

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.115 of 2009

Arising Out of PS.Case No. -57 Year- 2006 Thana –Luxmipur, District-
JAMUI

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Pappu Mandal, son of Sri Binod Mandal, resident of village- Naukadih, P.S.-
Laxmipur, District- Jamui.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Shri Vivekanand Vivek, Advocate

For the Respondent/s : Smt. Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 30-03-2015

The solitary appellant was put on trial in Sessions Trial
No. 416 of 2006 by the learned Presiding Officer, Fast Tract Court,
III, Jamui after being charged with committing offence under Sections
302/34 of the Indian Penal Code. The learned Judge delivered the
judgment of conviction dated 24.1.2009 holding the appellant guilty
of committing the offence under Section 302 IPC and, after hearing
the appellant under Section 235 of the Code of Criminal Procedure on
28.1.2009, directed him to suffer rigorous imprisonment for life. The
appellant has filed the present appeal to question the legality and
correctness of the finding and appropriateness of the sentence.

2. P. W. 6 Mukesh Mandal had lodged his report alleging



that his wife Hemamalini had gone out while he was asleep to attend the call of nature. She did not return. The informant woke up to find his wife not in the house and as such, himself set out on a search for her. He alleged that he saw the present appellant and two others named in the FIR running away towards their house with weapons in their hands and further found the dead body of his wife which was bleeding from its head.

3. There was initially a rumour which was picked up by P.W. 7 S. I. Samshad Ali who entered the information into station diary entry of Luxmipur Police Station and went to the place of occurrence with another police officer and constables where he recorded the fardbeyan (Ext. 2), on the basis of which, the FIR of the case was drawn up. As may appear from the evidence of P.W. 7, he held inquest upon the dead body and despatched the same for post mortem examination. He inspected the place of occurrence and after completing the investigation, sent up the appellant and two others for their trial.

4. By the impugned judgment, two accused, namely, Binod Mandal and Manju Devi, were acquitted of the charge while this appellant was held guilty and sentenced as noted above.

5. We have perused the record and we find that P.Ws. 1 to 4, i.e., Lakhan Mandal, Shambhu Mandal, Kanhayee Mandal and

Subodh Mandal respectively have not supported the prosecution case. As such, they were declared hostile. P.W. 5 Dr. Vijay Kumar had held post mortem examination on the dead body of the deceased and had found the following ante mortem injuries on it:-

- (i) *Lacerated wound 3" x 1" x bone deep with fracture of left parital bone on left side of head.*
- (ii) *Swelling with ecchymosis measuring 4" x 2" one right shoulder.*
- (iii) *Ecchymosis 3" x 3 ¼" on upper part of left side of chest.*
- (iv) *Abrasion 3" x 1" on right forearm.*
- (v) *Abrasion 2 ½" x ½" on left forearm.*
- (vi) *Multiple small ecchymoses of the size ¼" x ¼" to ½" x ¾" on both sides of neck.*

On dissection, skull, maninges and brain tissues were found lacerated and left parital bone was found fractured with accumulation of blood and blood clots in the skull cavity and the injury was caused by hard and blunt substance, within 24 hours of holding of post mortem examination by P.W. 5.

6. The solitary support to the charge had come from P.W. 6, informant Mukesh Mandal and when we considered his evidence in examination-in-chief and cross-examination, we found that he could not be a wholly reliable witness. During his evidence,



P.W. 6 Mukesh Mandal stated that his wife Hemamalini left his house to attend the call of nature and she did not come. He, then, went out of his house in search of the lady and found that the three accused persons, including the present appellant, were giving blows to his wife with lathi in the field of one Hari Mandal. He raised hulla upon which the accused persons ran away from there. Thus, what appears is that he projected himself as an eye witness while deposing in court. This is a complete departure from his earliest version which was contained in Ext. 2 (fardbeyan) in which he had not stated that he had seen the accused persons giving blows to his wife, rather had stated that he had seen three accused persons running away from the field of one Hari Mandal and thereafter, he found the dead body of his wife. We find this departure serious and also as vital improvement in nature inasmuch as while considering the other parts of his evidence stated in cross-examination what we could find out is that the possibility of the witness P.W. 6 having seen anything as regards the killing of his wife could not be a probable proposition, because he had set out from his house after one hour of the lady having ejected from her house and it was not only him, rather there were many other persons who had assembled in connection with the search for his wife, like, Lakhan Mandal (P.W. 1), Shambhu Mandal (P.W. 2), Kanhayee Mandal (P.W. 3), Subodh Mandal (P.W. 4) and others and they all had joined



him in search of his wife. However, we have already noted that this witness, like, P.Ws. 1 to 4, has not supported any part of the prosecution story. The other inference which is raised from the above line of P.W. 6 is that he had set out in search of his wife and in that connection, if he had taken with him other persons named above who were examined as P.Ws. 1 to 4, then definitely he had not seen anyone giving blows to his wife and running away from that place. Thus, it appears a well thought out story which was propounded by the prosecution at the stage of the trial which was produced by making P.W. 6 to state new facts which he had never stated. In our opinion, as appears from the evidence of P.W. 6 as well, he could find out the dead body of his wife during search at a distance of 100 yards from his house and when he saw the dead body it was bleeding, as appears stated by him in his cross-examination. Thus, we are sure about one thing that P.W. 6 had never seen any part of the occurrence and he was probably deposing against the accused persons out of any suspicion which had driven him into naming them in the FIR and had further moved him into the witness box with a mind of deposing in such a way as to obtaining an order of conviction in respect of the accused persons. Acting on the evidence of such a witness is never safe and we do not find him a trustworthy witness.

7. Thus, what we find is that there was absolute lack of

evidence on record of the trial court and the learned trial Judge was faultering serious in recording the judgment of conviction and order of sentence as regards the present appellant.

8. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence. The appellant Pappu Mandal is acquitted of the charge he had been held guilty of. He is in custody. He shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

Kanchan/V.K.Pandey

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