

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.357 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- LAKHISARAI

- =====
1. Bhagwani Mandal, son of Late Ram Khelawan Mandal
 2. Smt. Sunaina Devi, wife of Sri Bhagwani Mandal. Both residents of village-
Purani Bazar, Nayatola, Chitranjan Road, P.S. + District- Lakhisarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamla Kumar Sinha, Advocate

For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 17-07-2018

Appellant No.1, Bhagwani Mandal has been convicted under Section 304 Part (II) of the Indian Penal Code and sentenced to R.I. for five years and appellant no.2 Sunaina Devi has been convicted under Section 323 of I.P.C. and was found of Rs.500/- by a judgment and order dated 2.7.2003 passed by Laloo Prasad Singh, Presiding Officer, Fast Track Court, Munger in Sessions Case No.171 of 1996.

2. Prosecution case in short is that P.W.4 has lodged an F.I.R. stating therein inter alia that on 1.7.1994 at 5 P.M. the she-goat of the informant Ram Prakash Thathera had grazed wheat which was kept in the Angan of Bhagwani Mandal and the accused Bhagwani Mandal and his wife Sunaina Devi tied she-goat in their house where after Kumud Devi, wife of Bishundeo Thathera, who is elder brother went to the house of the accused appellants and it is alleged that all



the accused Sunaina Devi and daughter Raj Kumari Devi assaulted her with fist and slaps, when Sabo Devi (P.W.5) came to save her she was also assaulted by accused persons by lathi. As per husband was not available she was not brought to hospital nor to the police station and on the following day, the informant was going along with his Bhabhi Kumud Devi and mother Sabo Devi to police station for lodging F.I.R. on a Rickshaw after arrival of his elder brother, in the way his Bhabhi Kumud Devi expired and that thereafter present case has been lodged on the basis of Lakhisarai P.S. Case No.192 of 1994 was registered and charge sheet has been submitted against appellants and one Raj Kumari Devi under Sections 341, 323 and 302/34 of I.P.C. Accordingly, cognizance was taken and case has been travelled to the file of Sri Laloo Prasad Singh, Presiding Officer, Fast Track Court, Munger for trial and disposal.

3. During trial, charge was framed under Section 302/34 I.P.C. against the appellants and one Raj Kumari Devi.

4. In support of his contention, prosecution has examined altogether seven witnesses, they are P.W.1 Sanichar Ram declared hostile, P.W.2 Garo Mandal declared hostile, P.W.3 Dr. Sudhir Kumar conducted postmortem examination, P.W.4 Ram Prakash Thathera hearsay witness, P.W.5 Sabo Devi claimed to be eye witness, P.W.6 Bishundeo Thathera hearsay witness and husband



of the deceased. P.W.7 Mahendra Prasad is formal witness. I.O. has been examined as Court witness no.1.

5. On behalf of the defence also, two witnesses were examined, they are D.W.1 Uttam Mandal and D.W.2 Ashok Ram and they are on the point that deceased was suffering from mental disease and as such she used to be assaulted by the family members and due to that she died. The defence of the appellants is that they have falsely been implicated in this case and the deceased died due to assault by his family members.

6. The learned trial court on conclusion of trial has convicted the appellant no.1 under Section 304 Part (II) of I.P.C. and the appellant no.2 under Section 323 of I.P.C. and sentenced them as stated above. However, the appellants and the other co-accused Raj Kumari Devi has not been acquitted from the charge under section 302/34 of I.P.C.

7. Learned counsel for the appellants has assailed the judgment that the case is based on solitary evidence to P.W.5 Sabo Devi and P.W.2 has been declared hostile and P.Ws.4 and 6 are hearsay witnesses and P.W.7 Mahendra Prasad is a formal witness and the evidence of P.W.5 even if it is believed, only discloses that the deceased was assaulted only by fist and slaps and she has further stated that neck was pressed but that is not the prosecution case in the



F.I.R. Further submission of learned counsel for the appellants is that with respect to same occurrence a complaint case was lodged bearing Complaint Case No.602(c) of 1994 and in this case, the appellants were acquitted on trial and as such for the same offence, the trial has been conducted. Further submission of learned counsel for the appellants is that P.W.3 is the doctor which was conducted postmortem examination and found the scratches on the face and further that the neck was pressed from some hard and blunt substance but there is no such story of the prosecution. Further submission of learned counsel for the appellants is that in such a situation at best the appellants are liable for an offence under Section 323 of I.P.C. and no offence under Section 304 Part (II) of I.P.C. is made out against the appellants.

