

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.183 of 1994

1. Kamal Pandey
2. Ramdeo Pandey
3. Muni Pandey
All sons of Late Pratap Pandey
4. Munu Pandey
5. Madan Pandey, both son of Late Rajdeo Pandey
6. Ram Pravesh Pandey son of Baldeo Pandey
7. Nand Kishore Pandey son of Indradeo Pandey
8. Ramanand Pandey son of Lat Trivenee Pandey
9. Rajendra Pandey son of Late Sona Pandey
10. Mithilesh Pandey son of Late Radhubir Pandey
All residents of Village – Koshila, P.S. _ Magadh University (Bodh-Gaya),
District - Gaya

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ansul Advocate Mr. Arun Advocate
For the Respondent/s	:	Mr. Mayanand Jha Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date : 11-11-2017

This appeal is directed against the judgement and order dated 18th of April, 1994, passed by the Court of Additional District and Sessions Judge, I, Gaya, by which he has convicted all the appellants under section 302 / 34 IPC and sentenced them to



undergo RI for life and also acquitted the appellants from the charge under section 342 IPC.

2. The prosecution case as per F.I.R. is that the informant P.W. 7, Gopal Mahto, saw his son taken away by the appellants inside the house and when he went behind them, he saw them assaulting his son. Later on his son succumbed to the injuries.

3. On the basis of the aforesaid fact, Magadh University P.S. Case No. 121 of 1983 was instituted against them and thereafter charge-sheet has been submitted and cognizance has been taken against the appellants.

4. The prosecution has examined altogether 9 witnesses. They are: -

1. Panchanand Prasad – P.W. 1
2. Bisundhari Mahto – P.W. 2
3. Jagdish Mahto – P.W. 3
4. Narayan Mahto – P.W. 4
5. Sita Prasad – P.W. 5
6. Mahesh Prasad – P.W. 6
7. Gopal Mahto – P.W. 7
8. Dharendra Mohan Lal – P.W. 8
9. Dr. Kapildeo Prasad – P.W. 9



5. Out of them, P.W. 9 is the Doctor, who has conducted post-mortem examination. P.W. 7 is the informant in this case and P.W. 8 is the Investigation Officer (I.O.) in this case. Learned trial court after completion of trial convicted the appellants under section 302 I.P.C. and sentenced them to undergo rigorous imprisonment for life.

6. Being aggrieved by the aforesaid judgement and order, the present appeal has been filed by the appellants on the ground that the learned court below has though disbelieved the prosecution case and relied on the defence case that the deceased entered inside the house of the appellant for committing theft, but has convicted the appellants under section 302 / 34 I.P.C. holding that they have exceeded the right of private defence of property and convicted the appellants under section 302 / 34 I.P.C.

7. It is relevant to mention here that the defence of the appellants is that as a matter of fact the deceased entered inside the house of the informant to commit theft and thereafter he was apprehended and assaulted by the appellants inside the house and during assault he has received injuries and succumbed to death.

8. On the other hand the learned APP has submitted that there is sufficient material available on record to show that there was a love affair between the daughter of Appellant No. 3, namely,



Rita Kumari and the deceased and due to that deceased has been taken away by the accused persons / appellants and assaulted by them. Further, medical report clearly shows 9 injuries on the person of the deceased and there is nothing in the evidence of the witnesses to disbelieve the prosecution case and such conviction of the appellants is just and proper.

9. Having heard both the sides and on perusal of the evidence, it appears that P.W. 7 is the informant in this case and he has supported the prosecution case as alleged in the F.I.R. and said that when he went inside the house, he saw his son assaulted by the appellants. Apart from that evidence of Doctor P.W. 9 has been recorded in this case and he has found 9 injuries on the person of the deceased mostly abrasion. At the same time in this case, a formal F.I.R. was drawn at the instance of appellant against the deceased, which resulted in institution of Bodh Gaya P.S. Case No. 119 of 1983, in which the police submitted final form showing the deceased dead and the same was accepted by the court and the case was dropped.

