

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.189 of 2015

Arising Out of PS. Case No. -171 Year- 2011 Thana -MURLIGANJ District- MADHEPURA

- =====
1. Shivan Mandal.
 2. Fulo Mandal Both Son of Late Domi Mandal
 3. Suren Mandal
 4. Mantun Mandal Both Son of Shivam Mandal

All are resident of Village- Tanaut Parsa, P.S.- Murliganj, Distt. Madhepura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance:

For the Appellant/s : Mr. Ramesh Pravesh Kumar, Adv.

Mr. Ashok Kumar, Adv.

For the State : Mr. Sujit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 05-01-2018

Appellants, Shivan Mandal, Fulo Mandal, Suren Mandal, Mantun Mandal have been found guilty for an offence punishable under Section 304(Part-II)/34 of the IPC and each one has been sentenced to undergo R.I. for ten years as well as to pay fine appertaining to rupees ten thousand in default thereof, to undergo R.I. for one year, additionally, under Section 380 IPC and sentenced to undergo R.I. for three years with a further direction to run the sentences concurrently vide judgment of conviction dated 17.03.2015 and order of sentence dated 19.03.2015 passed by Sessions Judge, Madhepura in Sessions Trial No.39 of 2013.

2. PW.6, Meena Devi gave her fardbeyan on 13.12.2011 at about 10:45 AM at her house disclosing therein that on 10.12.2011 while her mother Jungli Devi was sitting inside her house Ranjit Kumar, aged about 7 years, grandson of Shivan Mandal pelted stone causing hurt of her on account of which, she had abused whereupon, Shivan Mandal, Fulo Mandal, Suren



Mandal, Mantun Mandal made house trespass and brutally assaulted her mother Jungli Devi with fist, slap, leg. She was also assaulted. Before assemblage of villagers, they managed to escape. On account of assault her mother was in grief. On Sunday, panchayati was convened wherein local mukhiya, deputy mukhiya along with so many villagers, ward member participated and it was resolved directing Shivan Mandal to get proper treatment of Jungli Devi. Accordingly, they took Jungli Devi to the clinic of Dr. Sandhaya Singh who refused as, it was a case of Marpit. Then thereafter they took her mother to the place of Dilip Kumar Singh with the help of her Mausea Sheo Dutt Mandal where she was given primary treatment. Then thereafter, they dumped her at her place. In the night, her condition deteriorated and during course thereof, the accused persons came and forcibly took away Rs.20,000/- which she had procured in course of Indira Awas Yojna. On 12.12.2011 at evening hour her mother died.

3. After registration of Murliganj P.S. Case No.171/2011 investigation commenced and concluded by way of submission of charge sheet, facilitating the trial which ultimately concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither ocular nor documentary evidence has been adduced.

5. In order to substantiate its case prosecution had examined altogether six PWs who are PW.1-Dukhiya Devi, PW.2-Manoj Kumar Singh, PW.3 Manik Chand Thakur, PW.4-Suraj



Kumar, PW.5-Sudhir Kumar and PW.6-Meena Devi as well as had also exhibited inquest report Ext.1. As stated above neither ocular nor documentary evidence has been adduced.

6. The learned counsel for the appellant emphatically argued that on account of non-exhibit of the postmortem report, cause of death is not known. That being so, conviction under Section 304 of the IPC could not be. Apart from this, it has also been submitted that Investigating Officer has not been examined. Non examination of the Investigating Officer has caused prejudice to the appellants because of the fact that apart from inconsistency which is found in the evidence of the PWs, could not be brought up on record legally in terms of Section 145 of the Evidence Act, the place of occurrence and other surrounding circumstances could not be brought up on record and that being so, the judgment of conviction and sentence, would not sustain.

7. Apart from this, it has also been submitted that coming to the status of the witnesses, it is apparent that PW.3, PW.5, have not supported the case of the prosecution whereupon they were out rightly declared hostile while PW.4 Suraj Kumar had halfheartedly supported the case of the prosecution only to the extent that a Marpit took place which he came to know subsequently and so, he was also declared hostile. Furthermore, it is also evident from the evidence of informant PW.6 that she also resiled from her previous statement and in the aforesaid background, she was also declared hostile. In the background of evidence of PW.6, it has been submitted that evidence of PW.1 and PW.2 who claimed to be an eyewitness to occurrence, could not be accepted. That being so, it happens to be a case of no evidence.



Consequent thereupon, the appeal is fit to be allowed after annulling the finding recorded by the learned lower court.

8. The learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that though, from the evidences having on the record the finding recorded by the learned lower court to the extent of Section 304(Part-II) could not be but, from the evidence of PW.1 and PW.2 it is evident that they have categorically stated with regard to assault having made by the appellants and for want of postmortem report, the appellants could be held guilty for an offence punishable under Section 323 of the IPC.

9. Learned counsel for the appellants happens to be right in submitting that evidence of PW.3, PW.4, PW.5 and PW.6 have not supported the case of the prosecution although, PW.4 had stated that on account of pelting of stone by the grandson of Shivan Mandal, Jungli Devi began to abuse whereupon, there was quarrel. At the instance of villagers dispute was pacified. In likewise manner PW.6, informant had also stated. That being so, dispute with regard to pelting of stone by the grandson of Shivan Mandal has not been controverted even during cross-examination. PW.6, informant was cross-examined to suggest that deceased was suffering from some sort of ailment since before. From para-6 of her cross-examination, it is evident that she had compromised the case and that happens to be reason behind her deflection from initial version. Now coming to the evidence of PW.1 as well as PW.2, it is evident that they had consistently deposed that after hearing sound of uproar coming from the house of Jungli Devi, they rushed and found Shivan Mandal, Fulo Mandal, Suren



Mandal, Mantun Mandal engaged in assaulting Jungli Devi with fist and slap, leg. PW.1 has been cross-examined on the point of occurrence as is evident from para-9, 10, 11, 12 of the cross-examination and in likewise manner PW.2 was cross-examined at para-10, 11, 12 and remained intact.

10. Learned Additional Public Prosecutor is correct in his submission that though inquest report is an exhibit of the record but that will not cater the legal requirements in absence of postmortem report. That means to say the cause of death is not at all found properly surfaced during course of trial whereupon the conviction and sentence recorded under Section 304(Part-II)/34 of the IPC would not sustain. Furthermore, from the evidence so discussed it is evident that taking away of Rs.20,000/- by the accused persons is also not found properly substantiated. Consequent thereupon, the conviction and sentence recorded therefor could not survive.

11. However, as stated above, evidence of PW.1 and PW.2 are consistent and supported the case of the prosecution to the extent of assault having at the end of the appellants. That means to say, the appellants are liable to be convicted for an offence punishable under Section 323 of the IPC and the same happens to be permissible in terms of Section 222 of the Cr.P.C. Accordingly, Shivan Mandal, Fulo Mandal, Suren Mandal, Mantun Mandal are found and held guilty for an offence punishable under Section 323 of the IPC. However, considering the nature of the evidence as well as conduct of the parties and further tracing out from the L.C. record, appellant Shivan Mandal being under custody from 23.09.2012 to 12.03.2013, appellants Fulo Mandal,



Suren Mandal, Mantun Mandal is to be under custody from 05.11.2012 to 09.07.2013, in the aforesaid background are directed to be sentenced as period undergone. In terms thereof, the appeal is partly allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	08.01.2018
Transmission Date	08.01.2018

