

(1999) 01 PAT CK 0004
In the Patna High Court
Case No : Criminal Appeal No. 425/86

Sonu Sao and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-01-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 302, 323, 34

Citation : (1999) 1 PLJR 613

Hon'ble Judges : R.N. Prasad, J; M.L. Visa, J

Bench : Division Bench

Advocate : Braj Kishore Prasad, Smt. Anjana Prakash and Kartik Kumar Sinha, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad and M.L Visa. JJ.

1. The Appellants have preferred this appeal against the judgment and order dated 19.8.1986 passed by 6th Addl. Sessions Judge, Gaya in ST. No. 65/23 of 1977/85 whereby, the Appellants have been convicted for the offence u/s 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life. Appellants Ram Lal Sao and Shym Lal Sao have further been convicted for the offence u/s 148 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year. Appellant Lal Sao @ Kalut Sao has further been convicted for the offence u/s 354 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for one year. Rest of the Appellants have been convicted for the offence u/s 147 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for six months. Appellant Satya Narain Sao and Tetar Sao have further been convicted for the offence u/s 323/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for six months.

2. The case of the prosecution is that one Lalji Yadav Chaukidar went to the

Police Station on 25.8.1976 along with injured Chunu Sao and Manu Sao and gave his statement at about 3 A.M. that on 24.8.1976 at about 10 A.M. Dineshwari Devi, the daughter-in-law of deceased Manu Sao was washing utensils. Appellant Ramlal Sao @ Kalut Sao came and caught her breast which she protested and raised alarm. She also assaulted Kalut Sao with "Kalchhul" (Ladle). There was also scuffle between them. The chain of the wrist watch of the accused came in the hand of Dineshwari Devi during scuffle. In the evening when the male members arrived a Panchaiti was called at the house of Awadh Bihari Lal regarding misbehavior of accused Kalut Sao. Panches came there but Appellant Kalut Sao and other Appellants did not attend the Panchaiti and as such no panchaiti was held. Manu Sao and Chunu Sao were returning to their house. When they reached near the house of Danu Sao Appellants surrounded them and assaulted them due to which Manu Sao and Chunu Sao fell down on the ground. Subsequently the injured Manu Sao died in the Jehanabad Hospital.

3. On the aforesaid fardbeyan, Ext. 2, a formal First Information Report, Ext. 6 was registered and investigation was taken up. During investigation the investigating officer visited the place of occurrence, recorded the statement of witnesses and after completion of investigation submitted charge-sheet. The court on receipt of charge-sheet committed the case to the court of Sessions for trial.

4. The trial court recorded the evidence of prosecution witnesses and also recorded the statement of accused persons u/s 313 of the Code of Criminal Procedure and convicted the Appellants as stated above.

5. The defence of the Appellants was that they are indecent and have falsely been implicated in this case.

6. The prosecution in support of its case examined 15 witnesses out of whom P.Ws. 1, 2 and 3 came at the place of occurrence after the occurrence. P.W. 7 is the victim lady with respect to first part of the occurrence and P.W. 8 is also witness to first part of occurrence. P.W. 9 claimed to be eye witness of second part of the occurrence i.e. commission of murder of Manu Sao P.W. 4 is seizure list witness to the chain of wrist watch. P.W. 5 has been tendered. P.W.6 has been declared hostile. P.W. 10 is Sub-Inspector of Police who recorded fardbeyan, Ext. 2. P.W. 11 is Doctor who referred Manu Sao and Chunu Sao to Jehanabad Hospital. P.W. 12 is the informant. P.W. 13 is Doctor who held postmortem over the dead body of Manu Sao. P.W. 14 is the Investigating Officer and submitted charge sheet. P.W. 15 proved the case diary.

7. P.W. 9 is only eye witness to the commission of the murder of Manu Sao. The witness stated in his evidence that he gave his statement in the hospital before the police. He along with Manu Sao was returning from the Panchaiti. When they came near the door of Sonu Sao he saw the Appellants. Shyamlal Sao gave Bhala blow and Kariman Sao gave lathi blow to Manu Sao. Kalut Sao gave Garasa blow

to him and Satya Narain Sao, Sonu Sao and Tetar Sao assaulted him with Lathi. On hulla the Appellants ran away. He learnt in the evening that Kalut Sao tried to outrage the modesty of daughter-in-law of Manu Sao for which there was a Panchaiti but Kalut Sao and his family members did not turn up and as such no Panchaiti was held. The evidence of the witness is no consistent with the statement made before the police. Moreover, the Doctor, P.W. 13, who held postmortam over the dead body of Manu Sao and also examined the witness, has stated in his evidence that he did not find any external mark of violence on the head of the deceased. However, on dissection the scalp was found to be fractured. It would not be out of place to mention herein that the witness has stated that the deceased was given lathi blow. In such a situation, non-finding of the external injury caused by Lathi blow makes the prosecution case suspicious. Further more, doctor, P.W. 13, examined the witness and he found only two injuries, one is lacerated and the another is welling although the witness has stated in his evidence that Kalut Sao had given Garasa blow and three persons assaulted him with Lathi. Thus, the evidence, of the witness is not consistent with the medical evidence. P.W. 1 stated in his evidence that he heard that Sonu Sao was saying to assault but when he reached there he found Manu Sao and Chunu Sao lying injured on the ground. Chunu Sao, P.W. 9 disclosed that Syamlal Sao gave Bhala blow on the Panjra of Manu Sao. Satya Narain Sao, Tetar Sao, Sonu Sao and Kariman Sao assaulted the deceased with lathi. Satya Narain Sao and Sonu Sao assaulted him with lathi. The evidence of the witness, though hearsay, is contradictory to the evidence of P.W. 9 and also the Doctor's evidence, as discussed above. The hearsay witnesses, namely, P.W. 2 and P.W. 3 have stated that they learnt about the occurrence. Therefore, in such circumstances, the evidence of P.W. 9, the sole eye witness, cannot be said to be wholly reliable. Besides, there is no other evidence to corroborate his evidence.

8. P.W. 7 is the victim lady, who stated in her evidence that Kalut Sao had caught her breast at about 10 A.M. on the day of occurrence but she did not disclose the incident to any person.

9. P.W. 8 stated that she saw Kalut Sao catching hold of the hand of P.W. 7 but such is not the case of the prosecution. Moreover, the incident" was neither disclosed to any person nor any information was given to Chaukidar or Panchayat or any Police Officer. For the first time it was disclosed in the evening. P.W. 8 has stated in her evidence that Kalut Sao is younger brother of husband. P.W. 7 raised hulla in the lane but no witness has come to support even that part of the incident that any body had seen P.W. 7 raising hulla. Therefore, in such a situation, the evidence of the witnesses becomes suspicious. It would not be out of place to mention that the prosecution has to prove its case beyond all reasonable doubts but it appears that the prosecution has failed to discharge its obligation and, thus, the Appellants are entitled to the benefit of doubt.

10. Accordingly, this appeal is allowed. The conviction and sentence of the Appellants are hereby set aside and the Appellants are discharged from the

liability of their bail bonds.