
(2002) 10 PAT CK 0095

Patna High Court

Case No: Criminal Appeal (DB) No. 362 of 1997

Ramjit Beldar

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Oct. 24, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302

Citation: (2003) 1 PLJR 693

Hon'ble Judges: M.L. Visa, J; B.K. Jha, J

Bench: Division Bench

Advocate: Vikram Deo Singh, Rudal Singh and Shambhu Prasad, for the Appellant;
Bhagya Narain Gupta, for the Respondent

Final Decision: Allowed

Judgement

M.L. Visa and B.K. Jha, JJ.

Ramjit Beldar, the sole Appellant in this appeal, is aggrieved by the judgment dated 17.6.1997 and order dated 19.7.1997 passed by 5th Additional Sessions Judge, Nalanda, in Sessions Trial No. 394 of 1995, convicting and sentencing him to undergo rigorous imprisonment for life u/s 302 of the Indian Penal Code (in short, IPC).

2. The case of prosecution as disclosed in the Fardbeyan (Ext.2) of informant Raj Kumar Thakur (P.W. 8), in short, is that informant used to cultivate the land of one Madan Mahto and was incharge of Piter Machine of Madan Mahto with which he used to irrigate the land. About a week prior to 10.6.95 handle of this machine was stolen by the Appellant and when this fact came in the knowledge of informant and other villagers, informant asked the Appellant to return the handle who at first avoided to return the handle but on pressure two days prior to 10.6.95 returned the handle to informant and at that time informant out of anger had abused him for committing theft of handle on which some altercation between the informant and

Appellant took place. On 10.6.95 at 12 O'clock in the noon Anil Thakur alias Chhotu Thakur, minor son aged about 7 years of informant, had gone towards south of village for playing where the Appellant caught hold of him and threw him on the ground and assaulted him with a hard blunt weapon crushing his face as a result of which he died and thereafter the Appellant concealed the dead body of the son of informant in the heap of husk in the "bathan" of Nagina Kewat (P.W. 7) which was seen by a village boy named Mantu Beldar (P.W. 6) and when Mantu Beldar inquired from the Appellant what he had concealed in the heap of husk the Appellant replied that he had kept some mangoes there to ripen. Mantu Beldar in greed of mangoes when made search in the heap of husk he found dead body of the son of informant concealed there and he then raised "hulla" that Appellant after killing the minor son of informant had kept his dead body in the heap of husk. Informant, his family members and villagers came running in the "bathan" of Nagina Kewat (P.W. 7) and found the dead body of son of informant in the heap of husk and Wood was oozing from the nose of the dead body. The villagers seeing the dead body of son of informant became agitated and started searching the Appellant and finally caught hold of him and in the meantime Chaukidar Karu Paswan also came there and on query the Appellant made extra judicial confession before the villagers that he had committed the murder of son of informant because informant had abused him on account of theft of handle of Piter Machine. The Fardbeyan of informant was recorded on 10.6.95 at about 4 PM in the "bathan"oi Nagina Kewat by S.I. Shashidhar Upadhyay (P.W. 10). Formal FIR (Ext. 1) u/s 302/201 IPC was drawn and after investigation police submitted chargesheet against the Appellant. The case was committed to the court of Session where charges under Sections 302/201 IPC were framed against the Appellant and because the Appellant denied the charges against him, he was put on trial and after trial he was found guilty u/s 302 IPC and was convicted and sentenced to undergo imprisonment for life. So far charge u/s 201 IPC is concerned, the Appellant was not found guilty and he was acquitted of this charge. No witness on behalf of Appellant has been examined but from the trend of cross examination of prosecution witnesses the case of Appellant appears to be complete denial of charge against him and his false implication in this case.

