CASE NO.:
Appeal (crl.) 923 of 1998

PETITIONER:
Yakub Mian

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 21/04/2004

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

O R D E R

It is the prosecution case that in the intervening night of 6th and 7th June, 1987, deceased Mumtaz Mian was murdered by the appellant and two others. According to the prosecution, the deceased was attacked when he was sleeping on the roof of his house which was witnesses by his two sisters who were examined as PWs.3 and 10. It is the further case of the prosecution that after hearing the cries of said sisters of the deceased, PW-8 Hamid Mian, a neighbour, came to the spot and these two eye-witnesses named the appellant and two others as the assailants. PW-6 Ambika Choudhary, Chowkidar of village Kaur Bathua within the jurisdiction of Police Station Uchakagaon in Gopalganj District allegedly heard the galata in the early morning and went to the spot where the incident had taken place where he was unable to find out from PWs.3 and 10 who were the assailants. By that time the Inspector of Police of the above-said Police Station on hearing the news of the murder came to the spot. He recorded the statement of PW-6 which was treated as a complaint and a case was registered on the said basis. After completing the investigation, a challan was filed only against the appellant only. During the course of trial, the trial court having found some material against two other accused persons summoned them under Section 319 of the Code of Criminal Procedure. But after the trial, the court found no material to convict them, hence they were acquitted while accepting the evidence of PWs.3, 6, 8 and 10 convicted the appellant for an offence punishable under Section 302 IPC.

In an appeal filed by the appellant before the high Court of Judicature at Patna, the High Court disbelieved the evidence of PWs.3 and 10 the two sisters who allegedly witnessed the attack. So far as evidence of PWs.6 and 8 are concerned, the High Court did not rely upon the same to base a conviction, but surprisingly on the basis of certain clothes seized from the house of the appellant allegedly at his instance the court found the appellant guilty and confirmed the conviction and sentence imposed by the trial court.

In this appeal it is pointed out to us that the clothes which according to the prosecution contained blood when sent to the serologist, no blood of human origin was found on the said clothes. That apart the learned counsel also pointed out that this incriminating circumstance of seizing of the blood stained clothes was not put to the appellant when his statement was recorded under Section 313 of Cr.P.C., therefore, the said circumstance could not have been relied upon by the High Court to convict the appellant.

Learned counsel appearing for the State, however, contended assuming that evidence of PWs.3 and 10 are unbelievable, the evidence of PWs.6 and 8 was sufficient to convict the appellant.

He also submitted that the failure to put the circumstance of the seizure of blood stained clothes to the accused when his statement was recorded under Section 313 of the Code has not prejudiced the appellant, hence, the High Court was justified in convicting the appellant.

Having heard the learned counsel for the parties and perused the records, we are of the opinion that the High Court was justified in rejecting the evidence of PWs.3 and 10 for more than one reason. So far as evidence of PW-8 is concerned, in our opinion, it cannot be accepted because of his conduct though it is stated that PW-8 came to the spot on hearing the cries of PWs.3 and 10 and came to know of the names of the assailants still this witness did not tell anybody else nor did he go to the police to make a complaint. According to his evidence after hearing of the incident from PWs.3 and 10 he went away from the spot. This is not the normal conduct of a human being in a situation like that.

So far as PW-6 is concerned, his evidence is of no assistance for the prosecution. He is the village Chowkidar who early in the morning heard some galata in the house of the deceased, hence, he went there. He said that he saw Pws.3 and 10 sitting near the body of the deceased in a shocked condition, hence, he could not ascertain the names of the assailants from them. He on the basis of certain suspicion had mentioned in his statement to the police that the appellant was a man of bad character and because the deceased wife was beautiful he had committed the murder. We do not think this piece of evidence also be made the basis of conviction. Even otherwise the High Court did not base the conviction on the evidence of PWs.6 and 8.

This leaves us to consider the only piece of evidence relied upon by the High Court to confirm the conviction of the appellant, that is the seizure of blood stained clothes of the accused at his instance. As contended by the learned counsel for the appellant from the material on record there is nothing to show that the blood stains found on the clothes were of human origin. That apart this incriminating circumstance of seizure of these clothes which according to the prosecution were worn by the appellant at the time of attack, was not put to the accused when his statement was recorded under Section 313 of the Code which certainly has caused prejudiced to the accused because this is the sole basis on which the High Court has convicted the appellant. Therefore, in our opinion, this circumstance also cannot be relied on to base a conviction.

For the reasons stated above, we are of the opinion that the courts below were not justified in accepting the prosecution case to convict the appellant. The judgments of the courts below are set aside. The appellant is acquitted for all the charges. We are told that the appellant is on bail, if so, his bail bonds shall stand discharged.