

(2015) 08 PAT CK 0045

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 423 of 1992 and 173 of 1994

Sita Ram Sao and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2016) 1 PLJR 66

Hon'ble Judges : V.N. Sinha, J;Jitendra Mohan Sharma, J

Bench : Division Bench

Advocate : Shivendra Kumar Sinha, for the Appellant; A.K. Sinha, APP,
Advocates for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J—Heard learned counsel for the appellants and the State.

2. Both these appeals arise out of judgment/order dated 25.08.1992, passed by Additional Sessions Judge-I, Gaya, in Sessions Trial No. 515/1990/02/1991 whereunder the appellants in the two appeals have been convicted for the offence under Section 302 of the Penal Code and sentenced to suffer rigorous imprisonment for life.

3. Prosecution case, as set out in the fardbeyan of Bindiya Devi, wife of Suresh Sao, resident of Village Lachhnaity, P.S. Sherghati, District Gaya, recorded by A.S.I.T. Singh of Sherghati Police Station on 27.10.1989 at 11.00 P.M. at Sherghati State Dispensary in presence of her father-in-law Madan Sao and Chowkidar 4/5 Jagdish Paswan, is that on the same day around 5.00 P.M. she was returning from Sherghati Market, when she approached the ridge near Rajiganj canal, her cousin brother-in-law Sitaram Sao, brother-in-law Kumar Sao apprehended her and Kumar Sao repeatedly stabbed her with knife. Informant further stated that Sitaram Sao also joined Kumar Sao in stabbing her causing injury near neck above the chest and 3, 2 injuries on left, right hand. Alarm

raised, Laxmi Bhuiyan also returning from the same market came, the accused persons made good their escape. Information about the assault on Bindiya Devi was given by Laxmi Bhuiyan to her father-in-law, who came along with the Chowkidar and brought her to Sherghati State Dispensary. She further stated that the occurrence took place due to previous enmity. She also claimed in the fardbeyan that Sitaram Sao and Kumar Sao both with intention to kill assaulted her with knife. She further stated that the fardbeyan statement was read over to her and she put thumb impression over the fardbeyan in presence of her father-in-law Madan Sao. Father-in-law of the informant also put his signature over the fardbeyan. Fardbeyan was forwarded to the Officer-in-Charge, Sherghati Police Station for registration of the case. In the light of the fardbeyan Sherghati P.S. Case No. 165/89 dated 27.10.1989 was registered for the offence under Section 307 and other allied Sections of the Penal Code on 27.10.1989 mid-night with instruction to A.S.I. Tribhuwan Singh, its scribe, to investigate the case. The First Information Report was forwarded to the court of Chief Judicial Magistrate, Gaya on 28.10.1989 which was also seen by him on the same day. Bindiya Devi having suffered several stab injuries appears to have been referred to Magadh Medical College Hospital, Gaya for better treatment where she, however, succumbed to stab injuries on 29.10.1989. Inquest report of Bindiya Devi is available on record vide Exhibit-5, perusal whereof indicates that the same was prepared on 29.10.1989 at 1.30 P.M. in presence of Krishna Prasad and Suresh Sao (both not examined). Post mortem on the dead body of Bindiya Devi was conducted in the same hospital on 29.10.1989 at 2.30 P.M. From the post mortem report (Exhibit-2) it is evident that Bindiya Devi suffered several ante-mortem injuries, which is quoted hereinbelow for ready reference :

"1. Five incised penetrating wound each of approximate size 1/2" X 1/4" X bone deep over front of neck which were found stitched. There was perforation of larynx wind pipe containing blood clots underlying tissues of front of neck inflicted with blood clots.

2. Three stitched incised penetrating wound each of approximate size 1/2" X 1/4" X chest cavity deep over front of left upper portion of chest around left nipple. There was half sharp cut of 5th and 6th left ribs. Left lung with plura and heart with pericardium were found perforated. Chest cavity was filled with blood and blood clots.

3. Two incised wound over dorsal surface of right forearm 1" above right wrist and three incised wound over ventral aspect of left wrist each of size 1" X 1/4" X bone deep underlying tissue containing blood clots. The wounds were found bandaged.

