

(2002) 02 PAT CK 0133

In the Patna High Court

Case No : Criminal Appeal No. 398 of 1990 (S.J.)

Sikandar Mahamarik and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304

Citation : (2002) 3 PLJR 161

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

Bench : Single Bench

Advocate : Anjana Prakash and Rakesh Kumar Sinha, for the Appellant; Din Bandhu Singh, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—The Appellants along with ten others were prosecuted for offences punishable u/s 302/149 and also u/s 147 of the Indian Penal Code.

2. The factual matrix, as transpiring from statement of Triveni Mahamarik (P.W. 6) rendered before the police was that on material date of incident, while he along with Dhananjay Mahamarik was returning to House after irrigating lands, fifteen persons emerged from the embankment of canal, holding arms with them who apprehended Dhananjay Mahamarik, fell him on the ground and assaulted with their weapons. Explicit accusations were attributed to Appellants (not Suresh Mahamarik) about assaulting Dhananjay dealt with Garasa on his leg. Accusations were also attributed to others for dealing blows on Dhananjay Mahamarik with axe, Khanti and hard blunt substance. It was alleged that seeing the ghastly incident, Triveni Mahamarik rushed to the village, and along with villagers came to the place of occurrence and noticed Dhananjay Mahamarik growing pains and with wounds in his legs which were bleeding profusely. He also claim to have noticed wounds near the temporary region of the injured. The injured, it is alleged also rendered statement about the assailants before the

villagers and as state of the injured, was critical, they took him on a cot to reach Bousi Hospital for treatment. However, before he could be given any medical aid, succumbed to the injury sustained by him. Triveni Mahamarik claimed identification of the assailants in the flash light of torch, and on these accusations. first information report on behest of Triveni Mahamarik was drawn up at Bousi Police Station and investigation commenced. During investigation, the investigating officer recorded statement of witnesses, got autopsy held on the body of the deceased (sic) doctor C.S. Kashyap (P.W. 8), visited pl(sic) of occurrence and on conclusion of investigation, laid chargesheet before the Court. The Appellants along with ten others o(sic) their committal to the Court of session were put on trial. The prosecution examined altogether eight witnesses and those examined, include Triveni Mahamarik who happened to be the brother of the deceased and also the person, who set (sic) police in motion. The State also examination host of witnesses including the police officer.

3. Now adverting to the witness placed on the record on behalf of the S(sic) one would find Triveni Mahamarik, (P.W. (sic) reiterating his early version which he ordered before the police, admittedly, some improvements over his early version as even though Bindeshwari and Har(sic) had not been saddled, in his early version for exhorting their associates to make (sic) sault on the deceased, such improvement sought to be introduced in the evidense at the trial. Even though such details wanting in his early version, in his (sic)nence at trial, he made explicit accusa-against Narayan Mahamarik for felling deceased on the ground and the Appellants dealing blows with sharp edged weap(sic) on particular part of the person of the deceased. Even though Suresh Mahamarik not been explicitly saddled with allegation of assaulting the deceased on temporal region of his head in the early version (sic)ch Triveni Mahamarik rendered before police, such accusations were attribute him in his evidence which was (sic)uced at trial. Though Rohin Mahamarik (sic)2) claimed to have visited the place of (sic)rrence and noticed Dhananjay Mahamarik lying injured with bleeding (sic)ds on his person and also having in Appellants making good their es(sic), it would appear from the evidence of investigating officer that such narra(sic) were conspicuously wanting on the (sic)ement which the witnesses rendered (sic)er Section 161 of the Code of Criminal Procedure. Though Naresh Maharik would (sic)arrate about any disclosure allegedly (sic)g been made by the deceased about Appellants, the witness was emphatic assertion that after he rushed to the (sic) of occurrence from the village, he (sic)d injuries on the knee of the injured. (sic)ar was the case with Pramod Mahamarik (P.W. 4), as though he too (sic)ed to have noticed the assailants (sic)ng good their escape, pursuant to his (sic) at the place of occurrence, such (sic)tions were conspicuously wanting be the police. Lakhan Mahamarik (P.W. 5) stated to have rushed to the place of occurrence from the village shortly on re-(sic) of information from Triveni Mahamarik (sic) the Appellants having cut the legs of Danjay Mahamarik. He stated to have (sic)ed some injuries on the legs of Dhananjay Mahamarik and also wound on temporal region, who on enquiries being made from him, disclosed complicity of the

