
(2015) 12 PAT CK 0074

Patna High Court

Case No: Criminal Appeal (DB) No. 925 of 2014

Usman

APPELLANT

Vs

The State of Bihar and
Others

RESPONDENT

Date of Decision: Dec. 9, 2015

Acts Referred:

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 309, 372
- Penal Code, 1860 (IPC) - Section 120B, 302, 34

Hon'ble Judges: I.A. Ansari, Actg. C.J. and Chakradhari Sharan Singh, J.

Bench: Division Bench

Advocate: Radhey Shyam Prasad, Advocate, for the Appellant; Indra Kumar Singh, APP, for the Respondent

Final Decision: Dismissed

Judgement

Chakradhari Sharan Singh, J.

The respondents herein stood charged with the offences punishable under Sections 302/34 and 120B of the Indian Penal Code in Sessions Trial No. 181 of 2004. One co-accused, Kedar Paswan, was also put on trial for the offences punishable under Sections 302 of the Indian Penal Code read with Section 27 of the Arms Act, 1959, Whereas the said Kedar Paswan came to be finally convicted and sentenced to imprisonment for life by the judgment and order, dated 20.7.2013/26.7.2013, passed by the learned 1st Additional Sessions Judge, Madhepura, the private respondents have been acquitted of the charge of criminal conspiracy by giving them benefit of doubt. The appellant is the informant and elder brother of the husband of the deceased. He is aggrieved by the judgment and order, under appeal, to the extent of acquittal of the present private respondents has been recorded.

2. It is the case of the appellant that the learned trial Court failed to appreciate the evidence adduced, at the trial, which was to establish that the private respondents herein had hatched the conspiracy, which finally resulted into killing of the deceased.
3. Learned counsel, appearing on behalf of the appellant, Mr. Radhey Shyam Prasad, has argued, referring to the materials on record, that the learned trial Court got influenced by such reasoning, which were irrelevant in a criminal trial. He has submitted that there were eye-witnesses also, who had deposed, at the trial, showing involvement of the private respondents as conspirators.
4. Before we deal with the impugned judgment and order, the prosecution case, as narrated in the First Information Report, needs to be taken into account in brief, according to which, at 9.15 PM on 25.4.2003, two persons, concealing their faces with mask (galmuchha), had come to the house of the informant's brother. They wanted to have the location of the "Mukhiyaji" from the wife of the brother of the informant, namely, Bibi Azima Khatoon (the deceased). In course of dialogue between the deceased and the said two persons, the deceased is said to have asked them as to why they had covered their faces. The deceased is claimed to have identified the accused, when they misrepresented themselves to be the residents of a different village. It is alleged that having been found to have been identified, one Kedar Paswan opened fire on the deceased. The informant, who is said to have witnessed the occurrence, came out, whereupon the other person, accompanying Kedar Paswan, fired upon the informant, but that narrowly escaped. The deceased was taken to the Government Hospital for treatment, where she was declared dead.
5. The informant claimed to be an eye-witness of the entire occurrence, who could identify the assailant Kedar Paswan in the light of lantern and the torch, which the accused, Kedar Paswan, was allegedly carrying.
6. In his fardbeyan to the police, which is the basis of institution of the FIR, the informant described the reason behind the occurrence as dispute in the business of a Boxer Club of which the husband of the deceased (brother of the informant) was also a subscriber and member. There was a scheme of the club to provide motor-cycle to its subscribers, which they continued for some time, but could not be carried on thereafter. The husband of the deceased and other persons were making demand for motor-cycle from the club. The owner and members of the club, namely, Md. Ayub Hasan, Md. Rahman, Md. Miraj, Md. Laddan, Md. Mannowar Alam, Md. Akhtar, Md. Asgar, Shekhar Bhagat (respondent No. 3), Bechan Bhagat (respondent No. 2) and Gautam Bhagat (respondent No. 4) are said to have hatched up a criminal conspiracy by hired criminals to kill the husband of the deceased. The miscreants had, on the date of occurrence, come to kill the brother of the informant, who could not be found, but since the miscreants were identified by the deceased, they killed her.

7. It transpires from the record that the police, upon investigation, initially submitted charge sheet against Kedar Paswan only under Section 302/34 IPC and 27 of the Arms Act and kept the investigation pending as regards other accused persons. Cognizance was taken accordingly on the basis of charge sheet submitted by the police against Kedar Paswan vide order dated 26.7.2003. Subsequently, the police submitted final report along with supplementary case diary. Rest of the 11 accused persons were not sent up for trial. A protest petition was filed by the informant.

