

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.258 of 2021

Arising Out of PS. Case No.-126 Year-2019 Thana- NARPATGANJ District- Araria

Ramphal Yadav, Son of Shiv Narayan Yadav, Resident of Village - Farhi,
Ward No. 03, P.S.- Narpatganj, District – Araria.

... .. Appellant

Versus

1. The State of Bihar
2. Lalia Devi, Wife of Jagdish Yadav, Resident of Village - Farhi, Ward No. 03,
P.S.- Narpatganj, District - Araria.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Uday Chand Prasad, Adv. Mr. Manoj Kumar, Advocate Ms. Pooja Prasad, Advocate
For the State	:	Mr. Abhimanyu Sharma, Addl. PP
For the Resp No. 2	:	Mr. Mukesh Kr. Singh, Advocate Mr. Mukesh Kr. Rana, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-02-2024

Heard Mr. Uday Chand Prasad, learned counsel for the appellant, Mr. Abhimanyu Sharma, learned Additional PP for the State and Mr. Mukesh Kr. Singh, learned counsel for the respondent no. 2.

2. This appeal has been preferred for setting aside the judgment dated 01.12.2020 passed by the learned Sessions Judge, Araria in Sessions Trial No. 207 of 2019 arising out of Narpatganj P.S. Case No. 126 of 2019, G.R. Case No. 708 of 2019 (State through Ramphal Yadav Vs. Ruban Yadav and Another) whereby and



whereunder the learned trial court has been pleased to acquit the respondent no. 2 from the charges under Section 302/34 of the Indian Penal Code (in short 'IPC').

Submissions on behalf of the Appellant

3. Learned counsel for the appellant submits that the respondent no. 2 was facing the charge under Section 302 read with Section 34 IPC together with her son, namely, Ruban Yadav. In course of trial, all the prosecution witnesses supported the prosecution case. It was the consistent case of the prosecution that on 28.02.2019 at about 5:00 O'clock evening, the wife of the informant was assaulted by the respondent no. 2 together with the co-accused Geeta Devi, Jhuna Devi, Pawan Yadav and Shila Devi. During the occurrence, Ruban Yadav came and assaulted the deceased Meena Devi by axe blows on her head due to which she sustained serious injuries, fell down and ultimately died.

4. Learned counsel submits that the prosecution examined altogether six witnesses in this case who are PW-1 Lav Kumar (son of the deceased), PW-2 Sonam Kumari @ Sunita Kumari (daughter of the deceased), PW-3 Kush Kumar (son of the deceased), PW-4 Ramfal Yadav (husband of the deceased and informant of the case), PW-5 Dr. Md. Ansar Alam and PW-6 Sanjeet Kumar (Investigating Officer).



5. It is submitted that the prosecution exhibited a number of documentary evidences which may be found mentioned in paragraph '5' of the judgment of the learned trial court.

6. Learned counsel submits that in ultimate analysis which may be found in paragraph '19' of the judgment of the learned trial court, the court opined that on the point of manner of assault and injuries inflicted on the deceased by the accused, it is found that Laliya Devi (respondent no. 2) had caught the deceased by her hair but subsequently during such occurrence, when co-accused Lalo Mandal @ Ram Prakash Mandal came then he gave a call to kill the deceased and then the accused Ruban Yadav who was also facing trial had inflicted fatal assault on the head of the deceased by stroke of axe. The learned trial court reached to a conclusion that the oral evidences apparently give reference to the circumstances that accused Laliya Devi had not joined or shared the intention of the accused Ruban Yadav to kill the life of the deceased.

7. It is submitted that the observation of the learned trial court that Laliya Devi had not joined or shared the intention of the accused Ruban Yadav to kill the deceased is unfounded on the face of the prosecution evidences.

8. Learned counsel submits that while learned trial court has convicted the accused Ruban Yadav for the charge under Section 302/34 IPC and ordered him to undergo a sentence of life



imprisonment, the respondent no. 2 in this case has been acquitted from the charge which is not justified. On the strength of the submissions, learned counsel for the appellant seeks interference of this Court in the matter of acquittal of respondent no. 2.

Submission on behalf of Respondent No. 2

9. On the other hand, Mr. Mukesh Kumar Singh, learned counsel for the respondent no. 2 has opposed this appeal. Learned counsel submits that in this case, there is no independent witness of the occurrence. The prosecution has not proved any premeditation of mind on the part of the accused persons in commission of crime. The evidences on record would show that both the parties are living in front of each other with a village road passing between the houses of the informant and the accused. The alleged occurrence is said to have taken place when the wife of the informant returned from Narpatganj to her home and found that the accused persons had thrown cow dung in front of her house.

