

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction and order of sentence dated 06.09.1994 passed by Shri Rajendra Prasad Rai, learned Sessions Judge, Katihar in Sessions Trial No. 228 of 1990, arising out of Manihari P.S. Case No. 47 of 1988)

Criminal Appeal (DB) No.450 of 1994

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1. Panchu Tatma, son of Late Aklu Tatma
2. Ganesh Tatma, son of Shri Panchu Tatma
Both residents of Village- Medinipur, P.S.- Manihari, District- Katihar.
..... Appellant/s

Versus

The State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae
For the Respondent/s : Ms. S. B. Verma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 04-01-2018

The instant Cr. Appeal has been filed by the appellants, against the judgment of conviction and order of sentence dated 06.09.1994 passed by learned Sessions Judge, Katihar in Sessions Trial No. 228 of 1990, arising out of Manihari P.S. Case No. 47 of 1988, whereby both the appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo RI for life.

2. The prosecution case, in brief, is that one Md. Mansoor Alam (P.W.8) gave his Fardbeyan to the police on 21.05.1988 at 11.30 A.M. alleging inter alia therein that on the same day i.e. on



21.05.1988 at about 10.30 A.M. his nephew Md. Ashlam @ Dukhwa had allegedly gone for watching his bamboo clump, where he found accused Chhathu Tatma allegedly lifting bamboo sticks there. The deceased Md. Ashlam is alleged to have caught hold of accused Chhathu Tatma and, as a result thereof, there was some scuffle between the two. In the meantime, appellants, Ganesh Tatma and Panchu Tatma are also alleged to have arrived there and all of them are alleged to have dragged the deceased Md. Ashlam and brought him in the house of accused Chhathu Tatma where he was allegedly assaulted. The informant (P.W.8) claims to have raised alarm, upon which, the villagers, named in the Fardbeyan, are alleged to have arrived there at the house of accused Chhathu Tatma. The informant claims to have seen accused Chhathu Tatma armed with Garansa with blood stains fleeing towards north and appellants Ganesh Tatma and Panchu Tatma were following him. Thereafter, the informant claims to have entered inside the house of accused Chhathu Tatma and found Md. Aslam seriously injured and blood was coming out from the different parts of his body. The informant with the help of other witnesses wanted to take Md. Ashlam for treatment on a cot, but, in the meantime, he was alleged to have died. Thereafter, his dead body was brought at the police station and the fardbeyan of the informant was recorded there.

3. On the basis of the fardbeyan, formal F.I.R. was drawn



by the police as Manihari P.S. case no.47 of 1988 under Section 302/34 of the Indian Penal Code.

4. The police after investigation, submitted charge-sheet against Chhathu Tatma and his wife Rekha Devi. Chhathu Tatma has absconded and as such his trial was bifurcated. Against accused Rekha Devi, the police submitted charge-sheet, whereas the police submitted Final Form against these two appellants of this appeal, as no material was found implicating these two appellants. However, the learned Chief Judicial Magistrate, subsequently, summoned the appellants before this Court and the case was committed to the Court of Sessions for trial.

5. As stated above, the main accused Chhathu Tatma has absconded and as such his trial was bifurcated. On framing of charge under Sections 302/34 of the Indian Penal Code. The accused persons pleaded not guilty and they were subjected to trial by the learned District and Sessions Judge.

6. On behalf of the prosecution 12 witnesses were examined. P.W. 1 is Sheikh Khali, P.W.2 is Shikh Rajjak, P.W.3 is Shikh Rahmat, P.W.4 is Bibi Khatoon, P.W.5 is Gulam Sarwar, P.W.6 is Md. Haffizuddin, P.W.7 is Dr. Bipin Kumar Singh, P.W.8 is Md. Mansoor Alam, P.W.9 is Sahdeo Tanthi, P.W.10 is Shailendra Mowar, P.W.11 is Md. Kishar Alam and P.W.12 is Sri Krishna Singh. Out of them, P.W. 1 Sheikh Khali, P.W.2 Shikh Rajjak, P.W.9 Sahdeo



Tanthi and P.W.10 Shailendra Mowar have been tendered by the prosecution. P.W.8 Md. Mansoor Alam is the informant of this case. P.W.7 is the doctor, who conducted post-mortem. P.W.11 is the formal witness, who proved the signature on the fardbeyan. P.W.3 Shikh Rahmat, P.W.4 Bibi Khatoon, P.W.5 Gulam Sarwar, P.W.6 Md. Haffizuddin and P.W.8 Md. Mansoor Alam claims to be the eye witness of the occurrence. P.W.12 Krishna Singh is the investigating officer of the case.

7. On behalf of the defence Manihari P.S. case no. 48 of 1988 lodged by accused Rekha Devi has been brought on record, as Ext.-A. The formal F.I.R. has been placed on record, as Ext.-B and the seizure list of Manihari P.S. case no. 48 of 1988 was placed as Ext.-C. Manihari P.S. case no. 48 of 1988 lodged by the accused Rekha Devi for attempt to commit rape by the deceased Md. Ashlam on Rekha Devi. The accused Rekha Devi during her examination under Section 313 of Cr.P.C. has also explained the circumstance of attempt to commit rape by the deceased Ashlam on Rekha Devi and assaulted by Rekha Devi in exercise of right of private defence to save her modesty and preventing the deceased from committing rape.

