

Babloo Kisku Vs. State of Bihar

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Court : Patna

Decided On : Nov-11-1999

Judge : B.P. Sharma and M.L. Visa, JJ.

Appeal No. : Criminal Appeal No. 9 of 1992

Appellant : Babloo Kisku

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : B.P. Sharma and M.L. Visa, JJ. 1. The sole appellant in this case has been convicted of offence under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life. He has also been convicted on offence under Section 324 of the Indian Penal Code and has been sentenced to undergo R.I. for two years each under two different Courts. However, the sentences have been ordered to run concurrently. 2. A case was registered at P.S. Poraiya Hat on 6th February, 1989 at 12

Judgement :

B.P. Sharma and M.L. Visa, JJ.

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life. He has also been convicted on offence under Section 324 of the Indian Penal Code and has been sentenced to undergo R.I. for two years each under two different Courts. However, the sentences have been ordered to run concurrently.

2. A case was registered at P.S. Poraiya Hat on 6th February, 1989 at 12.30 p.m. by drawing up a formal F.I.R. on the fardbeyan of one Lumba Murmu son of late Pradhan Murmu of village Baghamara Purabtola. recorded on 5th February, 1989 at 8.30 a.m. in the morning at Deodar P.S. The fardbeyan was recorded by the Sub-Inspector, Mahendra Yadav of Deodar Police Station, The informant stated that in the previous night at about 10.00 a.m., he was sitting in front of house of one Sukul Kisku with Thoka Hansda of the same village. They were sitting of a ridge in front of house of said Sukul Kisku and were talking among themselves. The appellant Babloo Kisku appeared where. He was using abusive language for Sukul Kisku and he asked him as to why he was holding a Panchayat. Sukul Kisku objected to it and forebade him from uttering abusive language on which Babloo Kisku became infuriated and stated that though the palm tree fell to his share, the said Sukul Kisku was claiming share in it. Sukul then told him that it was in his share and the appellant had nothing to do with the palm tree. The appellant then told him that he will cut the palm tree and when Sukul Kisku challenged him, he inflicted a blow in the abdomen of Sukul Kisku with a dagger or knife and Sukul fell on the ground. The informant and Thoka Hansda also tried to intervene and they were inflicted blows with the knife by the appellant and they sustained injuries. In the meanwhile, on hulla, wife and son of the said Sukul Kisku came out from inside the house and they also saw blood-stained knife in the hand of Babloo the appellant and they also raised alarm on which some villagers namely Nikulas Murmu and Raiman Murmu also arrived and they also saw the appellant who ran away. Sukul Kisku died as a result of injuries sustained by him in course of this incident and the matter was then reported to Police and the statement of the informant Lumba (P.W. 2) was recorded in the fardbeyan (Ext. 3). The said Police Officer Mahendra Yadav (P.W. 8) took up investigation after forwarding the fardbeyan to Poraiyahat P.S. for registering a case and he proceeded with the investigation of the case. He went to the P.O., prepared the inquest report of the dead body and sent the same for P.M. Examination and inspected the P.O. and also recorded the statements of some witnesses. He had also searched the house

of the appellant and is said to have recovered a sickle (Kachia), from the house of the appellant by preparing a seizure list (Ext. 7). Later, on completion of Investigation, he submitted charge-sheet, on which cognizance was taken and the case was committed to the Court of Session and the trial was taken up before the Sessions Judge, Godda who delivered the judgment and passed order, as stated above.

3. It appears to be the case of defence from the trend of cross-examination and the suggestions given to the witnesses for the prosecution that wife of deceased, namely, Malho Tuddu (P.W. 4) had some illicit connection with one Gopal and on this account, she took the informant and P.W. 1 in her collusion and got her husband killed and falsely implicated the appellant in this case. But, the learned trial Court did not accept this theory and relying on the evidence adduced on behalf of prosecution, he held that appellant guilty of the offence, as stated above, and convicted and sentenced him.