4. Stitched incised wound over lateral aspect of right thigh in middle size 1" X 1/4" X 1/2".

After death of Bindiya Devi Section 302 of the Penal Code was also added to the prosecution case vide order dated 15.11.1989. The two appellants thereafter

surrendered in the court below on 05.12.1989. In the light of the fardbeyan, further statement of the informant, police statement of the witnesses as also the inquest, post mortem report of Bindiya Devi charge-sheet submitted, cognizance of the offences found true during investigation taken and after supply of police papers to the accused persons case committed to the Court of Sessions. Sessions Court framed charge under Section 302/34 of the Penal Code under order dated 04.06.1991 to which both the accused persons pleaded not guilty and claimed to be tried.

4. In support of the charge prosecution examined three witnesses. P.W. 1 Krishna Sao is the brother of deceased Bindiya Devi, who claimed that her fardbeyan was recorded in Sherghati State Dispensary on the date of occurrence at 11.00 P.M. by Sri Tribhuwan Singh, Investigating Officer of the case in his presence. P.W. 2 Dr. Mithilesh Kumar Sinha of Magadh Medical College and Hospital is the autopsy surgeon. P.W. 3 Tribhuwan Singh is the Investigating Officer of the case, who scribed the fardbeyan of Bindiya Devi as also recorded her further statement, which has also been brought on record as Exhibit-4.

5. Learned counsel for the appellants submitted that the finding recorded by the trial court that both the appellants assaulted Bindiya Devi with knife while she was returning from Sherghati market on 27.10.1989 at 5.00 P.M. when she was approaching the ridge near Rajiganj canal, does not appear to have been recorded appreciating the materials on record. It is submitted that the statement of Bindiya Devi recorded by the Investigating Officer on 27.10.1989 at 11.00 P.M. at Sherghati State Dispensary cannot be accepted as her statement. In this connection, it is pointed out that the nature of injuries received by Bindiya Devi at 5.00 P.M. quoted in paragraph 3 above, remained unattended as she kept lying in the field, removed to the Dispensary around 11.00 P.M. after her father-in-law was informed about the occurrence by Laxmi Bhuiyan, who having seen the occurrence went to the village, informed her father-in-law about the occurrence. Father-in-law thereafter came to the place of occurrence along with Chowkidar and the two removed Bindiya Devi to Dispensary. By the time Bindiya Devi was removed to the dispensary, no effort at all was made to check her bleeding and thereby because of the blood loss on account of several penetrating wounds suffered by her, even if she was alive, as has been claimed by the prosecution, she may not have been in a position to make statement before the Investigating Officer in presence of her brother Krishna Sao (P.W. 1).

6. It is further submitted by the counsel for the appellants that though P.W. 1 claimed that he was present at the time of recording of the fardbeyan by Bindiya Devi in the Dispensary on 27.10.1989 at 11.00 P.M. but he has not put his signature over the fardbeyan as attesting witness. It is pointed out that Madan Sao, father-in-law of Bindiya Devi, though put his signature over the fardbeyan as attesting witness, but has not come forward to state before the court that fardbeyan of his daughter-in-law was recorded in his presence. It is further submitted that from the fardbeyan of Bindiya Devi, it will appear that assault on

her person was witnessed by Laxmi Bhuiyan, who having seen the assault went to the village and informed her father-in-law, who contacted Chowkidar 4/5 Jagdish Paswan and both came to the place of occurrence and brought Bindiya Devi to Sherghati State Dispensary. Fardbeyan was recorded in presence of Chowkidar Jagdish Paswan as well but he has also neither put his signature over the fardbeyan as attesting witness nor come forward to support the recording of the fardbeyan by Bindiya Devi. It is submitted that not only the nature of injuries sustained by Bindiya Devi should persuade this Court to hold that she was not in a position to make the statement, as is said to have been made by her before the Investigating Officer on 27.10.1989 at 11.00 P.M. but such fact becomes all the more prominent for the failure of the prosecution to examine either Madan Sao father-in-law of Bindiya Devi or the Chowkidar or Laxmi Bhuiyan, who witnessed the assault on the person of Bindiya Devi and informed Madan Sao, father-in-law of Bindiya Devi about the occurrence and thereby the veracity of the statement made by Bindiya Devi at 11.00 P.M. before the Investigating Officer becomes doubtful.

