
(2003) 12 PAT CK 0065
In the Patna High Court
Case No : Criminal Appeal No. 574 of 2002

Sarekh Singh, Lal Babu Singh and Arvind Singh	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 364

Citation : (2004) 1 PLJR 631

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Ram Shankar Das, for the Appellant; Bhagya Narain Gupta, Jagadish Prasad, No. 1, Krishna Prasad Singh, No. 2 and Shaheen Begum, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—Though six persons were put on trial, while others were acquitted of the charges, Appellants alone suffered conviction u/s 364/34 of the Indian Penal Code, who were sentenced to rigorous imprisonment for a term of ten years.

2. The salient features of the prosecution case reflected from the earliest version of the wife of Chalitra Singh, and narrations made by witnesses at trial, was that after Chalitra Singh left his house sometimes on 26th October, 1997 to attend, party's meeting at house of Moti Mehta, he did not return to his house till late hours of night. It was alleged that Moti Mehta and Kedar Nath Thakur, after the meeting was over, had accompanied Chalitra Singh to some distance from the venue of meeting. The wife of said Chalitra Singh, suspecting complicity of the Appellants and Sita Ram Singh and Ramanand Singh, who were convicted in a previous criminal case along with Appellant Lal Babu Singh on behest of her husband, and also suspecting complicity of Sarekh Singh, Chandra Shekhar Singh and Shivjee Singh who had been threatening her husband, instituted a police case, pursuant to which investigation, as usual followed. The Police, it

appears, had recorded statement of witnesses, took steps for apprehension of the miscreants, made seizure of some incriminating objects from the field of the deceased, and on conclusion of investigation, laid chargesheet before the court. In the eventual trial that followed, while State examined nine witnesses, the defence too examined two witnesses.

3. The defence of the Appellants had been that of plea of innocence, and on behalf of them it has been stated that as Chalitra Singh did not have cordial relation with his wife, quite often he used to leave his house on his own motion. The trial court, however, considering evidences available on the record, while acquitted rest recorded finding of guilt and sentenced the Appellants in the manner stated above.

4. Since narrations made by witnesses have been fairly discussed by trial court in its judgment. I do not wish to discuss them in much details. However, a brief resume of the narrations made by witnesses can be noticed at threshold. P.Ws. 5, 7, 8 and 9 happened to be formal witnesses who simply brought some documents on the record and their evidences as such did not merit comment. Reiterating her ear(sic) version Lachho Devi, P.W. 6, would still that after her husband had left his house to attend party's meeting at the house of Moti Mehta who did not come back till late hours of night, suspecting complicity of the Appellants and others with whom the husband had some sort of land dispute, she set the police in motion by instituting a police case. Wife alleges that Appellants and others had been threatening her husband, for which a Sanha had been instituted, and pursuant to institution of the case, she also Informed her son who was residing at Calcutta. Kedar Nath Thakur, P.W.1, states that shortly after conclusion of the meeting at the house of Moti Mehta and taking meal, he left venue in the company of Chalitra Singh and accompanied him to some distance, and in the following morning he was informed by wife of said chalitra Singh that her husband had not reached house till late hours of night, and she had also expressed her suspicion about complicity of the Appellants and others. Attention of this witness had been drawn he defence about he having accompanied Chalitra Singh to some distance after conclusion of meeting and wife of Chalitra Singh having informed him about Chalitra Singh having not reached house till late hours of night. Though credibility of this witness was sought to be impeached by the defence on some material particular of the incident, there being no such parallel statement rendered before the police during investigation, the Police Officer who recorded his statement had not been examined at trial and hence credibility of this witness remained open to question. Similar was the case with Moti Mehta, P.W. 2, who states that a meeting of workers of Socialist Party was convened at his house in which Chalitra Singh too had participated, and shortly after conclusion of meeting, he along with Chalitra Singh and Kedar Nath Thakur left the place and had accompanied Chalitra Singh for some distance. It was in the following morning that wife of Chalitra Singh came to him and expressed her apprehension about killing of her husband by Appellants and others. This witness states also about seizure of two pieces of

clothes allegedly that of Chalitra Singh from his field. Attention of this witness too had been drawn by the defence about he having accompanied Chalitra Singh to some distance after conclusion of meeting, and also identification of two pieces of clothes allegedly seized by the Police from the field of Chalitra Singh. His attention had been drawn also about wife of Chalitra Singh informed him that Chalitra Singh had not reached his house till late hours of night, and there is no gain saying the fact that though narration made by this witness was challenged to impeach his credibility, there being no such para(sic) statement rendered before the police by this witness during investigation, the Investigating Officer who recorded statement of this witness was examined at trial and hence his credibility on some material particulars of incident remained open to question.

