

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.130 of 1994

Against judgment and order dated 18.02.1994 passed by the learned 3rd
Additional Sessions Judge, Gopalganj, in Sessions Trial No. 20 of 1992/05
of 1992

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Baboolal Mahato, son of Shri Harhangi Mahto, resident of Village Tiwari Chakia
Ps BHorey, PO Hussepur, Distt. Gopalganj

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Maheshwar Dhar Dwivedi

For the Respondent/s : Mr. Shiwesh Chandra Mishra, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-11-2017

The sole appellant herein Baboolal Mahto stands convicted for an offence under Section 302 of the Indian Penal Code read with Section 27 of the Indian Arms Act with rigorous imprisonment for life and no separate sentence passed for offence under Section 27 of the Indian Arms Act by its judgment dated 18.02.1994 passed by the learned 3rd Additional Sessions judge, Gopalganj in Sessions Trial No. 20 of 1992/05 of 1992 and, therefore, this appeal.

It is the case of the prosecution as made out from the fardbeyan that Dafadar Ram Chandra Choudhary who has been examined as PW 5 on 05.05.1991 while he was performing his



duties in Lakhraon Chatti at about 2.30 P.M. received information that accused Baboolal Mahto has killed his wife by firing shots from a fire-arm. Accordingly, Ram Chandra Choudhary on hearing this news went to the village and on going to the house of accused Baboolal he found that there was a thatched palani on the side of his house and the dead body of his wife was lying on a gunny bag on the ground and a country-made pistol was kept on the chest and under the grip of right hand of the deceased. Ram Chandra Choudhary kept watch on the body and sent intimation to the police authorities. The police personnel reached the spot. The statement of Ram Chandra Choudhary was recorded as Ext.1 /1 and after investigation the appellant was put to trial and has been convicted.

In the trial in question 8 witnesses were examined. From the statement of witnesses that have come on record it is seen that PW 8 Lakhsman Prasad is a formal witness and has proved recording of the F.I.R. Ext.3 and the Case Diary Ext.4. PW 7 is Dr. Ram Bihari Singh who has conducted post mortem examination of the deceased and submitted the report Ext. 2. PW 6 is Anand Tiwari and PW 5 is Ram Chandra Choudhary, the informant and Dafadar. PW 4 is Indar Tiwari, PW 3 is Sheoji Tiwari and PW 1 is one Triloki and PW 2 Baliram Mahto are residents of the village in question. DW 5 Ram Chandra Choudhary, Dafadar, is the person



who recorded the fardbeyan. He is not a witness to the incident. He has not seen the incident and his evidence is only as to what was heard by him while he was in his office which instigated him to go to the spot and summoned the police. His evidence does not prove the guilt of the appellant as it is nothing but some information received by him and he even does not say as to how and in what manner this information was received by him. He only speaks that he has heard but has no personal knowledge about the incident. PW 1 Triloki Nath is said to have come to the spot even though he is declared hostile but he speaks about meeting the accused in his cycle repairing shop at 6 A.M. in the morning. This witness also does not help the case of the prosecution as he does not say anything about how and in what manner the incident took place. PW 3 Sheoji Tiwari speaks about seizure of the various documents. PW 4 Indar Tiwari is also a formal witness.

A total reading of the evidence that has come on record it is clear that there is nothing available on record to link the applicant with the commission of the offence in question. The learned trial court has assumed that it is the appellant only who could have committed the offence because the occurrence took place in the day time and there were four more members who were staying the house, namely, mother of the accused and his three children and



they had all gone for a mela and they were not present when the incident took place. However, the incident took place in the house of the appellant, therefore, he is guilty, accordingly, the conviction is ordered by the trial court. On the contrary, if the statements of some of the witnesses like Triloki are taken note of, he speaks about the appellant having a cycle shop in the neighboring village and the fact that he was in his shop from 6 A.M. in the morning, the defence of the appellant is also that he was not available in the house.

If we analyze the evidence of the doctor which has come on record, namely, that PW 7 Dr. Ram Bihari Choudhary and the post mortem report Ext.1 on record, we find that there was external injury on the private parties of the deceased also and possibility of she being sexually assaulted also cannot be ruled out. Medical examination of the appellant has not been done and mere surmises and presumptions have been utilized for convicting him without there being an iota of evidence to hold him guilty of the offence levelled against him. Even the statement of other family members are not recorded to find out the correct position. All the witnesses simply say that they had heard about the appellant Baboolal Mahto killing his wife and merely based on the aforesaid hearsay evidence and the presumption drawn by the learned trial court to say that except the appellant nobody else could have committed the offence



conviction is ordered. In our considered view, when conviction is based on circumstantial evidence and there is no proper evidence to implicate the accused with commission of the offence. The law mandates that every circumstance in the chain should be complete and lead to only one inevitable conclusion that is guilt of the appellant and if any of the link of the circumstance is missing, the benefit has to the accused person. In this case, apart from the fact that the chain of circumstance is not all made out there is no circumstantial evidence in the right sense which can be said to be available for convicting the appellant. Mere surmise, assumption and presumption based on *ipse dixit* of the prosecuting authority or the trial court cannot be a ground for conviction a person for offence under section 302 IPC. There has to cogent evidence, admissible in nature indicating and pointing to the guilt of the accused person. In view of the weak nature of evidence on record which is not sufficeint enough to bring home the guilt of the accused. It is not safe to record a conviction on the basis of such weak and unconfirmed evidence that is the law laid down by the Supreme Court in the case of ***Raj @ Rajinder Vs. State of Haryana [(2015) 11 SCC 43]*** and in the case of ***Vijay Shankar vs. State of Haryana [(2015)12 SCC 644]***, and if we analyze the case in the backdrop of the aforesaid principles, we have no hesitation in holding that this is



a case where the guilt of the appellant has not at all been proved in accordance with requirement of law. There is no evidence to bring home his guilt and, therefore, the conviction cannot be sustained.

Accordingly, we allow this appeal. The conviction and sentence of the appellant are set aside. The appellant is on bail. His bail bonds shall stand discharged.

(Rajendra Menon, CJ)

mrl./-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
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