Ram Chandra Pandey Vs State of Bihar and Others

Court: Patna High Court

Date of Decision: Feb. 20, 1997

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 229, 230, 231, 311
Penal Code, 1860 (IPC) â€" Section 148, 149, 302, 307, 34

Citation: (1998) 1 BLJR 42 : (1997) 2 PLJR 95

Hon'ble Judges: P.K. Sarin, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

P.K. Sarain, J.
This criminal revision application is directed against the judgment and order dated 22nd June, 1988 passed by the 9th.

Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 748/1977-77/88 whereby the learned Additional Sessions Judge has

acquitted the opposite party Nos. 2 to 8 of the charges u/s 302, 302/149, 148 and 307/34 of the Indian Penal Code.

2. The case of the prosecution against opposite party Nos. 2 to 8 may be briefly stated as follows:

That on 29th October, 1976 at 10 a.m. when the informant petitioner alongwith his uncle Lal Mohan Pandey (deceased) were operating their

Sugar Cane Crusher accused opposite party No. 8 Nathuni Pandey came there and took out 6-7 sugarcane from the bundle kept there. When the

informant asked Nathuni Pandy not to take so much of sugarcane it led to an altercation and Nathuni Pandey left the place throwing away

sugarcane. Soon thereafter all the accused persons including Nathuni Pandey armed with lathi, bhala and gadasa came at that place where crushing

of sugarcane was going on. Accused Vishwanath Pandey and Sinhasan Pandey exhorted Nathuni Pandey to assault Lal Mohan Pandey

whereupon Nathuni Pandey gave several lathi blows on the person of deceased Lal Mohan Pandey. Accused Sheo Muni on the extortion of

accused Dahari and Bhagwan gave blows on the person of he informant and accused Shri Ram Pandey gave lathi blow on the left knee of the

informant. Ram Subhag Pandey alias Ghutur Pandey(P.W. 1), Brahamdeo Pandey (P.W. 3) and Jangi Pandey (P.W. 7) arrived at the place of

occurrence whereupon the accused made good their escape. The two injured were taken to Surajpura hospital. Injured Lal Mohan Pandey (since

deceased) was referred to Patna Medical College Hospital for treatment. Lal Mohan Pandey died in Patna Medical College Hospital after some

time on 31st. October, 1976. Fardbeyan of the informant was recorded at Surajpura hospital by the Officer-Incharge of Dawath Police Station

and on its basis first information report was recorded. The policy after investigation submitted charge-sheet against the accused opposite party

Nos. 2 to 8.

3. The defence of the accused was denial of the occurrence. It appears that the defence have also taken stand that on 29.10.1976 at about 10

a.m. Nathuni Pandey was taking his bullock to his ''kalhuar'' and when he reached the back side of the Dalan of Ram Subhash Pandey deceased

Lal Mohan Pandey and others reached there and surrounded Nathuni Pandey and his bullocks and exclaimed that they would not allow the

bollock to proceed as it has grazed the vegetable plants. It is also alleged that Sheo Narain and Jai Ram Pandey twisted the hand of accused

Nathuni and Lal Mohan Pandey (the deceased) assaulted by brick on the face of accused Nathuni causing breaking of teeth and Nathuni fell down

and became senseless and was removed to Surajpura hospital for treatment where he gave a statement to the police.

4. In support of the prosecution case ten witnesses were examined. Out of which P.W. 2 Ram Chandra Pandey, the informant Ram Subhag