4. Altogether eight witnesses have been examined by the prosecution in support of the prosecution story. Out of them, P.W. 7 Dr. Raghvendra Prasad Choudhary happens to be the Doctor who held autopsy over the dead body of the deceased and he also examined the injuries found on P.W. 2. P.W. 8 Mahendra Yadav is the I.O. of the case. The rest six witnesses are on the point of occurrence. Out of them, P.W. 2 Lumbu Kisku is the informant himself and P.W. 1 Thoka Hansda is another witness who is said to be an eye-witness of the occurrence. However, both the witnesses had also sustained injuries. P.W. 3 Mahadeo Kisku happens to be son of the deceased and P.W. 4 Malho Tuddu is widow of the deceased. Both of them are said to have come out of the house after hearing hulla at the time of occurrence and had seen the deceased fallen on the ground with injury and also saw the appellant present there with a dagger. They also saw that the appellant had assaulted P.Ws. 1 and 2 with the knife held by him. P.W. 5 Nicholas Murmu and P.W. 6 Raiman Murmu are co-villagers and they are said to have arrived at the P.O. on hulla and they learnt about the occurrence. P.W. 5, however, claims that he had seen the appellant present there, when he came there.

5. So far as the medical evidence is concerned, according to P.W. 7 Dr. Raghavendra Prasad Choudhary, he held the P.M. Examination over the dead body of Sukul Kisku on 6th February 1989 at 4.00 p.m. in Godda Sadar Hospital and found one stab injury on the left side of abdomen 2-1 / 2' x 1' x abdominal cavity. The omentum was protruding out of the wound. However, on dissection, the Doctor found that spleen was punctured and ruptured with blood collected in abdominal cavity in large quantity. The stomach contained semi-digested rice. In the opinion of the Doctor, the wound was ante-mortem in nature caused by sharp-cutting and penetrating weapon, such as dagger or knife. The death had taken place due to such injuries within 24 hours from the time of autopsy as a result of shock and splenic haemorrhage, caused by above-mentioned injury. The P.M. report is Ext. 1. The injury on the person of the deceased also finds support from Ext. 6, the inquest report prepared by the I.O. (P.W. 8). It is, therefore, clear that the medical evidence lends support to the prosecution story regarding the manner of occurrence. So far as the place of occurrence is concerned, according to P.W. 8, when he visited the village, he found the dead body lying and he also found huge quantity of blood fallen on the ground near the place of occurrence. Therefore, the place of occurrence cannot be disputed. The I.O. (P.W. 8) had also found injuries on the person of P.Ws. 1 and 2 and had referred them to the Hospital for treatment and P.W. 7 had also examined their injuries and had stated so in his evidence as P.W. 7. These injury reports are Exts.-2 Series.

6. So far as the two eye-witnesses who are injured witnesses are concerned, considering the circumstance that they are the persons who had sustained injuries in course of occurrence, their evidence, must be accepted as their presence at the P.O. cannot be doubted. They have stated that while they were talking to the deceased in front of the ridge of the house, the appellant came there and after altercation, inflicted injury in his abdomen as a result of which the deceased died and when these two witnesses tried to intervene, they were also inflicted injuries by the appellant. Therefore, their version in support of the prosecution story cannot be doubted. So far as P.W. 3, the son of the deceased, is concerned, he has stated that when he heard hulla from inside the house, he came out and saw his father fallen on the ground and he also saw the appellant assaulting the two witnesses, i.e. P.Ws. 1 and 2 with a knife and he was also threatened that

whoever will come close to him, will be killed. Thereafter, he fled away. P.W. 4, the widow of the deceased also stated that when she heard hulla from the house, she came out and saw her husband fallen on the ground. She has made it clear that the appellant happened to be the elder brother of her husband (the deceased). It is, also clear that the appellant and the deceased were separate and there was some dispute between the two regarding a palm tree and the claim of the parties over it was the bone of contention because of which the appellant is said to have inflicted injury to the deceased resulting in his death. However, this P.W. 4 stated that when she came out. there was , none, except she herself and the two witnesses, namely, P.Ws. 1 & 2 and the accused and she has stated that the assault had already taken place on her husband before she came. But, she has also stated that the accused was holding a dagger in his hand. So far as the statement of P.Ws. 5 & 6 are concerned, they have arrived subsequently and though P.W. 5 had tried to explain that he had seen the occurrence, it does not appear to be probable.

7. It appears that in course of evidence, it has been pointed out to the witnesses that they had made statements before the I.O. that the blow on the victim was inflicted with a sickle (kachia) and it also appears that the I.O. had seized sickle (kachia) from the house of the appellant on the date he had visited the P.O. village, but this kachia was never sent to the Forensic Science Laboratory for examination regarding presence of blood on it, nor this Kachia (sickle) was produced in Court. The witnesses also did not accept that they had stated, that it was kachia which was used for inflicting injury. The Medical Report also shows that the injury was inflicted with a weapon which was sharp-cutting and penetrating one. It could not have been caused with a weapon having rough edge, as kachia (sickle) happens to be. Therefore, the learned trial Court has rightly observed that it appears to be that out of his over-enthusiasm the I.O. seized the Kachia from the house of the appellant in his absence and then started introducing the use of Kachia in causing injury to the victim and the witnesses.