7. Learned counsel for the State, on the other hand, submitted that in terms of the provisions contained in Section 32 of the Evidence Act the fardbeyan of Bindiya Devi dated 27.10.1989 is required to be treated as dying declaration, as the maker of the said statement left for heavenly abode after two days of making of such statement on 29.10.1989, as such, the statement made before the police officer, who recorded the same and also deposed in court that Bindiya Devi made such statement to him which he recorded, this Court should not entertain any doubt about the statement made by Bindiya Devi. Learned counsel, however, could not explain as to how Bindiya Devi, who suffered so many penetrating wounds on 27.10.1989 at 5.00 P.M., remained unattended for long duration, could record her statement at Sherghati State Dispensary on 27.10.1989 at 11.00 P.M. and reached Magadh Medical College and Hospital, Gaya where her inquest was performed on 29.10.1989. From the inquest report of Bindiya Devi it, however, appears that the same was drawn on 29.10.1989 at 01.30 P.M. in presence of Krishna Prasad and Suresh Prasad (both not examined). P.W. 1, brother of Bindiya Devi and P.W. 3 the Investigating Officer of the case have also not explained as to how Bindiya Devi reached Magadh Medical College Hospital, Gaya.

8. According to learned counsel for the appellants, there is yet another aspect of the matter, which requires consideration by this Court. It is submitted that from the post mortem report of Bindiya Devi, it will appear that she suffered several injuries, which were also stitched by the doctor and the circumstances in which those injuries were stitched has not been explained nor any injury report has been brought on record to indicate who stitched those injuries.

9. In view of the rival submissions, we have given our anxious consideration to the matter. It appears, after the occurrence and lodging of the fardbeyan on 27.10.1989 and death of Bindiya Devi on 29.10.1989 both the appellants

surrendered in the court below on 05.12.1989 and remained in jail during the trial as also for sometime during pendency of this appeal, as appellant Sitaram Sao has been granted bail by this Court under order dated 15.12.1993 and appellant Raj Kumar Sao has been granted bail by this Court under order dated 11.01.1995. It further appears that the assault on the person of Bindiya Devi was made on 27.10.1989 around 5.00 P.M. while she was returning from Sherghati market and was approaching the ridge near Rajiganj canal. The assault on her person was witnessed by Laxmi Bhuiyan, who having seen the assault went to the village and informed her father-in-law Madan Sao, who along with Chowkidar came to the place of occurrence and brought Bindiya Devi to Sherghati State Dispensary where her fardbeyan was recorded at 11.00 P.M. in presence of her father-in-law and the Chowkidar. Bindiya Devi was perhaps transferred from Sherghati State Dispensary to Magadh Medical College and Hospital, Gaya where she succumbed to the stab injuries on 29.10.1989. There is no material on record to indicate about the nature of treatment given to Bindiya Devi at Sherghati State Dispensary on 27.10.1989. There is also no material on record to indicate when and by whom she was transferred from Sherghati State Dispensary to Magadh Medical College and Hospital, Gaya where she succumbed to the injuries on 29.10.1989. The nature of injuries found on her person, the surgical intervention given to her, evident from her post mortem report, indicates that she sustained several grievous stab injuries on her person on 27.10.1989 at 5.00 P.M. leading to blood loss until she was removed to the Dispensary, in the circumstances, could not have been in a position to record her statement in the same night at 11.00 P.M. Krishna Sao (P.W. 1) has come forward to indicate that his sister Bindiya Devi recorded her fardbeyan on 27.10.1989 at 11.00 P.M. in his presence, however, has not put his signature over the fardbeyan, which is, perhaps because P.W. 1 was himself not available at Sherghati State Dispensary on 27.10.1989 at 11.00 P.M. The nature of treatment offered to Bindiya Devi in Sherghati State Dispensary on 27.10.1989, 28.10.1989 and prior to her death in the Hospital on 29.10.1989 or earlier has not been brought on record by examining the doctor who treated her, stitched the wounds.

10. There is yet another aspect of the matter, which requires our consideration. According to Bindiya Devi she suffered assault on her person while she was approaching the ridge near Rajiganj canal but the Investigating Officer of the case (P.W. 3) has found the place of occurrence in the adjoining paddy field as the water in the paddy field was found mixed with blood on account of blood loss from the body of Bindiya Devi.

11. From the discussions made above, we are satisfied that the prosecution has failed to discharge the onus which it was required to discharge. There has been serious prejudice caused to the appellants and thereby we have no option but to grant them benefit of doubt. Accordingly, both the appeals are allowed. The impugned judgment of conviction and order of sentence is set aside. Appellants are discharged of the liability of their respective bail bonds.