

Sayed Mirdaha Vs. State of Bihar

Sayed Mirdaha Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/109196

Court : Jharkhand

Decided On : Jan-18-2017

Appellant : Sayeed Mirdaha

Respondent : State of Bihar

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal No. 199 of 1992 (R) Sayeed Mirdaha Appellant Versus The State of Bihar (Now Jharkhand) Respondent ----- CORAM : HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N.PATHAK ----- For the Appellant : : M/s.Altaf Hussain, Advocate Afaque Ahmed, Advocate For the Respondent : : M/s. Ram Prakash Singh, A.P.P. ----- C.A.V. on 04.01.2017 Pronounced on 18.01.2017 H.C. Mishra, J.

: Heard learned counsel for the appellant and the learned counsel for the State.

2. The appellant is aggrieved by the Judgement of conviction and Order of sentence dated 25.11.1992 passed by the learned Additional Judicial Commissioner, Lohardaga, in Sessions Trial No. 64 of 1988 / 73 of 1990, whereby the appellant has been found guilty for the offences under Sections 452 and 302 of the Indian Penal Code and has been convicted for the same. Upon hearing on the point of sentence, the appellant has been sentenced to undergo rigorous imprisonment for life for the offence under section 302 of the Indian Penal Code and rigorous imprisonment for two years for the offence under section 452 of the

Indian Penal Code, and both the sentences have been directed to run concurrently.

3. According to the prosecution case, it is alleged that on 11.09.1986 at about 7:00 A.M. in the morning the appellant and his father were blocking the way of the uncle of the informant, which was objected, whereupon it is alleged that the appellant assaulted the uncle of the informant by spade which hit the wall and thereafter both the accused entered the courtyard of the uncle of the informant and they started assaulting him by spade and lathi. The informant was watching the occurrence from his house which was in front of the house of his uncle. Other family members were also present. Upon 2 raising the alarm both the accused persons fled away. The uncle of the informant was brought to hospital, but he died in the way. The F.I.R. to the aforesaid effect was lodged on the basis of the fardbeyan of the informant, on the basis of which Kisko P.S. Case No. 28 of 1986, corresponding to G.R. No. 242 of 1986 was instituted and investigation was taken up. After investigation the police submitted the charge-sheet against both the accused persons. The other accused died during pendency of this appeal and accordingly, this appeal abated as against the co-accused appellant No.2, vide order dated 11.8.2016.

4. After commitment of case to the Court of Session, charge was framed against both the accused persons for the offence under sections 452 and 302 of the Indian Penal Code and upon the accuseds' pleading not guilty and claiming to be tried, they were put to trial. In course of trial the prosecution has examined eight (8) witnesses out of whom P.W.-2 Sikandar Mirdaha, is the informant of the case, P.W.-3 Kamrunnisa is the niece of the deceased, P.W.-4 Samida Khatoon is the wife of the informant and P.W.-6 Jaseema Khatoon is the daughter of the deceased and these are the eye witnesses to the occurrence who have supported the prosecution case. P.W.-7, Bishwanath Dubey is the Investigating Officer of the case and P.W.-8 Dr. Vaidya Nath Prasad Jaiswal, had conducted the post-mortem examination on the dead body of the deceased.

5. P.W.-1, Ram Krishna Mahto, is the scribe of the F.I.R. who also stated that he had written the F.I.R. as disclosed by the informant, which was read over and

explained to him, upon which he put his thumb impression, which also contains the signature of the Officer-in-charge of the police station. Upon his identification the F.I.R. was marked as Exhibit-1. P.W.-2, Sikandar Mirdha, who is the informant of the case, has stated that at the time of occurrence he was at his door when both the accused were blocking the way by giving ridge on the land. His uncle objected, whereupon it is alleged that the accused Sayeed Mirdaha assaulted him by spade which hit the wall and 3 it also hit the uncle of the informant where after Sayeed Mirdha assaulted his uncle by the handle of the spade and the other accused also assaulted him and when the deceased fell down they fled away. The deceased was taken to hospital, but he died in the way. Thereafter he went to the police station and lodged the case. This witness was put to extensive cross-examination, but he has stood the test of cross-examination. He has stated in his cross-examination that he had given the statement before the police that upon the first assault made by the accused Sayeed Mirdaha, it hit the wall and also the deceased.

