

Manglu Asur Vs. State of Bihar

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Court : Jharkhand

Decided On : May-10-2017

Appellant : Manglu Asur

Respondent : State of Bihar

Judgement :

1 Criminal Appeal No. 156 of 1995(R) (Against the Judgment of conviction dated 13.06.1995 and Order of sentence dated 14.06.1995 passed by learned 1st Additional Sessions Judge, Gumla, in S.T. No. 44 of 1991) ----- Manglu Asur Appellant Versus The State of Bihar (Now Jharkhand) ... Respondent For the Appellant : Mr. R.S. Majumdar, Sr. Advocate For the State : Mr. Sanjay Kumar Pandey-2, APP. ----- PRESENT HONBLE MR. JUSTICE H. C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK ----- By Court :- Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant is aggrieved by the Judgment of conviction dated 13.06.1995 and Order of sentence dated 14.06.1995 passed by the learned 1st Additional Sessions Judge, Gumla, in S.T. No.44 of 1991, whereby the sole appellant was found guilty and convicted for the offence under Section 302 of the Indian Penal Code. After hearing on point of sentence, he has been sentenced to undergo R.I. for life.

3. According to the prosecution case, the F.I.R. was lodged by one Etwa Asur, who is brother of the deceased Mangra Asur, whose marriage had been settled at

village Sukhua Pani, and on the occasion of Sarhul, he had gone to that village for participating in the tribal dance in the night. In the morning at about 6 a.m., the younger brother of the informant, namely, Bokha Asur came and informed the informant that he was informed by one Jhagar Asur that his brother Mangra Asur was assaulted by someone by axe on his head due to which he had died. Upon getting the information, informant went to the place of occurrence and found his brother lying dead in the pool of blood at the place of occurrence, with the axe stuck in the wound. It is stated in the F.I.R. that the informant tried his best to get the information about the culprit, but he could not get any information, and accordingly, the F.I.R. was lodged against unknown. On the basis of the F.I.R., Bishunpur P.S. Case No.25 of 1990 corresponding to G.R. No.379 of 1990 was instituted for the offence under Section 302 of the Indian Penal Code against unknown and investigation was taken up. After investigation, the police submitted the charge-sheet against the sole appellant.

4. Upon commitment of the case to the court of Session, charge was framed against the appellant for the offence under Section 302 of the Indian Penal Code and upon appellant's pleading not guilty and claiming to be tried, he was put on trial. In course of trial, ten witnesses were examined on behalf of the prosecution, out of whom P.W.-1 Parsuram Singh, is formal witness, who has proved the F.I.R. as Exhibit-1. P.W.-6 Ailu Asur and P.W.-9 Bhuila Asur, were only tendered by the prosecution. I.O. of the case has not been examined due to the fact that he was dead.

5. P.W.-10 Etwa Asur is the informant of the case and during his examination in the Court below, he has claimed to be an eye witness to the occurrence, stating that he had also gone for dance along with his deceased brother and he had seen the occurrence, in which the accused Manglu Asur assaulted the deceased by axe on his head. In his cross-examination, he has stated that he has seen the occurrence, though it was night. He has denied the suggestion to have given the statement before the police as stated in the F.I.R.

6. P.W.-3 Satendra Asur, P.W.-4 Manish Asur, P.W.-5 Rajendra Munda, P.W.-7 Sani Asur and P.W.-8 Bhikhu Asur have all supported the prosecution case as eye

witness of the occurrence, stating that the appellant Manglu Asur had assaulted the deceased by axe at the time of dance on his head causing his death. P.W.-5 however, stated in his cross-examination that he had not seen the occurrence, as prior to occurrence he had returned home. The attention of all these witnesses were drawn towards their statement before the police that they were informed about the occurrence by the father of the deceased, but they have denied to have given such statement before the police. The fact however, remains that the I.O. has not been examined in the case and the contradiction of these statements could not be taken from the I.O. We have looked into the case diary for our satisfaction, and we find that all these witnesses were not the eye witness of occurrence, and they had not seen the occurrence.

7. P.W.-2 Dr. Krishna Prasad, who was Civil Assistant Surgeon of Sadar Hospital, Gumla, had conducted the post-mortem examination on the dead body of the deceased and he has stated about the injuries found on the deceased and has also stated that axe was stuck in his wound. He has proved the post-mortem report to be his pen and signature, which was marked Ext.-2. 3 8. Thus, from the evidence on record, we find that all the witnesses, who have claimed to be the eye witness to the occurrence were actually not the eye witness of the occurrence, rather they were hearsay witness, but in the Court below, they have deposed as the eye witnesses. The suggestion was given to them about their statement given before the police which they have denied. I.O. has not been examined in the case and the defence has vitally been prejudiced by the non-examination of the I.O., as the defence could not take the contradiction from the I.O. Even the informant, who according to the F.I.R. itself, is not the eye witness to the occurrence and had lodged the F.I.R. against unknown, has claimed to be the eye witness to the occurrence. The father of the deceased, from whom the other witness had learnt about the occurrence, has only been tendered by the prosecution as P.W.-9 Bhuilu Asur.

9. In the aforesaid facts and circumstances, we are of the considered view that the prosecution has utterly failed to prove the case against the appellant beyond all reasonable doubts, and it is a fit case in which the accused appellant ought to have been acquitted of the charge.

10. Accordingly, the impugned Judgment of conviction dated 13.06.1995 and Order of sentence dated 14.06.1995, passed by the learned 1st Additional Sessions Judge, Gumla, in S.T. No. 44 of 1991, are hereby, set aside. The appellant is found not guilty and he is acquitted of the charge. The appellant is on bail and he is discharged from the liabilities of his bail bond.

11. This appeal is accordingly allowed.

12. Let the Lower Court Record be sent back forthwith along with the copy of this Judgment to the Court concerned. (H. C. Mishra, J.) (Dr. S.N. Pathak, J.)
Jharkhand High Court, Ranchi Dated the 10th May, 2017 Anit/Anjali

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