

Paras Kumhar Vs. State of Bihar

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Court : Patna

Decided On : Jul-29-1999

Judge : R.N. Prasad and M.L. Visa, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 147

Appeal No. : Criminal Appeal (DB) No. 95 of 1987

Appellant : Paras Kumhar

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Bihari, Adv.

Advocate for Pet/Ap. : Kamlesh Jain, Adv.

Disposition : Appeal dismissed

Judgement :

M.L. Visa, J.

1. This appeal by sole appellant is directed against the judgment and order dated 16th January, 1987 passed by 2nd Additional Sessions Judge, Arrah in Session Trial No. 328/83 convicting and sentencing the appellant to undergo imprisonment for life under Section 302 of I.P.C.

2. The brief facts of the case of prosecution are that on 23-6-83 at about 7.15 p.m. the informant Hare Ram Kumhar along with Md. Israil, Md. Sharif, Sri Vishnu Tatwa (none examined), Ram Chand Kumar (PW 4) and Radha Mohan Prasad (PW 5) went to the police station with dead body of his father and lodged an F.I.R. stating therein that on the same day at about 5.30 p.m. a 'panchayati' was held to resolve the dispute between his deceased father and appellant on the point of flow of water from the drain of the house of appellant which was attended by the deceased and appellant. Bihari Kumar and -Motilal Marwari (who were co-accused in this case and faced trial along with the appellant but have been acquitted) were supporting the appellant in the 'panchayati'. The panches of the 'panchayati' ordered the appellant to stop the flow of water from his drain. As soon as the 'panches' left the place after giving their verdict the appellant along with Bihari Kumar and Motilal Marwari entangled with the father of informant and thereafter appellant gave a dagger blow on his chest. The father of informant, after receiving injuries fell down. The informant along with Radha Mohan Tatwa and Keshri Ahir caught hold of appellant but Motilal Marwari rescued him and thereafter appellant fled away. The informant took his injured father to Dumrao State Hospital where his father was declared dead and thereafter the informant brought the dead body of his father to the police station and lodged the F.I.R. (Ext. 3). The police after investigation submitted charge sheet under . Section 302/34 of C.P.C. against the appellant as well as against Bihari Kumar and Motilal Marwari and they all were put on trial after framing of charge under Section 302/34 against them but the Court below, after trial, found Bihari Kumar and Motilal Marwari not guilty and accordingly, acquitted them, but it found the appellant guilty under Section 302/34 of I.P.C. and convicted and sentenced him to undergo R.I. for life under Section 302, I.P.C.

3. The case of the-appellant before the Court below was completely denial of the charge against him and his false implication in this case. Two witnesses were examined on behalf of defence but they were on the point of alibi of co-accused Bihari Kumar, who has been acquitted.

4. The prosecution has examined seven witnesses to prove charge against the appellant in this case, Dr. C. M. Singh (PW 1) is the doctor who had held autopsy

on the dead body of the deceased. He has stated that on 24-6-83 at about 11.00 a.m. he held post mortem examination on the dead body of the deceased and found following injuries :

(i) one penetrating wound 2' x 3' x thoracic cavity deep below left nipple close to the left side of the sternum and fracture of left 5th rib corresponding to injury No. 1(i).

(ii) on dissection -- left thoracic cavity contained 4 to 6 ozs. of blood and blood clot. Pericardium was shown tear on its ante surface with one incised wound 1' x 1/2 x cavity deep on the ante surface of the left ventricle of heart. Heart was empty.

According to him the death was caused due to shock and haemorrhage as a result of injury No. (i) and both the injuries were caused by 'chhura' (dagger) and both the injuries were result of one blow only. He has further stated that the time elapsed since death and post mortem was between 12 to 24 hours. He has proved post mortem examination report (Ext. 1).

5. Out of the remaining witnesses Lakhpato Devi (PW 6) has been tendered. Matisari Devi (PW 7) is the wife of deceased who after hearing 'halla' and gone to the place of occurrence and had seen injury on the chest of the deceased from which blood was oozing out and was told by informant that appellant had given 'chhura' blow to the deceased. Md. Kalimuddin (PW 2) is a formal witness who has proved the F.I.R. (Ext. 3). Hare Ram Kumar (PW 3) is informant and son of the deceased, Ram Chand Prasad (PW 4) younger brother of the deceased and Radha Mohan Prasad (PW 5) are eye-witnesses of the occurrence and they in their evidence have stated that the appellant gave a 'chhura' blow to the deceased who after receiving injury fell down and thereafter the deceased was taken to Hospital where he was declared dead. Their evidence is consistent on the point of giving 'chhura' blow to the deceased by appellant and I find nothing in the cross-examination to disbelieve their evidence.