Appellants and ten others. Though he stated to have noticed some persons making good their escape, admittedly, he did not claim their identifications. Mangalik Mahamarik (P.W. 7) was tendered by the State and there was nothing material to merit consideration. Shri K.P. Keshri (P.W. 1) who happened to be the investigating officer of the incident, stated to have recorded statement of the witnesses, secured postmortem report and visited the place of occurrence which was embankment of Triveni Canal, east to village Sarocha. The police officer would state about evidence of blood on the western bandh of Canal.

4. Dr. C.S. Kashayap (P.W. 8) stated to have noticed following antemortem injuries on the dead body of Dhananjay Mahamarik:

(i) One incised wound over right thigh medially size (Mid portion) 6" x 2" bone deep.

(ii) One incised wound over left knee joint (anteriorly) size 6" x 2" bone deep.

(iii) One incised wound over right calf muscle size 4" x 2" bone deep.

(iv) One abrasion over left temporal region on head size 2"x 2".

(v) One abrasion over left elbow joint size 2" x 1".

5. Injury Nos. 1, 2 and 3, in estimation of the doctor were caused by sharp, cutting weapon may be by Garasa and injury Nos. 4 and 5 were caused by some hard and blunt object such as lathi. The cause of death, in opinion of the doctor, was shock and hemorrhage caused by aforesaid injuries. This is all the evidence that has been adduced on behalf of the State. The trial Court on meticulous appreciation of evidences placed on the record while acquitted rest, of the charges, found Appellants guilty u/s 304 first part, read with Section 149 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for a term of ten years. The Appellants also suffered conviction u/s 148 of the Indian Penal Code for which they were sentenced to suffer rigorous imprisonment for a term of one year. However, both the sentences were directed to run concurrently.

6. The finding recorded by trial Court was sought to be assailed by the learned Counsel appearing for the Appellants on premises that though death of Dhananjay Mahamarik was admitted in view of finding recorded by the doctor, regard being had to the situs of the injury suffered by Dhananjay Mahamarik, nowhere it was stated by the doctor that the injuries found on the person of the deceased were sufficient in ordinary course of injury to cause death and hence finding of guilt recorded by the trial Court u/s 304 Part-I of the Indian Penal Code was not sustainable in law. Contentions were raised that though the witnesses were making parrot like statements about all fifteen number of accused persons making indiscriminate assault on the deceased with some hard blunt object, it is quite incongruous to find that the doctor found only two injuries caused by hard blunt substance. It is urged that even though one witness would exclude the presence of other witness, in his narration made before the Court, implicit reliance on them was placed by the trial Court and the last argument canvassed

at bar was that it was quite unnatural that by the time when the villagers would reach the place of occurrence, the assailants would remain present at the place of occurrence to facilitate their identification by then and in quick succession it is urged that on some (sic-same?) set of evidence while ten persons were acquitted of the charges, the Appellants suffered conviction, and in alternate, it is urged that the prosecution was launched against the Appellants in the year 1988 as they have suffered the ordeal of protracted (sic) litigations about fourteen years and (sic) Appellants in any view of the matter should (sic) have been found guilty u/s 39 of the Indian Penal Code, taking the prosecution version to be true on their face (sic) value.

