that she had not gone to the police station and her statement was recorded in hospital at 11 a.m. She further stated that she had made statement before the police to this effect that it was appellant Dinesh Sah who gave fatta blow to the deceased.

15. P.W. 8, Baidnath Sah stated that at the instigation of appellant Gango Das, appellant Dinesh Sah gave one fatta blow on the head of the deceased Laxman Das whereas rest appellants assaulted him with lathi. This witness further stated that he had made statement before the police to this effect that at the instigation of appellant Gango Das, appellant Dinesh Sah gave one fatta blow on the head of the deceased Laxman Das whereas rest appellants assaulted him with lathi. This witness stated that alleged occurrence took place on account of a dispute of dol. This witness described the manner of occurrence and attention of this witness was drawn towards his previous statement recorded by Investigating officer but he denied almost all the suggestions of the defence.

16. On perusal of the aforesaid evidence, it is explicit clear that witnesses Umesh Das, Naresh Sah, Sushila Kuwar and the informant Jagsundari Devi are family members and they are related with the deceased. Furthermore, I find that P.W. 8 is an independent witness and he is not related with the deceased Laxman Das. I also find that the aforesaid prosecution witnesses, specifically, stated that appellant Dinesh Sah gave fatta blow on the head of the deceased causing injury to him and later on, the deceased died in hospital. Furthermore, the aforesaid witnesses stated that except appellant Dinesh Sah almost all the appellants

assaulted the deceased with lathi. Therefore, it is explicit clear that according to the prosecution witnesses, appellant Dinesh Sah gave single fatta blow on the head of the deceased whereas rest appellants assaulted the deceased with lathi.

17. P.W. 6, Hari Sharan Prasad Singh stated that on 9.5.1988 at 4.45 p.m. he held post mortem on the body of the deceased Laxman Das. This witness found following antemortem injuries on the head of the deceased:

Stitched wound on scalp 2 1/2" in length and on removing the stitches which were three in number, the wound was found lacerated and on dissection of the scalp, there was fracture of perennial bone (parietal bone and posterior part of frontal bone). He further stated that on opening perennial cavity, blood and blood clots were found. He further stated that the aforesaid injury was caused by hard and blunt substance such as lathi and fatta and he further stated that the above stated injury was sufficient to cause death. This witness proved post mortem report as exhibit 3.

18. On perusal of deposition of P.W. 8, it is explicit clear that this witness found only one injury on the head of Laxman Das and at the time of post mortem examination of dead body of the deceased Laxman Das, wound of the deceased was stitched.

19. P.W. 4 has stated at para 14 of her cross-examination that the deceased was treated by one Dr. Laxmi Rai before he could be brought to hospital. Admittedly, the aforesaid Dr. Laxmi Rai was not examined by the prosecution. Although it has been argued on behalf of the appellants that non-examination of Dr. Laxmi Rai was fatal to the prosecution case because the aforesaid Dr. Laxmi Rai was the first person who examined the deceased after alleged occurrence and he was able to say as to what type of injury was sustained by the deceased and neither any report of the aforesaid Dr. Laxmi Rai was brought on the record nor the aforesaid Dr. Laxmi Rai was examined by the prosecution but I am unable to accept the aforesaid contention because P.W. 4 has stated at para 14 of her cross-examination that villagers had given some medicines to the deceased and Dr. Laxmi Rai had given some treatment to the deceased and the aforesaid statement of P.W. 4 reflects that before taking away Laxman Das to hospital, some first aid was given to the deceased. P.W. 4 has specifically, stated at para 22 of her cross-examination that it was doctor of the hospital who stitched wound of the deceased. Therefore, even if the aforesaid Dr. Laxmi Rai was not examined nor any prescription or report of the aforesaid Dr. Laxmi Rai was brought on the record, then also, non-examination of Dr. Laxmi Rai is not fatal to the prosecution case.

20. On combined reading of depositions of P.Ws. 1, 2, 3 and 4 as well as P.W. 8, I find that eye witnesses of alleged occurrence stated that appellant Dinesh Sah had given fatta blow on the deceased causing head injury to him whereas rest appellants assaulted the deceased with lathi but admittedly, only one injury on the head of the deceased was found and according to the prosecution witnesses,

the aforesaid injury was attributed to appellant Dinesh Sah and non-finding of other injuries on the person of the deceased suggests that except appellant Dinesh Sah, none of the appellants had assaulted the deceased.

21. Admittedly, after investigation, appellants Dinesh Sah and Sukhdeo Sah were not sent up for trial and they were summoned by the learned trial court u/s 319 of the Cr.P.C.

22. It has been argued on behalf of the appellants that in course of investigation, prosecution witnesses named appellants Dinesh Sah and Sukhdeo Sah and that was the reason, the prosecution did not examine Investigating officer so that defence could not get an opportunity to bring on the record the contradiction/development in the deposition of prosecution story. It has also been argued that D.W. 1, Investigating officer of this case, was examined by the appellants and D.W. 1 very, specifically, stated that none of the so-called eyewitnesses including the informant of this case stated before him about involvement of appellant Dinesh Sah in the alleged occurrence but again I am not in a position to accept the aforesaid contention because in course of trial, several efforts were taken by the prosecution to procure attendance of Investigating officer (D.W. 1) but D.W. 1 did not appear before the learned trial court as prosecution witness and later on, he appeared as D.W. 1 on behalf of the defence. Furthermore, I find that D.W. 1 accepted at para 2 of his examination-in-chief that he recorded fardbeyan of Jagsundari Devi (informant) on 9.5.1988 at State hospital, Rosera and after recording her fardbeyan, he immediately recorded her further statement but in her further statement she had not stated this fact that appellant Dinesh Sah had given fatta blow on the head of the deceased. Similarly, this witness further stated that none of the prosecution witness had stated this fact that it was appellant Dinesh Sah who gave fatta blow on the head of the deceased.