Pandey alias Ghutur Pandey (P.W. 1) and Brahamdeo Pandey(P.W. 3) figured as eyewitnesses of the occurrence. P.W. 7 Jangi Pandey is also

stated to be the other eye-witness. P.W. 4 Ram Prasad Singh and P.W. 5 Chandrama Pandey were formal witnesses. P.W. 6 Haribansh Pandey

was tendered. P.W. 8 is doctor who examined the injuries of the informant P.Ws. 9 and 10 are also formal witnesses. The doctor who had held

autopsy over the dead-body of Lal Mohan Pandey was not examined. Defence examined one witness who formally proved the fardbeyan (Ext. B)

of Nathuni Pandey and the formal FIR (Ext. C). The learned trial Court on appraisal of the evidence on record found the statements of eye-

witnesses to be inconsistent. The learned trial Court accepted the contention raised on behalf of the defence that the prosecution case should fail

for non-examination of the Investigating Officer, non-examination of the doctor who conducted post-mortem examination on the dead-body of

deceased Lal Mohan Pandey and non-expllanation of grievous injuries received by accused Nathuni Pandey. The learned trial Court agreed with

the contention on all the three points raised by the defence. The trial Court ultimately came to the conclusion that all the witnesses examined on

behalf of the prosecution do not seem to be independent and trustworthy and considering the quality of the evidence available on record accused

could not be convicted. Accordingly he acquitted the accused opposite party Nos. 2 to 8 Being aggrieved the informant of the case referred this

criminal revision application before this Court.

5. The learned Counsel for the petitioner has contended that the reasons given by the trial Court regarding infirmity on account of non-examination

of the Investigating Officer or the doctor who conducted post-mortem examination are not sustainable. It is contended that the Court who is

responsible for administration of justice ought to have summoned and procured the attendance of the Investigating Officer and the doctor and when

the Court has failed to procure the attendance of the witnesses no adverse inference ought to have been drawn against the prosecution and the

Court could not have given advantage to the accused on account of non-examination of the I.O. and the doctor who conducted post-mortem

examination.

6. I find myself unable to accept the contention raised by the learned Counsel for the petitioner on this score. Section 230 of the Code of Criminal

Procedure lays down that where the accused refuses to plead or does not plead or claims to be tried or is not convicted u/s 229, the Judge shall fix

a date for examination of witnesses, and it may, on the application of the prosecution, issue a process for compelling the attendance of any witness

or the production of any document or other thing. Section 231 of the Code of Criminal Procedure provides that on the date so fixed, the Judge

shall proceed to take all such evidence as may be produced in support of the prosecution. It is evident by provisions of Sections 230 and 231 of

the Code of Criminal Procedure that it is the duty of the prosecution to produce evidence and the Court has to issue process for compelling the

attendance of any witness if an application in that regard is made by the prosecution. It means that if no application is made for issue of process for

compelling the attendance of any witness it is not the duty of the court to issue process as it is expected that the prosecution would itself produce

the evidence on the date fixed for examination of the witnesses. The court has to extend its assistance in procuring the attendance of the witness if

prosecution makes a prayer for the same. In my opinion it is not the duty of the court to go after the witnesses and procure their attendance even if

the prosecution does not pray for procuring their attendance. It is different matter where the court wants to act suo motu under the provisions of

Section 311 of the Code of Criminal Procedure the Court may summon any person as a witness without prayer by any party in that behalf. That is

the discretion of the trial court and if the trial court has not exercised that discretion u/s 311, CrPC the prosecution or the informant cannot make a

complaint tat the court ought to have suo motu summoned the witnesses. If any material witness is withheld by the prosecution, the prosecution has

to suffer. If the contention of the learned Counsel for the petitioner is accepted that it is the duty of the court to procure the attendance of all the

witnesses named in the charge-sheet then there would not be any scope for drawing any adverse inference against the prosecution for withholding

of material witness because there would not be any occasion for the prosecution to withhold any witness when the court itself has to procure the

attendance of the witnesses. The learned Counsel for the petitioner has contended that under Chapter VI of the Code of Criminal Procedure it is

for the court to issue process to compel appearance. Chapter VI deals with the procedure when process is to be issued. It only lays down the

procedure for issuance of summons or process, it does not lay down that under what circumstances the court has to issue summons or process.