It has rightly been observed by the trial Court that had it been so that the kachia which was seized from the house of the appellant was the weapon of offence and the appellant was found absconding from his house, certainly he would have

thrown away the same instead of leaving it in the house to be seized by the Police Officer. It is, therefore, apparent that the confusion regarding the weapon of offence has been created on account of this unnecessary over-enthusiasm shown by the I.O. (P.W. 8).

8. Another pertinent point has been raised in this case that whereas the informant did not state anything in his fardbeyan (Ext. 3) that either there was any lantern burning at the place of occurrence or that the accused brought a lantern with him, but in evidence the witnesses started saying that when the appellant came to the place of occurrence at the alleged time of occurrence, he was holding a lantern in his hand. It was probably for the reason that because the occurrence had taken place at 10.00 p.m. in the night and that it was a moonless night, the police officer tried to introduce the theory of presence of some source of light to facilitate identification of the assailant. Again the learned trial Court, after considering everything, has observed that so far as the presence of lantern, as stated by the witnesses, is concerned, it cannot be accepted and it also appears to be the manipulation of the police officer. Therefore, the presence of lantern, the source of identification has been negated by the trial Court and rightly so. However, if it is accepted that if there was no source of light present at the P.O. at the time of occurrence, was it possible for the witnesses to identify the culprits? The answer is in the affirmative. Even in the dark night in open place, there is some light present which can facilitate identification of a person who is closely known and whose features are known to the witnesses. It is all the more possible in view of the fact that the injury with a knife has to be inflicted from a close distance, if a person is present at such close distance, there does not appear to be any reason as to why a well known person could not have been identified. It is also worth considering that according to the prosecution story, when the appellant had arrived at the place of occurrence, he had abused and there was exchange of hot words between the deceased and the appellant, and therefore, the identification of the appellant by voice was also very much possible. Therefore, the identity of the appellant in this case could not have been disputed. It is also natural that when some altercation was going on between the appellant and the victim, it might have attracted the attention of the witnesses, especially P.Ws. 3 and 4, the son and wife of the deceased respectively and they started coming out and in the meanwhile,

the appellant had inflicted the injury on the deceased but he was in the process of assaulting the witnesses, and, thus, he was present. Since the informant (P.W. 2) has stated that after he was assaulted, the appellant fled away. It is obvious that these were two persons other than the witnesses who were assaulted, i.e. P.Ws. 1 and 2 and, therefore, it must have taken time in inflicting the injuries to the witnesses who were intervening to save the victim. So the claim of P.Ws. 3 and 4 regarding the presence of the appellant at the place of occurrence, when they came to the P.O. on hulla, also cannot be doubted. It is, therefore, evident from the materials and circumstances appearing in the case that it was the appellant who had caused injuries to the deceased in this case resulting in his death and it is also clear that he had caused injuries to P.Ws. 1 and 2 with some sharp-cutting weapon and had committed offence under Section 324, I.P.C. for which he has been convicted by the trial Court.

9. However, it has been contended on behalf of appellant that this is case in which a single blow has been dealt on the victim which resulted in his death and it cannot be said that the appellant in this case had, by all means, intended to kill the victim and with this intention inflicted the blow on the deceased. Therefore, it has been submitted that it should not be treated as a case under Section 302, I.P.C. It is true that a single blow has been inflicted on the deceased, no doubt, but the blow was inflicted in his abdomen which is a vital part with a sharp-cutting weapon like dagger. Moreover, it also appears from the evidence that there was some altercation between the two prior to inflicting the injury and according to P.Ws. 1 and 2, the appellant is said to have uttered that he will kill the deceased. In the circumstance, even though the single blow has been inflicted causing death of the appellant in this case, it will be a case of causing injury intentionally and the conviction of the appellant, therefore, is justified. Moreover, it is obvious that the two witnesses, i.e. P.Ws. 1 and 2 who tried to intervene in the matter, were inflicted blows by the appellant. Therefore, his determination is clear from his action. In this view of the matter, the conviction of the appellant for offence under Section 302, I.P.C. does not require any interference.

10. Accordingly, there does not appear to be any merit in this appeal and the appeal is accordingly dismissed and the judgment and order of the trial Court are

hereby confirmed.

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