

Manu Nag Vs. State of Bihar

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Court : Patna

Decided On : Apr-13-1999

Judge : R.A. Sharma and D.N. Prasad, JJ.

Appeal No. : Cr. Appl. Nos. 316 and 361 of 1989(R)

Appellant : Manu Nag

Respondent : State of Bihar

Disposition : Appeal Allowed

Prior history : D.N. Prasad, J. 1. This Criminal Appeal is arisen out of the judgment of conviction and sentence passed by the then learned 2nd Additional Sessions Judge, Singhbhum at Chaibassa by which the learned trial Judge convicted the appellant for the offence under Section 302, I.P.C. and he was sentenced to R.I. for life and also to pay a fine of Rs. 1,000/- and in default to undergo S.I. for six months. 2. The case of the prosecution in brief, as stated that on 6-11-1987 at about 8 a.m. the Informant

Judgement :

D.N. Prasad, J.

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Chaibassa by which the learned trial Judge convicted the appellant for the offence under Section 302, I.P.C. and he was sentenced to R.I. for life and also to pay a fine of Rs. 1,000/- and in default to undergo S.I. for six months.

2. The case of the prosecution in brief, as stated that on 6-11-1987 at about 8 a.m. the Informant along with her husband Tepal Tamaria had gone to Gulu Bazar to purchase rice. They purchased rice worth Rs. 50/-. The son of informant Ratan returned from the market and at about 3 p.m. the informant along with her husband started from the market for their house and they reached near Karla Pahar when her husband asked her to go to the house and prepare the meal and he would come later on and thereafter the Informant went to her house alone leaving behind her husband and she cooked the meal but her husband did not return to the house till 8 p.m. Thereafter, she became anxious and thereafter she started searching her husband along with her son Manki and went to the place where she had left him. It is further alleged that when they reached at a distance about 2 k.m. north near Karla Pahar, they saw the dead body of her husband and she also saw several injuries on the person of dead body caused by sharp-cutting weapon and thereafter she started weeping and crying and thereafter her elder son, daughter-in-law also rushed there. Thereafter, they took the dead-body and brought the same near Raru river. It is further alleged that the villagers also reached there. She sent both her sons to Munda and Manki to inform about the occurrence and the villagers who reached there were keeping guard over the dead body. On the next morning, Manki reached there to whom she narrated the entire incident. Manki with the help of villagers removed the dead-body to Bandgaon Police Station and she also went to the police station where she gave her statement in Mundari language and accordingly, the F.I.R. was registered. The Informant stated in the F.I.R. that the villagers used to call her witch and for that reason her husband (deceased) used to abuse the villagers and she suspected that some unknown person might have killed her husband.

3. The police investigated into the case and submitted charge-sheet against the appellant. The witnesses were examined in the lower Court and after hearing both sides and considering the evidence on record, the learned trial Judge convicted the appellant and sentenced him to undergo R.I. for life and he was also fined for

Rs. 1,000/-.

4. The defence has alleged that the appellant has been falsely implicated in the case out of previous enmity and the whole story of the prosecution has been concocted after-thought against the appellant in order to harass him,

5. On being aggrieved by and dissatisfied with the impugned judgment of conviction and sentence, the appellant preferred this appeal on the grounds that there is no eye-witness of the occurrence and no any independent witness has been examined by the prosecution to substantiate the story of prosecution. It is also claimed that Bhujali said to have been seized from the house of the appellant does not belong to him and it was never produced in the Court during the trial as well as there was no blood stains over the said Bhujali and the prosecution has totally failed to establish that actually the said Bhujali was used in the crime. It is also claimed that there is no whisper in the F.I.R. specifically that the appellant had ever told the deceased about the story of witch to his wife, rather there is a general allegation in the F.I.R. for calling witch to the wife of the deceased by the villagers and due to which the Informant suspected that some of the villagers might have killed her husband and so there is no direct evidence against the appellant to connect him for the alleged offence and as such the judgment of conviction and sentence is fit to be set aside. The appellant also filed appeal from Jail being No. Cr. Appeal No. 361/89(c).

6. It is worth to mention, at this stage, that admittedly the F.I.R. was lodged against unknown.

7. Altogether 15 witnesses have been examined on behalf of the prosecution in this case. P.W. 1, Budhni Tamarin, the informant stated that she along with her husband had gone to Gulu Bazar, but she returned to house earlier on the advice of her husband and her husband remained there but later on her husband did not return back in the night but his dead body was found. There was also injuries found on his person. She stated in para-3 that there was quarrel with her husband and the appellant as the appellant used to say her 'Dain' and there was Panchayati held for the same but she admitted in her cross-examination that there was no any document reduced into writing in the said Panchayati. She further

claimed that except the appellant none of the villagers called her 'Dain' which is apparently contradictory to her own statement as alleged in the F.I.R. Itself where she claimed that the villagers used to call her 'Dian' and she has not narrated specifically against the appellant in the F.I.R.