10. As per prosecution case, the informant's wife objected to the throwing of cow dung on which the alleged occurrence took place. All this happened in the spur of the moment.

11. Learned counsel further submits that the learned trial court has carefully examined the prosecution evidences. In paragraph '19' of the judgment under appeal, the learned trial court has taken note of the evidences of PW-1, PW-2, PW-3 and PW-4, who all have



stated in their examination-in-chief that accused Laliya Devi assaulted the deceased by having caught the deceased by her hair and subsequently, during such occurrence of assault when co-accused Lalo Mandal @ Ram Prakash Mandal came there then he gave a call to kill the deceased whereupon Ruban Yadav had inflicted the fatal assault on the head of the deceased by stroke of axe.

12. Learned counsel submits that the Doctor, who was examined as PW-5 in this case, has stated that in course of conducting the autopsy on the dead body, he had found only one external injury which was an enlarge lacerated wound on the scalp on the fronto-parietal region. PW-5 did not find any other injury on the part of the body of the deceased at the time of examination except blood clots on nostril and mouth.

13. Learned counsel submits that learned trial court has rightly appreciated the prosecution evidences brought before it and has taken a view fully in consonance with the law.

Consideration

14. We have carefully examined the submissions made on behalf of the parties and perused the records. It is true that in this case, though the occurrence has taken place at about 5:00 P.M. on 28.02.2019 in the village, there is no independent witness of the occurrence. The learned trial court has discussed the prosecution evidences in the judgment under appeal. Copy of the prosecution



evidences have also been brought on the record on behalf of the appellant. It appears on perusal thereof that the informant (PW-4) deposed that the alleged axe which was used for committing murder of the deceased in the alleged occurrence was also seized by the police and the same axe was having blood stains and police had also collected the blood stained soil from the place of occurrence but he had no knowledge whether any seizure list was prepared by the police. In contrast, the Investigating Officer (PW-6) has stated in his cross-examination that during his investigation of the place of occurrence of the case, he had not found any specific material from the place of occurrence, no one had produced anything including the weapon and nothing had been seized by him in this case and he had not recovered any material from the place of occurrence. The Investigating Officer (PW-6) further stated that he had not found any cow dung or wastage in the village. He had recorded the statement of witness Lav Kumar (PW-1) but the case diary did not reveal the time and place where the statement of the witness Sonam Kumari @ Sunita Kumari (PW-2) was recorded. The Investigating Officer has also stated that the accused Ruban Yadav is cousin brother of the informant and witness Kush Kumar (PW-3) had given his statement to police that he was absent from his house at the alleged date and time of occurrence as he works at Forbesganj Bank and he came only after getting knowledge of the occurrence. PW-6 has deposed that he



had not examined any independent witness in this case and has not mentioned in the case diary about the motive or genesis of the occurrence but the informant claimed and told him that dumping of cow dung and wastage is the genesis of the occurrence.

15. We further find that the Doctor (PW-5) has been examined on the point of injury and cause of death of the deceased. He has proved the postmortem report on the record under his pen and signature as Exhibit.- '2'. In his examination-in-chief, he has stated that he found external injury on the dead body of the deceased and enlarged lacerated wound on the scalp on the fronto-parietal region and also found eyes semi open, mouth open, scalp bone fracture but no other injury was found on the part of the body of the deceased. The Doctor further deposed that on dissection of dead body of the deceased by opening of Cranial Cavity Fronto-parietal bone fracture, blood and blood clots found and brain material lacerated and he has deposed to have drawn the opinion of death of the deceased due to hemorrhage and shock as a result of the injuries caused by hard and blunt substance and time elapsed since death of deceased and postmortem was within 24 hours.

16. The learned trial court has recorded that the Doctor has deposed that he has not found injury for pocking of axe on the head of the deceased and the injuries sustained and as reported to have been found on the dead body of the deceased is caused by falling



over the hard surface and the injury report of the deceased is not the injury of sharp cut weapon.

17. We are satisfied with the discussions made by the learned trial court that the prosecution evidences have been properly discussed and examined whereupon the learned trial court has reached to a conclusion in terms of the observations as stated in paragraph ‘19’ of the judgment under appeal. No fault may be found with the findings reached by the learned trial court.

18. We are, therefore, not persuaded to interfere with the judgment of the learned trial court.

19. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Annu/Lekhi-

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