8. Sessions Trial No. 181 of 2004 commenced against Kedar Paswan, wherein prosecution witnesses, namely, Bibi Arfun Khatoon (PW 1), Islam (husband of the deceased PW 2) and Ansar @ Babloo (PW 3) were examined and cross-examined. On the basis of petition filed under section 309, Code of Criminal Procedure, 1973, 12 other co-accused persons including the present private respondents were also summoned to face trial under Sections 302/34 and 120B IPC. In the aforesaid trial, Bechan Bhagat (respondent No. 2), Shekhar Bhagat (respondent No. 3) and Gautam Bhagat (respondent No. 4) appeared. The trial, so far as these persons were concerned, was separated from the other after framing of charge against them. As has been noted above, charge against co-accused Kedar Paswan had already been framed.

9. We find from the materials on record that altogether 12 witnesses were examined. The informant was examined as PW 9. He deposed, at the trial, by supporting the prosecution's case of Kedar Paswan having shot dead the deceased. It is the evidence of the informant that when he came out of the house, he saw respondent No. 2 pointing out towards him whereupon co-accused, Laddan, shot at him, but he escaped and the bullet hit and penetrated into a wall. He also deposed that he saw the respondents fleeing away towards northern side. Bibi Afrun Khatoon was examined as PW 1. She stated the same story as narrated by the informant that Kedar Paswan had shot at the deceased leading to her death. She has also stated, in her evidence, that other co-accused persons, including the private respondents herein, were standing behind Kedar Paswan at the time of occurrence. She also claims to be an eye-witness and said to have identified the accused persons in the light of the lantern. The husband of the deceased has been examined as PW 2, who, in his examination-in-chief, also claimed to have witnessed the occurrence from a distance of about 10 feet from the place of occurrence. He has also deposed that enmity between him and the accused persons existed. Md. Ansar @ Babloo, brother-in-law of Md. Islam (PW 2), also claimed to be an eye-witness having seen the occurrence from a distance of about 10 feet. The mother-in-law of PW 2, Munisha Khatoon, was examined as PW 4, who also claimed to be an eye-witness. PW 5 Md. Ershad and PW 6 Habib, residents of Mouza Chausa, were declared hostile to the prosecution. PW 7 was also declared hostile. PW 8, son of the informant, also claimed to be an eyewitness in his examination-in-chief, but on being cross-examined he admitted that he had not seen the deceased talking to Kedar Paswan.

10. The Investigating Officers were examined as PWs 10 and 11, who did not support accusations against the private respondents. PWs 12 and 13 were formal witnesses, who

proved the postmortem report.

11. Defence witnesses were also examined to support a story parallel to the prosecution story developed by the defence that the deceased was killed by her husband, because of illicit relationship, which her husband had with the younger sister of the deceased.

12. In the present appeal, we have to remain confined to the question as to whether the prosecution could establish beyond all reasonable doubt the charge against the private respondents of conspiracy or abetment leading to the killing of the deceased. The enmity between the prosecution witnesses and the private respondents has been proved by the prosecution witnesses. We find that there is material contradiction between the story narrated by the informant in his fardbeyan as regards the manner of occurrence and his subsequent deposition at the trial. Whereas, on the one hand, the informant named only two persons to have come to the house of his brother and talking to the wife of his brother, at 9.15 PM, on the date of occurrence, he, on the other hand, deposed, at the trial, that other persons, including the private respondents, were also present. We do not find any concrete and clinching evidence adduced at the trial on the basis of which one can conclusively arrive at a finding that the private respondents conspired with the assailant to get the deceased killed. We also find that no independent witness has supported the prosecution's case and those, who have supported the prosecution story and the accusation against the present respondents are highly interested witnesses. As has been noticed, the informant (PW 9) is the brother of the husband of the deceased, whereas PW 1 is the sister of the deceased. PW 2 is the husband of the deceased, whereas PW 3 is the brother-in-law of the deceased. PW 4 is the mother-in-law of PW 2. No other witness has supported the accusation against the private respondents.

13. In such circumstances, as indicated above, the view, taken by the learned trial Court recording acquittal of the private respondents, cannot be said to be not a reasonably possible view requiring interference by this Court in exercise of its appellate jurisdiction under the proviso to Section 372 of the Code.

14. It is well settled that acquittal by the trial court strengthens the presumption of innocence of an accused. The appellate court in an appeal against whose acquittal is required to interfere only if the evidence adduced at the trial conclusively prove and definitely indicate commission of offence by the accused persons. We have not been shown any evidence on record by learned counsel appearing on behalf of the appellant so clinching on the basis of which it can be said that conviction of the private respondents could be the only possible conclusion and no other view was possible. It is well established that no interference is required by the appellate court in an appeal against acquittal on the ground that a view other than the view taken by the trial court may also be a reasonably possible view.

15. This appeal does not merit admission and is accordingly dismissed.

I.A. Ansari, Actg. C.J.

I agree.