8. P.W.2, Birsa Nag stated that he had seen the appellant Manu Nag in the Gulu Market, who was holding Bhujali. Admittedly, he had not seen the occurrence as he admitted in para-3 that the appellant is a resident of another village.

9. P.W. 3, Bir Singh Tameria, the son-in-law of the deceased stated that when his father-in-law did not return in the night, thereafter he started searching and he found the dead-body of his father-in-law lying on the lane. P.W.4, Manki Tamari is the son of the deceased and he also found the dead-body lying in the side of the road and he found the injuries on the person of the dead-body. According to him, there was a dispute between his father and the appellant in respect of the matter of Dain, but he admitted that he had never reported anything in respect of the said dispute to anybody.

10. P.W. 5, Ratan Tamariais also the son of the deceased and he also claimed to have seen the dead body having injuries on his person. P.W, 6, Heerchand Tanti stated that he had met with the appellant, Manu Nag on the way and he was holding Bhujali in his hand and told him that he killed Tapela. He admitted in his cross-examination that he had seen the appellant Manu Nag in the light of the moon and he had identified him in the light of the moon,

11. P. W. 7 is the formal witness, who put his signature on the seizure list. P.W, 8 has been tendered by the prosecution. P.W. 9, Mangra Manki said to be the Manki of the village and he stated that he got information in the morning about the occurrence and he went there and found the dead-body lying in the side of the road. He also proved his signature over the F.I.R. (Ext. 1 /2), as well as on the seizure list of cover of the Bhujali being Ext. 1/1. He further stated that the wife of the appellant also told him about the incident. He further deposed that one Bhujali was recovered and seized from the house of appellant and the said Bhujali was produced before the police and he also proved his signature over the said seizure list (Ext-1/3 and 1/4) and he also put his signature on inquest report, which is Ext.

1/5 and 1/6. He admitted in his cross-examination in clear terms that he had not seen the occurrence. He further admitted in para-4 that the wife of the appellant did not say anything to him. He also admitted that the said Bhujali has not been produced in the Court.

12. P.W. 10 stated that one Bhujali was recovered in presence of Mangra and Chunu. P.W.-11 claimed to have informed about the occurrence to Manki and he had gone with the son of the deceased. He further stated that there was a Panchayati in connection with the matter of Dam, but he admitted that he does not remember the name of the persons attending the said Panchayati. He further admitted that no any document was reduced into writing in the said Panchayati. P.W. 12 and P.W. 13 had been tendered by the prosecution.

13. P.W. 14, Dr. R.P. Singh, held post-mortem on the dead body and found the following ante-mortem injuries namely ;

- (i) Sharp-cutting wound on the left cheek extending up to mouth of 5' x 2' x deep to oral cavity.
- (ii) Sharp cutting wound on the left side of neck of size 3' x 2' deep to vessels of the neck which were cut.
- (iii) Stab wound on the left side of anterior chest wall of size 2' x 2' deep to thoracic cavity.
- (iv) Stab wound on the left hypochondrium size 2' x 1 1/2' x deep to abdominal cavity.
- (v) Multiple step wounds (seven in number) on the left side of lateral abdominal wall.

According to him, the nature of weapon used was sharp cutting. He admitted that he had not mentioned the dates in the post-mortem report on the basis of which he came to the conclusion that the injuries were ante-mortem. He also admitted that the injuries found on the dead-body may be caused by any sharp- cutting weapon other than Bhujali. He admitted that he had not given the measurement of all the

stab injury being Injury No. 5.

14. P.W. 15, Parsu Ram Singh, is the Investigating Officer and he claimed to have inspected the place of occurrence. He also claimed to have examined the witnesses. He further stated that on 18-11-1987 one Bhujali was produced by Mangra Manki. He also admitted that the appellant was arrested on 16-11-1987 and he had sent the article seized for chemical examination. He further admitted in his cross-examination in Para-6 that there is a forest around the place of occurrence. He further admitted that the chemical examination report has not been received. He also admitted that he had not searched the house of the appellant, and the said Bhujali has not been produced in the Court. He also admitted that he had not examined the witness, Joto Tamarua, P.W. 10 and Mangra Hamsai, P.W. 12.