6. Almost similar statements have been made by the other eye witnesses, namely, P.W.-3 Kamrunnisa, the niece of the deceased, P.W.-4 Samida Khatoon, the wife of the informant and P.W.-6 Jaseema Khatoon, the daughter of the deceased and they have also supported the case as eye witnesses to the occurrence stating that the accused Sayeed Mirdaha and the other accused were blocking the way which was objected by the deceased, whereupon the deceased was assaulted. All these witnesses have stated that the accused Sayeed Mirdaha had assaulted the deceased by spade and they fled away when the deceased fell down and subsequently, the deceased died. These witnesses have also stood the test of cross-examination and apart from some minor discrepancies in their testimony, there is nothing in their testimony to discredit their testimony.

7. P.W.-5, Budhram Oraon, is the witness to the seizure list and he has stated that the Investigating Officer had seized the blood stained earth from the place of occurrence and had prepared the seizure list on which he had put his signature. He has identified his signature as Exhibit-2 on the seizure list. He has also stated that the Inquest Report of the dead body was prepared by the Investigating Officer upon which also he had put his signature and his signature was marked as

Exhibit-3 on the Inquest Report. There is nothing in his cross-examination to discredit his testimony. 4 8. P.W.-8 is Dr. Vaidya Nath Prasad Jaiswal, who had conducted the post mortem examination on the dead body of the deceased on 12.09.1986 and had found the following injuries on the dead body:- i) One bruise 7 x 1 on the left side of chest below the axilla. ii) One bruise 2 x 1 on the back of left elbow. iii) One incised wound 2x1/4 x1/4 on the left pariety. iv) Fracture of fourth, fifth, sixth, seventh & eighth ribs of left side of chest. He has stated that all the injuries were ante mortem in nature. Injury No. iii), was caused by sharp cutting weapon and other injuries were caused by hard and blunt substance and death was due to shock and hemorrhage due to those injuries. This witness has identified the post-mortem report to be in his pen and signature which was marked as Exhibit-4.

9. P.W.-7, Bishwanath Dubey is the Investigating Officer of the case, who has identified the F.I.R. which was earlier marked Exhibit-1 and he has stated about the place of occurrence to be the courtyard of the house of the deceased from where he had also seized the blood stained earth and had prepared the seizure list. He has proved the seizure list, which was marked as Exhibit- 2/1. He has also proved the Inquest Report of the dead body of the deceased, which was marked as Exhibit- 3/1 and has stated that upon completing the investigation he had filed charge-sheet in the case against the accused persons. In his cross-examination he has stated that on the date of occurrence, the accused persons had also gone to the police station and accused Sayeed Mirdaha was in injured condition. He has stated that the injury slip was prepared by him and the accused was sent for medical examination. This witness has also stated that the informant Sikandar Mirdaha, had not stated before him that the first assault of the accused Sayeed Mirdaha had hit the deceased also, rather he had stated that the first assault had hit the wall. 5 10. The defence is the denial of the charge and according to the defence case, in course of occurrence the prosecution side had assaulted the defence side in which the accused Sayeed Mirdaha was injured and the deceased had also fallen upon him and he also received injuries due to which he subsequently died. The defence has examined two witnesses, who are D.W.- 1, Idul Mirdaha and D.W.-2, is the appellant Sayeed Mirdaha himself, who have stated as above. D.W.-2, has also produced the injury slip which as wrongly

marked as Exhibit-A in the case, in view of the fact that the injury slip had not been identified by the Investigating Officer who had prepared the injury slip. As such Exhibit-A, could not be taken into evidence. No Doctor has been examined by the defence to prove the injuries upon the accused appellant Sayeed Mirdaha. As such there is no documentary evidence to prove any injury upon the appellant, Sayeed Mirdaha. A counter case filed by the accused Sayeed Mirdaha in the form of complaint, which was sent for institution of the police case, has been proved as Exhibit-B (Certified Copy).

11. Learned counsel for the appellant has submitted that the appellant has been falsely implicated in this case, in as much as, the appellant was putting boundary on his own land which was objected by the deceased and it was the prosecution side which first assaulted the appellant causing injuries on him due to which he fell down and in course of quarrel the deceased fell upon him and he also received injuries due to which he subsequently died. Learned counsel submitted that the prosecution case has been supported only by the interested witnesses who are the close family members of the deceased and not a single independent witness has come forward to support the case of the prosecution. Learned counsel has placed reliance upon the decision of the Supreme Court of India in Lakshmi Singh and Others Vs. State of Bihar, reported in (1976) 4 SCC394 wherein it is held as follows:-

14. -----. It is well settled that it is not necessary for the defence to prove its case with the same rigour as the prosecution is required to prove its case, and it is sufficient if the defence succeeds in throwing a reasonable doubt on the prosecution case which is sufficient to enable the court to reject the prosecution version.