6. The learned counsel on behalf of the appellant has submitted that I.O. has not been examined in this case which has caused prejudice to the defence because suggestions given to the witnesses as to contradiction in their statements given

before I.O. and in their evidence could not be corroborated by the evidence of I.O. It is true that the defence while cross-examining Ram Chand Prasad (PW 4) and Radha Mohan Prasad (PW 5). I had drawn their attention towards their statements made before the I.O. but then this was in respect of co-accused Motilal Marwari, who has already been acquitted by the Court below. No suggestion about any contradiction in the earlier statements of the aforesaid three eye-witnesses including informant has been given in respect of the appellant or manner of occurrence. I, therefore, find that non-examination of I.O. has not caused any prejudice to the appellant. It has further been submitted on behalf of the appellant that Ram Chand Prasad (PW 4) is the own uncle of informant and Radha Mohan Prasad (PW 5) is also interested witness because the informant in his evidence has admitted that earlier in a case under Section 147, Cr.P.C. between the deceased and appellant which was in respect of the same drain this witness has deposed on behalf of informant. It has been further argued that as all the witnesses are interested witnesses and no other independent witness has been examined, therefore, evidence of prosecution witnesses cannot be relied upon. I am unable to accept this argument. If the evidence of prosecution witnesses is consistent free from any doubt and inspires confidence, it cannot be discarded merely on the ground that witnesses are related to each other. In the instant case the informant is the son of deceased and Ram Chand Prasad is the own brother of the deceased. The case of prosecution that deceased died of injuries caused by 'chhura' has been fully supported by the medical evidence. In such circumstances it does not seem convincing that the son and brother of deceased would not disclose the name of real culprit and would falsely implicate the appellant. Besides this, Radha Mohan Prasad (PW 5) is, admittedly, not related to informant and Ram Chand Prasad (PW 4). Merely the fact that earlier also he had deposed in a case from the side of informant will not be a ground to disbelieve his evidence which has stood the test of cross-examination and which has remained unshaken on the point of giving 'chhura' blow by the appellant to the deceased.

7. From the evidence of informant I find that at one place of his cross-examination he has first stated that he was alone present at the place of occurrence before the occurrence took place but thereafter he has stated that when the appellant and his companion filed away about to persons assembled at the place of occurrence

which included Keshri Yadav, Radha Mohan Prasad (PW 5) and he himself. If the evidence of informant is considered in its entirety it shows that he at the time of occurrence was at his house and the place of occurrence is situated about 100 yards from his house which has come in the evidence of Ram Chand Prasad (PW 4). Under these circumstances, if this witness has said that 50 persons including him assembled at the place of occurrence after the appellant and his companions fled away it does not mean that he had no opportunity to witness the occurrence because, admittedly, he saw the occurrence from his house. Considering the entire evidence on record I find the prosecution has successfully proved that it was the appellant who gave 'chhura' blow on the chest of deceased which resulted into his death.

8. The Court below has found the appellant guilty under Section 302 of I.P.C. Admittedly, only the 'chhura' blow was given by the appellant to the deceased. It is also admitted fact that the relations between the appellant and deceased were estranged on account of dispute over the flow of water from the drain of appellant. It has further come in evidence that immediately before the occurrence a 'panchayati' was held in which the verdict went against the appellant. The mental state of the appellant after 'panchayati' can very well be imagined and naturally he must have been agitated by the verdict of 'panchayati' which was against him. It is the case of the prosecution that immediately after 'panchayati' the appellant and his companions entangled with the deceased. It shows that there was a scuffle between the deceased and appellant, which lasted only for five minutes as per the evidence of informant and in which, admittedly, only one blow by 'chhura' was given by the appellant. In view of these facts it cannot be inferred that there was pre-meditation for committing the murder of deceased and the appellant inflicted single injury by 'chhura' with the intention of causing of death of the deceased. The possibility of giving 'chhura' blow by the appellant by whipping out a 'chhura' from his waist to the deceased in the heat of passion' and in agitated mental state which was the result of provocation caused to him by the verdict of 'panchayati' which went in favour of the deceased with whom he had stranged relations cannot be ruled out. So, I find that this case falls within the purview of Section 304, Part II of I.P.C.

9. Considering the aforesaid facts the conviction and sentence of appellant under Section 302 of I.P.C. is set aside. The appellant is convicted under Section 304, Part II of I.P.C. The record of Court below shows that the appellant in this case had remained in jail custody from 19-7-83 to 4-4-88. Considering this fact the appellant is sentenced to undergo R.I. for the period already undergone by him in jail custody in connection with this case. The conviction and sentence of the appellant is, accordingly, modified as indicated above.

10. In the result this appeal is dismissed with the aforesaid modification. The appellant is discharged from the liability of the bail bonds.

R.N. Prasad, J.

11. I agree.

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