8. Heard learned counsel for the State also. He has submitted that the evidence of Sabo Devi, who is the mother-in-law of the deceased is consistent and she is quite natural witness as she was supposed to be present at the place of occurrence and also stated that the neck was pressed by the appellant no.1 and further doctor has found injury over the neck and that corroborates evidence of P.W.5. It has further been submitted that though P.Ws. 4 and 6 are hearsay witnesses but they had seen the deceased and as such the occurrence cannot be denied. Hence, the conviction of the appellants is just and



proper and does not require any interference.

9. Having heard both sides in the background of submission and examination of the evidence, it appears that P.W.5 who is the sole witness of the occurrence, has stated in her evidence that her daughter-in-law was assaulted by Sunaina Devi and Bhagwani Mandal by fist and slaps and Bhagwani Mandal pressed her neck and thereafter on hulla she went there and she was also assaulted by Sunaina Devi by lathi. No doubt, the F.I.R. does not show that neck was pressed by the appellant no.1 but in her evidence, she has stated so. From her cross examination, it appears that contradiction has been taken from her previous statements before police and she has stated that she told the police that Bhagwani Mandal pressed her neck and he has also stated before the police that Sunaina Devi assaulted on her head by lathi and also stated before the police that she had come to Lakhisarai for treatment. However, the F.I.R. shows that the deceased was taken to the police station first on the next day of the occurrence. P.Ws.4 and 6 are hearsay witnesses but their evidence shows that she was taken to the police station and on way she died. P.W.3 is the doctor who has conducted postmortem examination and he has found the following : (i) bruise on the right side of the face, cheek 2 ½ “ x 1 ½ “. No other external injury could be detected. On dissection extravasation of blood under soft tissues of neck with broken and fracture



traches were found. He has opined that the death was due to pressure over the neck by hard and blunt substance.

10. Though the doctor has given an opinion that the injury on the neck was found by hard and blunt substance but there is no such story in the F.I.R. rather later on P.W.5 has stated that appellant Bhagwani Mandal has pressed the neck of the deceased. It further appears from prosecution evidence that she was not taken to hospital but on way to police station, she died.

11. Even if the evidence of P.Ws.3 and 5 which believed it clearly appears that the occurrence at the place with respect to freeing of she-goat and in that scuffle took place and deceased was assaulted by fist and slaps though later on her neck was pressed. It shows that she was not taken to hospital for treatment though she died.

12. Considering the above evidence, it appears that though the appellant no.1 has assaulted the deceased but it does not appear that he has intention to kill her or he was knowing that by his that Act she will die and at best it appears to be case of simple assault and as such I find force in the argument of learned counsel for the appellants that at best a case under Section 323 of I.P.C. is made out against appellant no.1. So appellant no.2 is concerned, learned counsel for the appellants could not make out any contradiction or



inconsistency in the evidence.

13. In view of the discussion made above, the conviction of appellant no.1 Bhagwani Mandal under section 304 Part (II) of I.P.C. is modified to conviction under Section 323 of I.P.C. and conviction of appellant no.2 is affirmed.

14. Submission of learned counsel for the appellants is that appellant no.1 has remained in custody for 3 ½ months during trial and two months after conviction and as such he has sufficiently been punished and the appellant no.2 was also fine of Rs.500/-.

15. In such view of the matter, the sentence of the appellant no.1 under section 323 I.P.C. is modified to the period already undergone by him during trial and appeal. However, the sentence of fine of appellant no.2 is affirmed.

16. With the aforesaid modification, this appeal is dismissed.

(Vinod Kumar Sinha, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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