12. It is also submitted by learned counsel for the appellant that since the prosecution has concealed the fact that the appellant was also injured in the occurrence, which fact has been proved by the defence witnesses and also admitted by P.W.-7, Bishwanath Dubey, the Investigating Officer of the case, sufficient doubt has been created in the prosecution story. In this connection learned counsel has also placed reliance upon the decision of the Supreme Court

of India in State of U.P. Vs. Madan Mohan and Others, reported in (1989) 3 SCC390 wherein it is held that non-examination of the independent witnesses and the failure of the prosecution to explain the injury on the accused makes the prosecution case doubtful. Placing reliance on these decisions learned counsel submitted that the prosecution has failed to prove its case beyond all reasonable doubts and accordingly, this is a fit case in which the Judgement of conviction and Order of sentence passed by the Court below be set aside and the appellant be acquitted of the charge.

13. Learned counsel for the State on the other-hand has opposed the prayer and has submitted that the place of occurrence is the courtyard of the deceased and accordingly, the family members are the only natural eye witness in the case. It is submitted that four eye witnesses have supported the case stating that it was the appellant, Sayeed Mirdaha, who had assaulted the deceased by spade causing injuries upon him and the other accused had assaulted him by lathi. The deceased subsequently succumbed to injuries while he was being taken to hospital. Learned counsel submitted that there may be minor discrepancies in the evidences of the witnesses, but all the eye witnesses have clearly stated that it was this appellant who was armed with 7 spade and had assaulted the deceased by spade. The ocular evidence of the eye witnesses is fully supported by the medical evidence of P.W.-8, Dr. Vaidya Nath Prasad Jaiswal, who had found four injuries on the dead body of the deceased, including the incised wound. Learned counsel accordingly, submitted that the prosecution has been able to prove the case beyond all reasonable doubts. It is submitted that though the defence has tried to make out a case that the appellant was injured in the occurrence, but no documentary evidence has been proved and the defence has failed to prove any injury. Though P.W.-7, the Investigating officer has admitted that the appellant was also found to be injured, but he has not stated anything about the site or nature of the injury, i.e., whether the injury was bleeding one, or only bruise or abrasion. Learned counsel accordingly, submitted that the defence has failed to prove any injury upon the appellant and as such it was not the burden of the prosecution to explain any such injury. Learned counsel reiterated that the prosecution has been able to prove the case beyond all reasonable doubts and the appellant has been rightly convicted and sentenced by the Court below.

14. Having heard learned counsels for both the sides and upon going through the record, we find that the prosecution case has been supported by four eye witnesses and all of them have stated that it was the appellant who was armed with spade and had assaulted the deceased by spade. These witnesses have been put to extensive cross-examination but nothing could be taken in their cross-examination to discredit their testimony. In the F.I.R. though it is stated that the first assault made by the appellant had hit the wall, but in evidence it is stated that the first assault had hit the wall as also the deceased, but this discrepancy is not such so as to disbelieve the evidence of the witnesses in entirety, in as much as, all the witnesses have stated that the appellant was armed with spade and he had assaulted the deceased by spade whereas the other accused had assaulted the deceased by lathi. The ocular evidence of the eye witnesses is fully corroborated by the 8 medical evidence of P.W.-8, Dr. Vaidya Nath Prasad Jaiswal, who had proved the post-mortem report and has detailed the injuries on the deceased, including one incised wound. The Doctor has stated that the deceased had died due to shock and hemorrhage caused by ante mortem injuries upon him. In the present case since the place of occurrence is the courtyard of the deceased, where only the family members were present, in our considered view the non-examination of the independent witnesses is only natural, as the occurrence was witnessed only by the family members who have fully supported the prosecution case. In our considered view, the prosecution has been able to prove the charges against the appellant beyond all reasonable doubts and he has been rightly convicted and sentenced for the offences as aforesaid.

15. Accordingly, the Judgement of conviction and Order of sentence dated 25.11.1992 passed by the learned Additional Judicial Commissioner, Lohardaga, in Sessions Trial No. 64 of 1988 / 73 of 1990, are hereby, affirmed. The appellant is on bail. His bail bond is cancelled and the appellant is directed to surrender in the Trial Court below to serve out the sentence. The Court below is also directed to issue process compelling the surrender / production of the appellant for serving out the sentence.

16. This appeal is accordingly, dismissed. Let the L.C.R. be sent back forthwith along with the copy of this Judgement. (H.C. Mishra, J.) Dr. S.N. Pathak, J.

: (Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi. Dated the 18th of January, 2017 D.S./N.A.F.R.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com