7. The improvements sought to be introduced by Triveni Mahamarik (P.W. (sic) over his early version which was rendered before the police has been stated in the preceding paragraphs which need not require repetition. However, the basic feature of the prosecution case about the Appellants (not Suresh Mahamarik) assault (sic) the deceased with some sharp edged weapons on his legs, was coherent in all the (sic) statements which he rendered before the police and also the Court. Though part (sic) narrations made by Rohin Mahamarik (P.W. 2) about claiming identification of (sic) assailants while they were fleeing, weapons (sic) wanting before the police, the other part (sic) the prosecution case about the deceased allegedly making dying declaration disclosing complicity of the assailant, was in tune with the statement which he rendered before the police. This witness was a signatory of the first information report and also claimed to have put signature on the (sic) sure memo about the collection of bio (sic) from the place of occurrence. As has been (sic) discussed, only that part of evidence Nareish Mahamarik (P.W. 3) which can (sic) taken into consideration, was about (sic) having noticed injuries on the knee of (sic) injured. In case of Pramod Mahamarik (P.W. 4) also, though some part of (sic) statements made by him merits exclusion (sic) consideration, as such narrations (sic) wanting before the police, other part of (sic) prosecution case about the witness (sic) having noticed bleeding injuries on the person (sic) of the deceased and the deceased's (sic) declaration disclosing complicity of the (sic) assailants before the villagers, was in conformity (sic) with the statement which he rendered before the police. This witness would state about Dhananjay Mahamarik stating about Suresh Mahamarik assaulting on his immoral region with a Khanti. However, Rich statement made before the Court was Hinting before the police. True it is that the Rood allegedly seized from the place of Occurrence does not appear to have been (sic) sent for chemical examination but for laches. In part of the investigating officer the prosecution was not to be a casualty.

8. The deceased and the Appellant, it can be gathered from the evidences of the witnesses, come from common ancestor as both the parties are descendants of Ganesh Mahamarik. It would appear from the evidence of Rohin Mahamarik (P.W. 2) that the tragic incident happened due to some land dispute persisting between the parties. The land which was recorded in (sic) the name of Durga Mahamarik, as is stated this witness, was being cultivated by (sic) him and for that reason

Dhananjay Mahamarik was made a casualty. Litigation (sic) cross-cases between the parties also bear to be admitted facts of the case, (sic)e statement made by Rohin Mahamarik but there being darkness at the time of (sic)dent cannot be a good ground to assail (sic)ntification of the assailant, in view of (sic)ement of Triveni Mahamarik and other (SIC)NESSES that they held torches with them (sic)ch facilitated identification of the assail(sic) True it is that narrations were made some witnesses about there being in-triminate blows with hard blunt sub-(sic) on the person of the deceased for (sic)ch only two injuries caused by hard (sic) substance were noticed by the doctor held autopsy over his dead body, the (sic) prosecution case cannot be disposed the witnesses are not explicit as (sic) of the assailants dealt blows with and it is not unlikely that in their anxiety to make their case strong and believable, they would render such statement, and that apart the Appellants do not appear to have been saddled with the allegation of causing assault with hard blunt substance, as explicit evidence against them was for assaulting the deceased with some sharp edged weapons on the legs of the deceased and it is not in dispute that those who were saddled with allegation of causing assault with hard blunt substance, have been acquitted by the trial Court.

9. However, certain facts merit consideration. Though omnibus allegation was attributed to Suresh Mahamarik, one of the Appellants, about he too be in the company of the assailants, explicit accusations were sought to be introduced by some witnesses at trial, about this Appellant assaulting the deceased with Khanti on temporal region of his head. No explicit accusation was ever attributed to Suresh Mahamarik by Rohin Mahamarik (P.W. 2) about assault with Khanti on temporal region of head of the deceased and even though Pramod Mahamarik (P.W. 4) would state about Suresh Mahamarik assaulting the deceased with Khanti, such statement was conspicuously wanting before the police. As total narration made by Lakhan Mahamarik (P.W. 5) was wanting before the police, that has to be excluded from consideration and, in that view of the matter, I do feel that the case of Suresh Mahamarik was distinct from other Appellants and, in that view of the matter, he is given benefit of doubt and is acquitted of the charges levelled against him.

10. Though the Appellants were found guilty u/s 304 Part-I of the Indian Penal Code, regard being had to the nature of injuries and also the citus of them; they cannot be saddled with knowledge that their act might result in the death of the deceased and, hence, the overt act attributed to the Appellants were well-covered u/s 304 Part-II of the Indian Penal Code. The finding of guilt recorded against the Appellants (not Suresh Mahamarik) is converted to Section 304 Part-II and sentences imposed on them is reduced to eight years. The finding of guilt recorded by the trial Court u/s 148 of the Indian Penal Code and also the sentences imposed on the Appellants is also upheld and with this modification appeal succeeds in part.