

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.981 of 2012

Arising Out of PS. Case No.-83 Year-2009 Thana- NATHNAGAR District- Bhagalpur

Laltush Mandal S/o Late Bishundeo Mandal R/o Village- Amri, P.S- Bihpur,
District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shiwesh Chandra Mishra, Advocate
For the Respondent/s : Mr. A. K. SINHA (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 13-03-2018

Heard learned counsel for the appellant and learned
APP for the State.

2. This appeal has been preferred against the judgment and order of conviction dated 16.08.2012 and order of sentence dated 24.08.2012 passed by Adhoc Additional District and Sessions Judge-3, Bhagalpur in Sessions Trial No.765 of 2009 arising out of Nathnagar P.S. Case no. 83 of 2009, whereby the learned trial Court convicted the accused Laltush Mandal under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life and also slapped him with a fine of Rs. 5000/- and in default



of payment of fine to undergo S.I. for three months under Section 302 of the Indian Penal Code.

3. The factual matrix of the case is that Nathnagar P.S. Case No. 83 of 2009 was instituted under Section 302 of the Indian Penal Code against accused Laltush Mandal on the basis of fardbeyan of Gopi Mandal S/o Gajadhar Mandal recorded by S.H.O. of P.S. Nathnagar near Basa of Pathoo Mandal on 19.04.2009 at 2:15 PM with the allegation, in succinct that on 19.04.2009 in the morning, his wife had gone to maize field located at 1 km. from his house to bundle the maize straw. His nephew, in relation namely, Laltush Mandal also arrived there and started making bundle of maize straw. When his wife forbade him, Laltush Mandal chiding her extended threatening of dire consequences. At 9:45 AM, when his wife arrived at the hand pump located near Basa of Pathoo Mandal to drink water, Laltush Mandal armed with knife arrived there and assaulted on the breast and stomach of his wife with intention to do away with her life. His wife succumbed to her injury on the spot. Thereafter, Laltush Mandal made good his escape brandishing knife and swimming across the Ganga river. Chitranjan Mandal, Umesh Mandal and Laxmi Mandal witnessed the occurrence and tried



to overpower Laltush Mandal, but they could not succeed in their attempt due to aggressive attitude of the accused.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused namely, Laltush Mandal under Section 302 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the Adhoc Additional District and Sessions Judge-3, Bhagalpur for trial.

6. Charge against accused Laltush Mandal was framed under Section 302 of the Indian Penal Code. Charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Anil Kumar Mandal as PW-1, Laxmi Mandal as PW-2, Sushil Kumar Sharma as PW-3, Informant Gopi Mandal as PW-4, Kamal Kishore Mandal as PW-5, I.O., Atik Bari Khan as PW-6, and Dr. Yogesh Prasad Sah who



conducted autopsy of the cadaver of the deceased as PW-7. Out of the aforesaid witnesses, PW-1 (Anil Kumar Mandal) and PW-5 (Kamal Kishore Mandal) turned hostile. In documentary evidence, the prosecution has filed and proved some documents.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused has neither adduced any ocular nor documentary evidence to buttress his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.



12. It is submitted by learned counsel for the appellant that PW-2 (Laxmi Mandal) who happens to be son-in-law of the deceased, PW-3 (Sushil Kumar Sharma) who happens to be son of the deceased and PW-4 (Gopi Mandal) informant himself are not the eye witness of the occurrence. Two more F.I.R. named witnesses, namely, Chitranjan Mandal and Umesh Mandal, who are said to be eye witnesses of the occurrence, have not been examined by the prosecution, and no plausible explanation has been assigned by the prosecution for non-examination of the aforesaid material witnesses of the case, which creates serious doubt about the prosecution case. It is further submitted that the place of occurrence also does not stand established by the prosecution as the informant has disclosed the place of occurrence as maize field located at 75 feet away from the hand pump while I.O. has divulged it to be open land located at 9 feet from the hand pump. Boundary of the place of occurrence disclosed by the informant also does not match with that disclosed by the I.O. It is further submitted that as per witnesses account, blood was fallen on the place of occurrence, but I.O. has not mentioned finding of blood at the place of occurrence in the case diary. Meaning thereby, that no blood was found at the place of occurrence by



the I.O. which creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing trustworthy, worth credence and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that PWs-2, 3 and 4 who happen to be eye witnesses of the case, have consistently supported the prosecution case and the ocular evidence also stand corroborated by the medical evidence and after correctly appreciating the facts and material on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. On perusal of record, it appears that to substantiate its case, in ocular evidence, the prosecution has examined five material witnesses namely, PW-1 (Anil Kumar