8. Mr. Ranbir Singh, learned Amicus Curiae submitted that in the instant case the police after investigation doubted the prosecution version of commission of murder by these two appellants and as such submitted final form. However, they were summoned by



the learned Chief Judicial Magistrate to face trial and thereafter charges were framed and they have been put on trial. Mr. Singh submitted that in the present case, from the prosecution version, the main assailant is Chhathu Tatma, whose trial was bifurcated, as he has absconded. In the trial, the wife of Chhathu Tatma, namely, Rekha Devi, was acquitted by the trial Court. The trial court disbelieved the specific case of Rekha Devi that she has killed the deceased in order to save her modesty and prevent the deceased from committing rape. The trial court proceeded that the version of Rekha Devi is designed to protect her husband against whom there are allegation of the prosecution that he was found fleeing away with axe containing blood stains.

9. Learned Amicus Curiae submitted that in the present case no eye witness to the alleged occurrence and the prosecution has developed the story of commission of crime by the appellants and Chhathu Tatma on the pretext of dispute on account of lifting bamboo stick from the bamboo clump, which was being watched by the deceased. The incident allegedly took place inside the house of Chhathu Tatma and no one has seen the actual occurrence. The suspicion against the appellants and Chhathu Tatma is based on the circumstance that Chhathu Tatma was seen fleeing away with axe in his hand containing blood stained and the deceased died of the injury inflicted by Chhathu Tatma.



10. Mr. Singh, learned Amicus Curiae submitted that in the present case most of the witnesses have been tendered by the prosecution, as they have not supported the prosecution case. He submitted that the attending facts and circumstance indicate that the version of the defence of attempt to commit rape is most probable and the specific plea of right to defence to save the modesty and prevent from committing rape is most natural, as the incident took place inside the house where the informant of Manihari P.S. case no. 48 of 1988 was lonely and under such circumstance, the defence story of death of the deceased is most probable and indicate that the deceased was done to death by Rekha Devi in order to save her modesty and prevent commission of offence of rape on her.

11. Referring to the entire facts and circumstances, Mr. Singh submitted that none of the witnesses has actually seen the actual commission of occurrence. The witnesses have deposed that they have seen the appellants standing at the Varanda and as per their case, according to Bibi Khatoon (P.W.4) Chhathu Tatma has assaulted the deceased with Gadasa. Even assuming that the deceased was killed by Chhathu Tatma by Gadasa, no case is made out against the appellants in the present case.

12. Ms. S. B. Verma, learned counsel appearing on behalf of State, submitted that the trial court has committed no error in convicting the appellants, as there is no dispute as to the death of the



deceased by giving Gadasa blow. She submitted that the conduct of Chhathu Tatma in absconding is indicative of the fact that Chhathu Tatma has killed the deceased. Referring to Manihari P.S. case no. 48 of 1988 she submitted that the case registered at the instance of Rekha Devi appears to be a device to save her husband, as per discussion of the trial court.

13. We have gone through the entire materials on record. The defence has a definite case in the nature of exercise of right of private defence to save the modesty and prevent commission of rape by the accused. The attending facts and circumstances indicate that the defence case is equally probable, particularly, in view of the facts (a) the deceased was found injured inside the house of Rekha Devi, (b) at the time of occurrence Rekha Devi was lonely in the house and (c) the blood stained on the cloth of Rekha Devi is also circumstance to indicate that she has exercised right of private defence.

14. In the instant case, there is no eye witness, even from the prosecution version, it appears that the prosecution witnesses have seen these two appellants standing on the Varanda and as such they were not involved in the actual commission of assault and either the husband of Rekha Devi or Rekha Devi was the assailant, who killed the deceased inside the house, even as per the prosecution case that they have seen Chhathu Tatma fleeing away with axe in his hand containing blood stain. Therefore, in the totality of the facts situation,



we are of the considered view that there is no material conclusive in nature to correlate the appellants herein that they have actually participated in the commission of crime. The fact that accused Rekha Devi was acquitted by the trial court and the fact that the husband of Rekha Devi, namely, Chhathu Tatma has absconded and against whom there is definite case of the prosecution that he has given a fatal blow.

15. On perusal of record, it also appears that all the witnesses have reached the place of occurrence after the commission of crime, we also find that during the course of examination under Section 313 of Cr.P.C. accused Rekha Devi has explained that she has inflicted injury on the deceased, as he attempted to commit rape at Chhura point and in the scuffle her bangles was broken. On perusal of the record, it also transpires that the appellants Ganesh Tatma and Chhathu Tatma were asked specific question that you people were standing out side the house of Chhathu Tatma when he was committing murder of the deceased by Gadasa.

16. From the totality of the facts situation, we are of the considered view that when two views are possible, one which leads to involvement of the accused persons in commission of crime and the other which leads to innocence, the Court is required to adopt the view which leads to acquittal.

17. In the totality of the facts of this case, we are of the



considered view that the defence case of commission of assaulting the deceased by Rekha Devi in exercise of right of private defence is equally probable and, as such, we have no hesitation in extending the benefit of doubt to the two appellants in this appeal, particularly, in view of the fact that against these appellants the allegation is only that they were standing out side the room of Chhathu Tatma where the deceased was either killed by Chhathu Tatma or his wife Rekha Devi.

18. Under the aforesaid circumstances, it would not be safe to approve the conviction of the appellants. Accordingly, extending the benefit of doubt, we allow the appeal, set aside the judgment of conviction and sentence passed by the learned trial court and acquit the appellants from the charges leveled against them. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

19. In the result, the appeal is allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2018
Transmission Date	13.01.2018

