
(2011) 08 PAT CK 0138

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 257 of 1998

Suraj Sah and Bijali Sah

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 323, 34

Citation : (2011) 08 PAT CK 0138

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the Appellants and learned Counsel for the State.

2. The Appellants have been convicted u/s 304/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and further convicted u/s 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. However, it has been ordered that both the sentences shall run concurrently.

3. The prosecution case as alleged in the fardbeyan is that Talukiya Devi the deceased, wife of informant Nand Lal Sah was cleaning the place in front of her house on which there was verbal altercation with the wife of Suraj Sah and the wife of the informant. It is further alleged that thereafter the wife of informant went to the hand pipe to take water along with her bucket in the meantime Suraj Sah started assaulting his wife with Lathi and then the informant rushed to rescue his wife and in the meantime the son of Suraj Sah named Bijali Sah also came with Lathi and both Suraj Sah and Bijali Sah started assaulting his wife and informant by Lathi and when the wife of the informant fell down then Suraj Sah assaulted his wife by a brick on her abdomen and then the witnesses fled away and her wife went to police station after the occurrence but he had not come at

the police station because the wife was sent Tilauthu hospital for treatment, the doctor admitted her and so she could not come to the police station and on Monday he took his wife Dehari for treatment by doctor Sunil Bose and during the treatment she died on Wednesday (30.08.1989) and Dehari police sent the dead body for post mortem and claimed that his wife has been done to death by the accused persons Bijali and Suraj Sah on the last 26.08.1989.

4. On the fardbeyan of the informant, First Information Report was lodged and after investigation, charge-sheet was submitted, during the trial six witnesses have been examined. P.W. 1 Umesh Dubey, P.W. 2 Umesh Dubey, P.W. 3 Mahendra Paswan and P.W. 4 Jokhan Sah, P.W. 5 Nand Lal Sah and P.W. 6 Dr. C. v. Singh, who did the autopsy on the person of deceased. However, the doctor who examined the victim has not been examined nor the injury report has been proved. The I.O. has also not been examined. The defence of the accused is of false implication and the victim died due to her fall and not by assault.

5. However, taking into consideration the ocular evidence of witness having deposed about assault by Lathi and by which victim fell down, recorded the order of conviction and sentence as stated above.

6. Learned Counsel for the Appellants, however, contended that the doctor who did the autopsy on person of deceased has found only one injury on the shoulder. The witnesses though in their deposition have stated that the accused persons assaulted the victim by Lathi and 4-5 Lathi blows were given on her person and informant was also assaulted by Lathi. It is further deposed that victim was assaulted by brick on abdomen but No. corresponding injury of brick has been found on the deceased and further the allegation regarding the assault by Lathi is also vague and none specifically stated that who assaulted on what part of the body and there is No. injury proved on the person of informant and it is further contended that the occurrence took place on 26.08.1989 and it is asserted that the victim went to the police station but her statement was not recorded. She remained at Tilauthu hospital for two days but even then her statement was not recorded by the police nor the police informed to record her fardbeyan. The treatment of the victim was done at Dihari hospital.

7. Learned Counsel for the Appellants contended that there is delay in lodging the First Information Report. The occurrence took place on 26.08.1989 but First Information Report lodged after four day upon death of the victim. The allegation and evidence of assault are omnibus and general. The injury report of doctor who treated her not proved. The doctor who did autopsy, his autopsy report did not find any corresponding injury of Lathi or brick on the person of deceased. The I.O. has not been examined.

8. Hence, in view of the submission, I proceed to consider the evidence in the First Information Report itself. There is mention that the occurrence took place at 26.08.1989 and the victim was taken to Dihari hospital and though the matter was reported to the police and the informant though himself has stated that his

wife went first to police station but she did not go at the police station to report and though his wife remained there at Dihari hospital for two days for treatment thus the First Information Report was not lodged at Tilauthu. P.Ws. 1, 2 and 3 have further supported the prosecution case that both the Appellants Suraj Sah and his son Bijali Sah assaulted Talukiya Devi by Lathi and 3, 4 and 5 Lathi blows were given by which she fell down and the informant was also assaulted by Lathi. The allegation is omnibus and there is No. evidence that who assaulted on what part of the body. It is further stated that there was assault by brick on the abdomen. The doctor who treated the victim has not been examined as witness nor injury report of treating doctor proved. However, the doctor P.W. 6 who conducted the post-mortem of deceased found only one injury that is swelling 3" x 4" over left arm near shoulder joint but the doctor could not be able to assess cause of death and has proved the post mortem report marked as Ext. 1. In cross-examination P.W. 6 the doctor has stated that there was No. abrasion or laceration over the deceased and there was No. sign of having injury caused by brick.

9. Hence, from the evidence of the doctor, it is apparent that the injury alleged on the person of the deceased is not corroborated by the medical evidence. However, the defence has been taken that the victim may have slipped causing injury and since only one injury found it may probabalize the case of the defence.

10. However, having regard to the facts and circumstances and further having regard to the fact that the occurrence took place on 26.08.1989 but the First Information Report not filed till the death or even the post-mortem examination was done and there is explanation for delay is not at all acceptable for lodging the First Information Report, the I.O. has also not been examined, the prosecution has not been able to prove the charges beyond reasonable doubt and hence the order of conviction and sentence recorded by the lower court is hereby set aside and hence the appeal is allowed.