Mandal), PW-2 (Laxmi Mandal), PW-3 (Sushil Kumar Sharma), PW-4 (Gopi Mandal) and PW-5 (Kamal Kishore Mandal). Out of them, PW-1 and PW-5 turned hostile. While, PW-2 (Laxmi Mandal) who happens to be son-in-law of the deceased, PW-3 (Sushil Kumar Sharma) who happens to be son of the deceased and PW-4 (Gopi Mandal) who happens to be informant of the case, have made an abortive bid to support the prosecution case by giving statement in consonance with the prosecution case claiming themselves to be the eye witnesses of the occurrence. But, from perusal of their testimonies, it appears that none of the aforesaid three witnesses happen to be eye witness of the occurrence. As as per prosecution case, the occurrence is of 19.04.2009 at 09:45 AM and as as per the statement of PW-2, made in his examination-in-chief that at the time of occurrence, he was accompanying the deceased and witnessed the occurrence. But, in quite contradiction to the aforesaid statement, he has stated in paragraphs 3, 5 and 6 of his cross-examination that he was present in the house of his mother-in-law right from the morning till 10:30 AM. He had got the knowledge of the occurrence at 10:30 AM from his father-in-law and brother-in-law. He has further stated that he had got the knowledge of



the occurrence from his father-in-law and brother-in-law at 11:00 AM. The aforesaid statement of PW-2 rules him out to be the eye witness of the occurrence as at the time of occurrence, he was not present at the place of occurrence along with the deceased rather at her house and got knowledge of the occurrence at the house of the deceased by his father-in-law (informant) and brother-in-law (PW-3).

15. PW-3 (Sushil Kumar Sharma) has stated in his examination-in-chief itself that on 19.4.2009 at around 09:45 AM i.e. at the time of occurrence, he was taking meal at his house. Laltush Mandal approached him and divulged that he has eliminated his mother, then he rushed to the Basa of Pathoo Mandal and found his mother dead there, sustaining injury on her breast and stomach. In paragraph 3 of his cross-examination, he has further stated that he had witnessed the dead body of his mother 10 minutes later to the getting information of death of his mother. The aforesaid statement of PW-3 candidly indicates that PW-3 also does not happen to be eye witness of the occurrence.

16. PW-4 informant (Gopi Mandal) has stated in paragraph 3 of his cross-examination that he was at his house at the time of occurrence. In paragraph 8 of his cross-



examination, he has further stated that he learnt from the people at his house that his wife has been murdered. He arrived near the dead body within one hour of getting information. The aforesaid testimony of the informant also eloquently indicates that at the time of occurrence, he was in his house and had got the information of death of the deceased there, and then he rushed to the place of occurrence and witnessed the dead body of his wife within one hour of getting information about death of his wife and he does not happen to be eye witness of the occurrence. He has also not disclosed the identity of source of getting information of the occurrence and none has come forward to corroborate the factum of divulgence of the occurrence and murder of his wife to him. Thus, the aforesaid statement of the informant is not admissible in evidence even as a hearsay witness of the occurrence.

17. As per prosecution case, Chitranjan Mandal and Umesh Mandal had also witnessed the occurrence and tried to overpower the appellant at the time of occurrence, but they could not succeed in their attempt due to aggressive attitude of the appellant. But the aforesaid two witnesses, who happen to be material witnesses of the case, have not been



examined by the prosecution and no plausible reason has been assigned by the prosecution for their non-examination. Hence, adverse inference is drawn against the prosecution. Thus, from the perusal of record, it appears that there is no eye witness of the occurrence.

18. As per prosecution case, the place of occurrence is near hand pump located near the Basa of Phatoo Mandal. But, in quite contradiction to the aforesaid prosecution case, the informant in paragraph 5 of his cross-examination has stated that he had found the dead body of his wife in the maize field and in paragraph 6 of his cross-examination, he has stated that he had seen hand pump located at 75 feet North of the dead body. But, I.O. has stated in paragraph 3 of his examination-in-chief that the hand pump is located at 9 feet South of the place of occurrence. The boundary of the place of occurrence given by the informant in paragraph 5 of his cross-examination also does not match with that disclosed by the I.O. in paragraph 3 of his examination-in-chief. As as per account of the informant, towards North of the dead body, there is Pipal tree, towards South, there is concrete pillar and towards West, there is maize field. While, I.O. has stated in paragraph 3 of his examination-in-chief that



towards North of the place of occurrence, there is kacha road of the village, towards South, there is Basa of Ghosi Das and towards West, there is hut of Sanjay Mandal. Thus, there is vital contradiction between the place of occurrence as stated by the informant in his fardbeyan and his statement and between the statement of the informant and that of the I.O. Thus, the place of occurrence does not stand established by the prosecution.

19. PW-2 (Laxmi Mandal) has stated in paragraph 3 of his cross-examination that he had found blood at the place of occurrence and informant (PW-4) has stated in paragraph 7 of his cross-examination that blood was fallen on the ground as well as on the bundle of the maize. He found blood at the stretch of around 100 mt. But, I.O. in paragraph 6 of his cross-examination has stated that he had not mentioned about finding of any blood stain and seizure of blood stained earth and attire at the place of occurrence in the case diary, which means that he had not found any blood at the place of occurrence. Informant has stated in paragraph 6 of his cross-examination that he had witnessed the crop trampled at the place of dead body. He had also displayed the aforesaid place to the I.O. But, the I.O. has not stated about finding of any



trampled crop at the place of occurrence. The aforesaid aspects of the case also creates serious doubt about the prosecution case.

20. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to bring home the charge levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned lower trial is set aside and the appellant is acquitted of the charge levelled against him. As the appellant is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, this Criminal Appeal stands allowed.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

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