23. From perusal of the entire deposition of this witness, I find that testimony of this witness is not trust worthy and furthermore, it appears that he did not investigate the case properly with an intent to help accused persons of this case. This witness admitted at para 16 of his cross-examination that P.W. 4 Jagsundari Devi had taken names of all the appellants in her fardbeyan. This witness has admitted that just after recording of her fardbeyan, he recorded further statement of P.W. 4 Jagsundari Devi and therefore, it is unbelievable that P.W. 4 Jagsundari Devi did not disclose the name of appellants Dinesh Sah and Sukhdeo Sah in her further statement before this witness, particularly, in the circumstance when her further statement was recorded just after recording of her fardbeyan. Moreover, this witness has admitted at para 19 of his cross-examination that P.W. 4, Jagsundari Devi supported her fardbeyan in her further statement. Admittedly, P.W. 4 Jagsundari Devi has stated in her fardbeyan that it was appellant Dinesh Sah who gave fatta blow on the head of her husband. Therefore, it appears to me that D.W. 1 did not record the statement of the prosecution witnesses properly in course of investigation. Furthermore, D.W. 1 has admitted at para 19 of his cross-examination that he found injury on the person of P.W. 4 and he

prepared requisition of the aforesaid injury and proved the same as exhibit 5/1. Therefore, from the aforesaid admission of D.W. 1, it is established that P.W. 4 had sustained injury on her person in the alleged occurrence. Furthermore, D.W. 1 has admitted at para 22 of his cross-examination that he had noticed some blood at the place of occurrence though the aforesaid blood was not seized by him.

24. On the basis of the aforesaid discussions, I am of the opinion that even if it has been argued on behalf of the appellants that material prosecution witnesses developed their statements in course of trial, then also, the aforesaid argument does not have leg to stand because credibility of D.W. 1 is doubtful, particularly, in the circumstance that P.W. 4 has, specifically, stated in her fardbeyan that it was appellant Dinesh Sah who inflicted fatta blow on the head of the deceased and D.W. 1 admitted in his deposition that P.W. 4 reiterated the aforesaid fact in her further statement. Therefore, even if there are some contradictions in the deposition of prosecution witnesses, then also, the aforesaid contradictions do not go to the root of the prosecution case.

25. It has also been argued on behalf of the appellants that no independent witness has been examined by the prosecution and all material prosecution witnesses are related with each other but again I am unable to accept the aforesaid contention because according to the prosecution case, appellants entered the house of P.W. 4 and assaulted the deceased and therefore, the aforesaid fact goes to show that occurrence took place inside the house and therefore, it is quite natural that except the family members of P.W. 4, none were present inside the house at the time of alleged occurrence. Furthermore, I find that in course of occurrence, the deceased came out of his house and P.W. 8 witnessed the occurrence. Therefore, even if no independent witness except P.W. 8 was examined by the prosecution, then also, it is not fatal to the prosecution case because P.Ws. 1, 2 and P.W. 3 being inmates of the house witnessed the occurrence and supported the prosecution story.

26. Admittedly, almost all material prosecution witnesses stated that it was appellant Dinesh Sah who gave fatta blow on the head of the deceased and doctor (P.W. 6) found only one injury on the head of the deceased. Therefore, injury found on the person of the deceased is attributed to the appellant Dinesh Sah and except the aforesaid injury, no other injury was found on the person of the deceased. Furthermore, the learned trial court at para 15 of the impugned judgment has observed that there was no fact for indicating common object in the minds of accused persons to cause death but the learned trial court convicted the appellants after taking aid of section 34 of the IPC. There is nothing in the depositions of prosecution witnesses that there was common intention or knowledge of all appellants to cause death of the deceased Laxman Das and according to the prosecution case itself, the appellants entered the house of the deceased with intent to cause injury to him and in that course, appellant Dinesh Sah gave one fatta blow to the deceased which resulted into his death.

Therefore, in my opinion, the appellants except appellant Dinesh Sah could not have been convicted for the offence punishable u/s 304 Part II read with section 34 of the IPC, particularly, in the above stated circumstance as well as keeping in mind that except one injury no other injury was found on the person of the deceased and there was nothing on the record to infer this fact that all appellants had common intention or knowledge to cause death of the deceased. Furthermore, I am of the view that for causing death of the deceased only appellant Dinesh Sah is responsible and the learned trial court rightly convicted him for the offence punishable u/s 304 Part II read with section 34 of the IPC.

27. On the basis of the aforesaid discussions, this criminal appeal is partly allowed and the impugned judgment of conviction and sentence order in respect of appellants Ramjee Das, Patti Das, Gango Das and Sukhdeo Sah are hereby, set aside. The above stated appellants are acquitted of the charges framed against them. The aforesaid four appellants are on bail. They are discharged from their liabilities of their bail bonds.

28. So far appellant Dinesh Sah is concerned, his appeal is dismissed and accordingly, his judgment of conviction and sentence order is, hereby, confirmed. Since he is also on bail, his bail bonds are cancelled and he is directed to surrender before the court below within a month from today to serve out his sentences, failing which the learned court below shall take all possible steps to procure the attendance of above stated appellant Dinesh Sah so that he could be sent behind the bar to serve out his sentences. The period already undergone by him will be set off. In the aforesaid manner, this criminal appeal stands disposed of.