The occasion for issuance of summons may arise by virtue of the other provisions of the Code of Criminal Procedure and as regards the process

for compelling the attendance of the witnesses in sessions trial the provisions of Section 230 of the Code of Criminal Procedure would cover it and

the court may issue process by virtue of provisions of Section 230, CrPC when the provisions of Chapter VI is in respect of process have to be

complied with. The learned trial Court has pointed out that on account of non-examination of the Investigating Officer the defence has been

deprived to bring on record the contradictory statements made by witnesses. Thus serious prejudice has been caused to the defence in bringing on

record the material contradictions in the statements of eyewitnesses. This is a finding of fact based on appraisal of evidence and no illegality in that

conclusion is found.

7. As regards the non-examination of doctor who conducted post-mortem examination, the trial Court had dealt with that point and has given

elaborate reasoning of non-examination of the doctor who conducted post-mortem examination. The post-mortem examination report proved by

another witness is not admissible in evidence. There appears to be no illegality in this conclusion. The doctor who prepared post-mortem

examination report himself ought to have been examined and it would be his statement in court which would have been substantive evidence. The

post-mortem examination report may be said to be the statement of doctor recorded in writing at the time when post-mortem examination was

done. But post-mortem examination report by itself could not have been treated as substantive evidence when the doctor who prepared the same

was not examined.

8. As regard non-examination of the injuries on person of accused Nathuni Pandey, it has been contended by the learned Counsel for the petitioner

that non-examination of the injuries on the person of he accused is not fatal and it is not necessary for the prosecution to explain the injuries

received by accused. In support of his contention he has placed reliance on the decision of Apex Court in the case of Hare Krishna Singh and

Others Vs. State of Bihar, , wherein it has been held that the obligation of the prosecution to explain the injuries sustained by accused in the same

occurrence may not arise in each and every case. It was observed that if the witnesses examined on behalf of the prosecution are believed by the

Curt in proof of the guilt of the accused beyond all reasonable doubts, the question of the obligation of the prosecution to explain the injuries

sustained by the accused will not arise. The Apex Court has considered the previous judgment on this point including the judgment in the case of

Lakshmi Singh v. The State of Bihar (1976) 4 SCC 2263. A perusal of the judgment of the Apex Court in Hare Krishna Singh case (supra) would

show that the Apex Court has held that the non-explanation of injuries sustained by the accused is not material where the prosecution has been

able to prove the guilt against the accused beyond all reasonable doubts by the prosecution evidence. That means if the prosecution evidence is not

trustworthy and full reliance cannot be placed on it, the question of non-explanation of the injuries sustained by accused assume importance and in

that event non-explanation of the injuries of the accused may give rise to adverse inference against the prosecution so as to create doubt about the

genesis and manner of occurrence. In Lakshmi Sigh''s case (supra) the apex Court has laid down as to what inference may be drawn on account of

non-explanation of the injuries sustained by the accused at the time of the occurrence or in the course of altercation. It has been observed that

inference may be drawn that the prosecution as suppressed the genesis and the origin of the occurrence and thus has not presented the true version

and the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their

evidence is unreliable. It further observed that in case there is a defence version which explains the injuries on the person of the accused it is

rendered probable so as to throw doubt on the prosecution case. In the present case the trial Court has found that the prosecution evidence is not

worth reliance and trustworthy and the quality of the evidence is not sufficient to record conviction against the accused. As on appraisal of

evidence the trial Court has not found the prosecution evidence to be worthy of credence. In these circumstances, the principle laid down in the

case of Hare Krishna Singh v. Stare of Bihar (supra) that non-explanation of the injury on the person of the accused is of no material consequence.

In the facts of the present case where the prosecution evidence has been found to be shaken and not worth reliance to prove the charge beyond all

reasonable doubts, the revisional court cannot enter into re-appraisal of the evidence. It would not be possible to take a different view on facts as

found by the trial Court.

9. In these circumstances no infirmity in the trial Court judgment is found so as to warrant any interference in exercise of the revisional jurisdiction

of this Court. The Criminal Revision Application is dismissed accordingly.