5. Now advertent to evidence of Chulhai Singh alias Chulhan Singh, P.W. 3, one may notice that this witness claims to have noticed Chalitra Singh on an auto going towards Hajipur in the company of Lal Babu Singh, Arbind Singh and two unidentified persons. This witness also claims that when he met Naresh Singh, son of Chalitra Singh, he had informed him about witnessing Chalitra Singh in the company of two persons in auto. He also claims to have made hectic searches for Chalitra Singh in the company of Naresh Singh, and attention of this witness too had been drawn to this material part of evidence, there being no such parallel statement before the Police during investigation and since the Investigating Officer has not been examined at trial, credibility of this witness too remained open to question. Ram Naresh Singh, P.W. 4, stated to have come to his house on receipt of information at Calcutta about incident. He go informant about the incident from his mother. Moti Mehta too had informed him that he and Kedar Nath Thakur had accompanied Chalitra Singh to some distance after the meeting was over. He too had suspicion against Appellants and others in view of criminal cases instituted against them, and they having suffered conviction, after conclusion of trial. This witness too states about threatening hurled by Appellants and others, for which a Sanha had been lodged. He also states to have been informed by Chulhai alias Chulhan Singh, P.W. 3, about he witnessing Chalitra Singh in the company of Lal Babu Singh, Arbind Singh and Suresh Singh on an auto on Bidupur-Hajipur Road. He also claimed to have identified two pieces of clothes to be that of his father seized by police from his field, and attention of this witness too has been drawn by the defence about he having any talk with Moti Mehta about the incident. This is all the evidence that has been adduced on behalf of the State.

6. Per contra these evidences, there are two defence witnesses to say that the relation between the spouse was not cordial, though they acknowledged land dispute between the parties.

7. Learned Counsel appearing for the Appellants would submit that accepting the prosecution version to be true on its face value which has not been corroborated by any unimpeachable evidence, simply company of the Appellants with the deceased for sometimes preceding his death, would not saddle Appellants with

accusation of kidnapping, for which they were made answerable at trial. Even if story propounded by the State about "last seen evidence" was given some credence, that would not lead to conclusion about guilt of the Appellants. As for recording verdict of guilt in cases of circumstantial evidence of this nature, the State was required to establish guilt of the accused with unbroken chain of evidence which could establish only the guilt of the accused and was totally incompatible with all hypothesis of innocence of the accused. Other piece of evidence on which reliance was placed by the State to establish guilt of the Appellants, was that of Chulhai alias Chulhan Singh, P.W.3 and same analogy would apply in his case, also, and that apart, narration made by witnesses had been emphatically challenged by the defence on material particular of the incident, there being no such parallel statement recorded by police during investigation, and so far as seizure two pieces of clothes allegedly to be that of the deceased from his field was concerned, on that score too, the State had not led clinching evidence to establish that what was seized by the Police from the field, that was of Chalitra Singh and also that there was no evidence about origin blood, as there has been no finding of the chemical examiner. Though witnesses had been claiming about seizure of clothes from the field allegedly to be that of Cria(sic) Singh, these narrations too made by witnesses had been challenged by the defence for there being no such parallel statement before the police during investigation. Though State had placed on the record, Ext. 5 that simply suggests that (sic) Babu Singh alone, among the Appellant had suffered conviction in which finding guilt recorded by the court below (sic) upheld by the appellate court. Though (sic) may be an evidence to suspect compl(sic) of the persons put on trial, that was no (sic) sole criterion to judge the guilt of the accused. It seems that the trial court largely obsessed with conviction of one the Appellants in the previous case (sic) tuted on behest of Chalitra Singh.

8. Having bestowed my anxious and deepest consideration to the evidences placed on the record and also the facts and circumstances of the case, I find that the finding recorded by court below could not be sustained. In the circumstances, finding of guilt recorded by court below about guilt and also sentence against the Appellants is set aside and they are acquitted of the charges levelled against them, Since Appellants happen to be in custody, it is directed that they shall be set at liberty forthwith if no wanted in any other case the appeal accordingly succeeds.