No any other witness has been examined on behalf of the prosecution.

15. The appellant was examined under Section 313 Cr. P.C. and he denied the allegation. He also stated that the said Bhujali does not belong to him.

16. Obviously, there is no eye-witness of the occurrence and none of the witnesses had seen the incident. P.W. 1, P.W. 3, P.W.-4 and P.W. 5 are own relations of the deceased and they have clearly deposed that they had not seen the appellant. There is an allegation about the fact that a Panchayati was held in connection with dispute on the point of Dam, but admittedly none of Panches has been examined in the prosecution case, nor any document has been reduced into writing in the said Panchayati to substantiate the said story. It is also clear from the F.I.R. itself that the informant alleged that the villagers were saying her Dain and due to which the informant put suspicion that her husband was killed by some villagers but the Informant later on stated in her evidence that it was appellant who told her Dain and due to which there was dispute with her husband. Had there been any such story or any dispute with the appellant from before, the Informant would have easily disclosed the name of the appellant at the first instance, but admittedly the appellant has never named in the First Information Report, nor any suspicion was alleged against him in the F.I.R. P.W. 6 claimed that appellant told him that he had killed Tapela, but surprisingly enough to note that this fact has not

been corroborated by any other witness. Moreover, had there been such incident or narration by the appellant, he would have easily told this fact to the Informant or her sons at the early stage so that the name of the appellant would have been figured in the F.I.R. itself.

17. There is an allegation that one Bhujali was recovered from the house of the appellant, but admittedly the said Bhujali has not been produced in the Court and there is no specific evidence coming forward to indicate that actually the said Bhujali was used in the said occurrence by the appellant. Moreover, P.W. 9 Mangra Baring also admitted in his cross-examination that the wife of appellant did not say anything to him. The doctor also opined that the said injuries can be caused by any sharp cutting weapon other than Bhujali.

18. It is well settled that conviction under circumstantial evidence, the evidence must satisfy three tests:

- (i) The circumstances from which an inference of guilty is sought to be drawn, must be cogently and firmly established ;
- (ii) Those circumstances should be of a definite tendency unerringly pointing towards guilty of the accused ; and
- (iii) The circumstances taken cumulatively should form a chain so complete that there is no scope from the conclusion that within all human probabilities, the crime was committed by the accused and none else.

19. In the instant case, obviously, there is no specific against the appellant and the evidence of P.W-6 has not been corroborated by any other witness as well as the alleged Bhujali said to have, been recovered 011 18-11-1987, though occurrence took place on 6-11 -1987, has not been produced in the Court, nor it is definite that the said Bhujali was actually used in the said crime by the appellant. Moreover, the appellant denied about the ownership of the said Bhujali in his statement under Section 313, Cr. P.C. No any Chemical report, whatsoever, has been produced by the prosecution. In this way, there is much suspicion about the whole story of the prosecution.

20. The learned Counsel appearing on behalf of the appellant submitted that there is nothing specific against the appellant for the alleged offence as well as there is no eye-witness of the occurrence and the witnesses examined from the side of the prosecution are own relations, who cannot be relied upon. It is also submitted that the said Bhujali alleged to have been recovered from the house of the appellant has never been produced in the Court, nor it was identified in presence of the appellant. It is also submitted that the said Bhujali was not recovered or seized by the police, rather a villager claimed to have produced the same before the police, which makes much suspicion about the actual position. It is also submitted that the appellant has already denied the ownership of the said Bhujali in his statement under Section 313, Cr. P.C. and the statement of P.W. 6 cannot be relied upon as his statement has never been corroborated, as well as the story as propounded by P.W.-6 also appears to be unnatural.

21. It is pertinent to mention here that the appellant was also not examined under Section 313, Cr. P.C. on the point of this absconding and it is also settled that the facts of abscondance of accused alter occurrence and if those circumstances not put to accused in his examination under Section 313, Cr. P.C., such circumstances cannot go against the appellant and as such the whole story of prosecution becomes doubtful and even if there is a slightest doubt arose, the benefit will go in favour of the accused.

22. In the above facts and circumstances, I find that the prosecution has failed to establish the charges against the appellant beyond all reasonable doubts, as required under law.

23. In the result, I do not find the appellant guilty for the offences charged, Accordingly, he is acquitted. Thus, the appeal is allowed. The judgment of conviction and sentence passed by the learned ,trial Court is, hereby, set aside.

The appellant, if in custody, be released forthwith, if not required in any other case.