3. In order to prove its case the prosecution has examined 10 witnesses. Raj" Kumar Thakur (P.W. 8) is informant. Ravi Ranjan Rajesh (P.W. 9) is a doctor who had held autopsy on the dead body of deceased. Surendra Prasad (P.W. 1) and Bijay Singh (P.W. 4) are formal witnesses who have proved Fardbeyan (Ext. 2) and formal FIR (Ext.1). Nagina Kewat (P.W. 7) is a witness on the inquest report (Ext.4). Although in his examination-in-chief he has said that inquest report of the dead body of deceased was prepared by police in his presence on which he put his L.T.I, but in his cross examination he has said that he did not know what was written in the inquest report on which he put his L.T.I, and he was not examined by the Investigating Officer. He is a witness in whose "Bathan" dead body of deceased was found lying in the heap of husk as alleged by prosecution. Jai Kant Kumar (P.W. 2), Shailendra

Kumar (P.W. 3) and Shyam Prasad (P.W. 5) are witnesses in whose presence dead body of son of informant was recovered from the heap of husk. Surendra Upadhyaya (P.W. 10) is the Investigating Officer of this case.

4. Dr. Rabi Ranjan Rajesh (P.W. 9) in his evidence has said that on 11.6.95 when he was posted as Civil Assistant Surgeon at Sadar Hospital, Bihar Sharif he held post mortem examination on the dead body of deceased and found that body was decomposed with four swellings and distended abdomen with peeling of skin at places and swollen, blackened bruise over whole face including forehead and frontal region of skull and death in his opinion was caused due to head injury caused by hard blunt substance and time elapsed since death was within 36 hours to 48 hours. He has proved his post mortem examination report (Ext. 3). From his evidence it appears that death of deceased was homicidal.

5. Informant Raj Kumar Thakur (P.W. 8) in his evidence has said that on 10.6.95 at 12 O'clock he was in his house when his son Chhotu went towards south of village for playing and Appellant also accompanied him and half an hour thereafter Mantu Beldar (P.W. 6) came there raising "hulla" that Appellant after killing Chhotu had kept his dead body in the heap of husk and thereafter he along with 7-8 persons ran towards the place and took out the dead body of his son from the heap of husk. He has said that at that time, besides him, other witnesses namely, Nagina Kewat (P.W. 7), Jai Kant Kumar (P.W. 2), Shyam Prasad (P.W. 5) and Shailendra Kumar (P.W. 3) were there. He has further said that he and aforesaid persons caught hold of appellant and tied him with a standing tree and on inquiry Appellant confessed that he had killed the son of informant because informant had abused him for stealing the handle of machine. He has further said that in the meantime Chaukidar also reached there who brought the police and police recorded his Fardbeyan. In para-5 of his evidence he has said that there were some particles of blood and husk on the body of Appellant. Jai Kant Kumar (P.W. 2), Shailendra Kumar (P.W. 3) and Shyam Prasad (P.W. 5) in their evidence have said that on hearing "hulla" raised by Mantu Beldar (P.W. 6) that Appellant after killing Chhotu had concealed his dead body in the heap of husk, they went to the "Bathan" of Nagina Kewat (P.W. 7) where they found the dead body of son of informant in the heap of husk. Out of these witnesses only Shailendra Kumar (P.W. 3) has said that Appellant was caught by him and other witnesses and then the Appellant confessed that he had committed the murder of son of informant.

6. Mantu Beldar (P.W. 6) is a child witness who has been examined after test. According to the Fardbeyan, on hearing "hulla" raised by Mantu Beldar the informant came to know that Appellant had killed the deceased and his dead body was concealed in the heap of husk. P.Ws. 2, 3 and 5 have also stated that on hearing nulla raised by this witness they had gone to the "Bathan" of Nagina Kewat where they had seen the dead body of deceased in the heap of husk. P.W. 6 in his evidence has said that on the day of occurrence at about 12 O'clock in the noon when he was

playing near the "Bathan" of Nagina Kewat he found the Appellant brushing particles of husks from his hands and legs and he also saw the fist of Chhotu in the heap of husk and then he raised "hulla" that Appellant after killing Chhotu had kept his dead body in the heap of husk and on "hulla" villagers ran there and dead body of Chhotu was taken out from the heap of husk. He has said that Appellant was caught and village Chaukidar had also come. He has not said that Appellant had made any extra judicial confession. Shashidhar Upadhyay (P.W. 10) is the Investigating Officer of this case and he has proved formal FIR (Ext. 1) and Fardbeyan (Ext. 2) recorded by him. He has further said that he found the dead body of deceased in the "Bathan" of Nagina Kewat with particles of husk on the entire body and he prepared inquest report (Ext. 4) and recorded further statement of informant and other witnesses and submitted chargesheet. He has clearly stated that he did not find any blood stains at the place where dead body was found lying.