10. It appears from perusal of judgement that the learned trial court has convicted the appellants on the ground that nature of injuries on deceased cannot not be attributed to fall and death had not occurred at 10.30 P.M., rather on 11.09.1993 at 11.30 AM.,



which appears from post-mortem report and he had received multiple injuries and died due to such assault. Learned Trial Court has also come to a finding in last line of para 10 that this fact remains totally unproved that Lalo Mahto was whisked away from the lane, when he was going towards river. Learned trial court has also considered that love letters between Lalo (deceased) and Rita has not been brought on record due to latches on the part of police and the prior information cannot do anything. Learned Trial Court failed to consider that prosecution has to stand on its legs and if there is any lacuna and latches in the prosecution story, benefit must be accrue to the defence.

11. However, learned trial court in spite of above finding, has come to a conclusion that the death had occurred at 11 A.M. It can't be possible that he entered in night and assaulted in morning, as such manner of entry in the night does not arise.

12. No doubt, post-mortem report, exhibit – 2, shows that time elapses since death is within 48 hours and post-mortem was conducted on 13.02.1993 at 11.30 A.M. Hence according to post-mortem report the death occurred at about 11.30 A.M. on 11.02.1993. On perusal of evidence of prosecution witness, it appears that P.W. 2 claimed himself to be eye-witness to the occurrence and he has stated in his cross-examination that when he



reached at the place of occurrence, the deceased was lying fallen on the ground. His evidence in chief shows that he had gone at about 08.00 A.M. to the place of occurrence. P.W. 3 is the prosecution witness and he has stated that deceased was killed while committing theft. P.W. 4 has been declared hostile. P.W. 5 has been tendered. P.W. 6 has stated that he had seen deceased apprehended by accused persons, but in his cross-examination he has stated that he had knowledge that appellant Kamal Pandey had lodged a case of theft. He has also stated in paragraph 6 that he had not seen Lalo love affairs with anyone. P.W. 7 has supported the prosecution case in his chief. However, his evidence in paragraph 8 of his cross-examination shows that when he came again, he saw that deceased dead. Suggestion has also been given to the witness that deceased died while committing theft to which he denied. Whereas P.W. 8 (I.O.) has stated that Bishundhari Mahto (P.W. 2) had stated before him that on hullah of deceased, he had gone to the house of appellant. He has also stated that P.W. 4 has not stated before him that he (P.W. 4) had gone with P.W. 2 to the house of appellant. The above evidence of P.W. 8 creates doubt about presence of P.W. 2 at the place of occurrence. The evidence of Gopal Mahto (P.W. 7) shows that when he went again, he found the deceased dead and even according to the prosecution



witness, occurrence is of 11.09.1993 at about 08.00 A.M. Hence from the evidence of prosecution witness, it appears, occurrence took place at about 8 A.M. and they saw Lalo Mahto (deceased) dead. Hence there is no prosecution story that Lalo Mahto died at around 11.30 A.M.

13. Considering the evidence available on record brought by prosecution and defence and if the judgement of the trial court is considered in that background it appears that trial court has disbelieved the prosecution story of whisking of deceased by the appellants and also found that the love letters were not brought on record, come to another story that the appellants assaulted the deceased causing his death.

14. It is settled principle of law that prosecution story has to be believed either in toto or completely disbelieved. No third story can be propounded by trial court. However, in the present case, it appears that trial court has disbelieved the part of prosecution story and part of defence story and come to a third story. Further more if the prosecution story is disbelieved, the presence of prosecution witness at the place of occurrence also become doubtful. As a result, prosecution has failed to prove its charge u/s 302 / 34 IPC against the appellants beyond all reasonable doubt.



15. Considering the discussions made above, the conviction of the appellants under section 302/34 I.P.C. does not appear to be just and proper. Accordingly, this appeal is allowed. The judgement and order passed by the learned trial court is set aside. As appellants are on bail, they are directed to be discharged from the liabilities of their respective bail bonds.

(Ajay Kumar Tripathi, J)

(Vinod Kumar Sinha, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	16.11.2017
Transmission Date	

