

(2011) 11 PAT CK 0077

In the Patna High Court

Case No : Govt. Appeal (SJ) No.7 of 1995 and Criminal Revision No. 716 of 1994

State Of Bihar

APPELLANT

Vs

Ram Saranagat Thakur
 Raj Mangal Singh @ Bhola
Singh Vs Ramsarnagat Thakur

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 354, 436

Citation : (2011) 11 PAT CK 0077

Hon'ble Judges : Navaniti Prasad Singh, J; Ashwani Kumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Navaniti Prasad Singh

1. The Government appeal and the connected criminal revision are directed against the judgment and order of acquittal of the sole accused, as rendered by the 5th Additional Sessions Judge, Muzaffarpur, on 19.8.1994, in Sessions Trial no, 84 of 1992. The accused had been charged under Sections 302, 354 and 436 of the Indian Penal Code and has been acquitted.

2. The incident is of 6.10.1990 and the acquittal, after trial, has been recorded on 19.8.1994 i.e. after four years and we are now hearing this appeal after 21 years of the incident. We may also note that in 1994 when the sole accused was acquitted, he was 65 years old, which would make him 81/82 years as of date. Prima facie, in view of this fact we are not inclined to upset the finding of innocence recorded two decades back. However, as learned A.P.P. has pressed the government appeal, we are giving briefly the reasons even otherwise for not interfering.

3. The incident is of 6.10.1990 wherein in the FIR it is alleged that the accused had allegedly tried to molest one Minto Devi being the wife of an agnate. She

had protested and complained to her mother-in-law. They went and informed others but on the same night, the accused is said to have come and lit the hut in which Minto Devi was sleeping with her two years old child. Her husband is in military service and posted outside. It is further alleged in the FIR that after Minto Devi and her child were burnt alive in the hut, next morning Panchayati was held in the village. It is alleged that in the Panchayati the accused admitted having acted emotionally and set the hut on fire and was ready to compensate, if no case was lodged. The Panchayat decided that as it was a criminal act there was no question of Panchayati and a case must be lodged. Accordingly, on the next day, the information was given to the police. Thus, it would be seen that even though two persons died as consequence of hut having been put on fire in a village, no information was given to the police immediately. The FIR is being lodged after more than 24 hours i.e. the incident being of the night of 6th of October, 1990 at 11 P.M but the FIR is being lodged on 7.10.1990 at 10 P.M. and after alleged Panchayati. That itself creates serious doubt about the prosecution story. Apart from this in Court we find that only other evidence being sought to be relied by the prosecution to establish the guilt is alleged confession of the accused in the Panchayati. Admittedly none of the prosecution witnesses were the Panches. They all alleged to have seen the Panchayati The village Panches were never examined in Court. It is pursuant to the question asked by the Panches, the accused is said to have confessed to the Panches but the Panches have neither been named nor brought in the Court for deposing. When we come to the evidence of individual prosecution witness, who had allegedly witnessed the Panchayati, we find that they all differed greatly in timing of Panchayati. One says that it was in the morning of 7th October, the other says that it was at about 12 noon of 7th of October and the other says that it was at about 4 P.M. on the 7th of October. If we see this in contradiction to the time of occurrence which is about 11 P.M. the night earlier and the time of institution of the FIR, which is 10 P.M. on 7th of October, it would be clear that there was enough time for the prosecution to build a story, to find the witnesses and then make out a case. We may also note that these witnesses when produced in the Court, their attention was drawn to the previous statement recorded by the police u/s 161 Cr. P.C. What they said in the Court was then put to the investigating officer, who clearly denied that any such fact was discussed in course of investigation. There were substantial and material contradictions, which have been brought on record in evidence. This, in our view, creates great doubt upon the prosecution story. Be that as it may, we may also notice that defence has examined two witnesses and brought on record two documents, which are Exhibit- A and Exhibit- B. Exhibit -A is a complaint filed before the S.D.J.M. by the father of the deceased Minto Devi against her father-in-law stating therein that she was being tortured for dowry and it was her father-in-law, who was responsible for her and her child's death. Exhibit- B is the protest petition filed by Minto Devi's father as against the police investigation upon the said complaint. The prosecution witnesses accepted that they were aware of such case having been lodged. Thus we have two versions of the case. One as set up by the prosecution after much delay and deliberation

accusing the sole accused of having burnt the hut in which Minto Devi and her two years infant were sleeping and the other written complaint lodged by the father of Minto Devi alleging that it was the father-in-law of Minto Devi, who had got the plan executed for getting rid of his daughter which does not implicate the accused..

4. In our view, the jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is well settled and circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the trial court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the appellate court would not interfere with an order of acquittal. The trial Court, in our view, has discussed the evidence in detail and in para 34 given the cogent reason for acquitting the respondent. It is well established that a person is assumed to be innocent till he is proved guilty. If this innocence is reaffirmed by the order of acquittal, then after almost two decades, this Court would be reluctant in reversing this finding of innocence unless we find some grave error either in appreciation of evidence or in appreciating law in that regard. We find none. Patna High Court, November 3, 2011, A.F.R. (Singh)

5. Having perused the evidence, we find no reason to take a different view of the matter. In our view, the trial court having examined the evidence in correct perspective, has come to the right conclusion. We accordingly dismiss this appeal and the connected criminal revision.