7. In this case admittedly there is no eye witness to the occurrence. As stated earlier charges u/s 302/201 IPC were framed against the Appellant but charge u/s 201 IPC was not found proved against the Appellant but charge u/s 302 IPC was found proved against him and he has been convicted and sentenced under this count in this case. The entire case of prosecution is based on so-called extra judicial confession of Appellant. On this point witnesses namely, Jai Kant Kumar (P.W. 2) and informant Raj Kumar Thakur (P.W. 8) have stated that when the Appellant was caught by the villagers he made extra judicial confession. The informant in his evidence has said that after catching hold of Appellant, he was tied with a standing tree. In para 20 of his evidence he has clearly stated that I.O. had seen the Appellant tied with a tree. He has admitted that in his statement before I.O. he had not stated that he had (sic) the Appellant with a tree. I.O. Shashidhar Upadhyay (P.W. 10) in his evidence has said that he had arrested the Appellant from his house and has clearly stated that he did not see the Appellant tied with a tree. If the evidence of I.O. that Appellant was arrested by him from his house is believed, in that case the evidence of informant and P.W.2 stands falsified that after arrest the Appellant made extra judicial confession and he was tied with a tree. This point was raised in the court below on behalf of the Appellant that I.O. had arrested him from his house and he was not found tied with a tree as stated by the informant but the court below in para-19 of its judgment after observing that how the Appellant escaped from the place where he was tied with a tree and was arrested by the I.O. from his house has not come in evidence and it has also not come that after tying the Appellant with a tree the villagers were keeping watch over him till the I.O. came there and so whether he was arrested from his house or whether he was tied with a tree is immaterial because of the fact that he was arrested just after the occurrence by the I.O. and he made statement before the witnesses that he had killed the son of informant. We are quite unable to agree with the aforesaid reasoning of the court below. Here the conviction of Appellant is based only on the basis of extra judicial confession and once any circumstance comes to show that there was no occasion

for the Appellant to make extra judicial confession before the prosecution witnesses, the entire case of prosecution will fail because as stated above there is no any direct or circumstantial evidence except the so-called extra judicial confession of Appellant. It is not the case of prosecution that after tying the Appellant with a tree informant and other witnesses left the place leaving the Appellant alone and giving him opportunity to escape from there and thereafter he was arrested from his house. To hold as such will amount to introduce a new story quite different from the cases of parties. The informant and P.W. 2 who are only witnesses who have stated that the Appellant made extra judicial confession before them and others that he had killed the son of informant but other prosecution witnesses have not supported the case of prosecution on the point that Appellant had made extra judicial confession. Besides this, we find that some prosecution witnesses including the informant have stated that a blood stained piece of wood was found lying at the place from where the dead body of deceased was recovered but the I.O. in his evidence has clearly stated that neither he found any blood stain nor such blood stained weapon at the place from where dead body was recovered. We further find that the court below in its judgment has observed that "It has come in the evidence that the accused saw the boy alone in the bathan of Nagina Kewat and he had assaulted mercilessly with a wooden piece as a result of which he died and". We fail to understand how the court below has come to this finding because there is no material on record to show that Appellant assaulted the deceased with a wooden piece because not a single witness on behalf of the prosecution has deposed like this.

8. Considering the entire evidence on record we find that prosecution has not been able to. prove the charge against the Appellant beyond all reasonable doubts.

9. In the result, this appeal is allowed. The judgment and order of the court below is hereby set aside. Since the Appellant is in jail, issue release order for release of Appellant, if not required in any other case.