

Kale Maln and Etc. Vs. State of Bihar

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Court : Patna

Decided On : Mar-31-1997

Judge : J.N. Dubey, Actg. C.J. and G.S. Chaube, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Criminal Appeal Nos. 1 and 30 of 1991

Appellant : Kale Maln and Etc.

Respondent : State of Bihar

Advocate for Def. : Ashwini Kumar Sinha, Adv.

Advocate for Pet/Ap. : Vindhaya Keshri Kumar, Sr. Adv., S. Ranjana Sinha, Vijaya Anand Singh, Rakesh Kumar Singh and Shailendra Kumar Singh, Adv.

Disposition : Appeal allowed

Judgement :

G.S. Chaube, J.

1. Both the appeals have been heard together and are being disposed of by the common judgment as they have arisen out of common judgment of conviction and sentence passed by the 4th Addl. Sessions Judge of Muzaffarpur in Sessions Trial No. 48 of 1990. The appellants in both the appeals have been held guilty for

committing murder in furtherance of their common intention punishable under Section 302 read with Section 34 of the Indian Penal Code and are sentenced to undergo imprisonment for life.

2. As the prosecution story goes, in the evening on 3-1-1989 at about 7 deceased Rambriksh Sah of village Methurapur Bharthi within Maniyari police station in the district of Muzaffarpur was returning home from Madarsa Bazar after selling his merchandise. When he reached at the 'Chaur' of village Bangara Chouri situated hardly at a distance of 1 K.M. from his village he was waylaid and stabbed. On his cries for help his co-villagers rushed to the Chaur to find that the said Rambriksh Sah was lying injured in the field of one Abbas Mian near a culvert. He was gasping for life. However, on enquiry he disclosed that 'Budhna' had stabbed him and fled. He wanted to disclose some other name or names but could not do so and lost his senses never to regain. He was taken to hospital at Maniyari where the doctor advised him to be taken to Muzaffarpur. On way to Muzaffarpur injured Rambriksh Sah breathed his last. Therefore, his dead body was brought home and information sent to the police at Maniyari. On such information, a Sub-Inspector of Maniyari police station reached village Methurapur Bharthi early in the morning on 4-1 -1989 and recorded the fardbeyan (Ext. 5) of one Ram Nandan Sah related to the deceased as his nephew. Police registered a case of murder against the appellant in Cr. Appeal No. 30/91 and took up investigation. In course of investigation complicity of the appellant in Cr. Appeal No. 1/91 also came to light. Therefore, both of them were put on trial for committing murder of the deceased and have been convicted and sentenced as stated above, after full trial.

3. The defence of the appellants is total denial of their involvement in the murder of the deceased and false implication.

4. Learned counsel for the appellants in both the appeals has submitted that there is no witness to killing of the deceased and that the evidence regarding dying declaration by the deceased disclosing the names of the appellants as his killers is not free from doubt. At least, there is no mention of the name of the appellant in Cr. Appeal No. 1/91 in the earliest version recorded by the police after 11 hours of the occurrence. He further submitted that from the evidence of P. W. 1 Dr. Mumtaz

Ahmad it is apparent that the deceased could have died instantaneously, therefore, incapable of making any disclosure regarding his assailants. He has further contended that even if what the deceased appears to have conveyed to the witnesses who reached on hearing his cries, it is difficult to connect the appellant in Cr. Appeal No. 30/91 with the Budhna, the killer of the deceased as he had not given complete details of the assailant.

5. There is little dispute that deceased Rambriksh Sah was waylaid and murdered after sun set at a lonely place in Chaur lying between Madarsa Bazar and his own village Methurapur Bharthi situated at a distance of 1 K.M. from the place of the occurrence according to some witnesses and 1/2 K. M. according to some others. As the witnesses have stated, that they were at their respective houses at village Methurapur Bharthi when they heard the cry from the Chour situated towards the east of the village and they rushed in that direction and when they reached at the field of Abbas Mian, they found the deceased lying in pool of blood. P.W. 3 Shambhu Sah has stated that when he reached the place of the occurrence, the deceased disclosed that he was stabbed by these appellants. However, P.W. 4 Shankar Sah, a resident of the same village, has stated that when he reached the place of the occurrence along with other villagers the deceased disclosed to them, on enquiry, that it was Budhna who stabbed him and fled away. So have said P.W. 5 Jalahu Sah, P.W. 7 Dewaki Sah, P.W. 10 Bindeshwar Paswan and P. W. 12 Ram Nandan Sah, the informant in case. They have stated that before the deceased could name his other assailant or assailants he became senseless and never regained his consciousness.

6. Thus, it is manifest that except P.W. 3 no other witness has stated that the deceased had disclosed the name of the appellant in Cr. Appeal No. 1/91 as well as his assailant. Even respecting the disclosure of the name of Budhna as the assailant of the deceased the witnesses are not very uniform. Some have stated that the deceased stated to them that Budhna stabbed him and fled away and while he was likely to utter the name of someone else, he lost his senses. On the other hand, according to P.W. 10 the deceased had disclosed that, besides Budhna Mian, there were two others as well whom he could not identify. However, when put to cross-examination, P.W. 10 stated that by the time he reached the

place of the occurrence he found that the deceased was being put on a cot for being taken to hospital. On his part P.W. 7 has stated that the deceased was put on the cot for being taken to hospital only after he lost his senses. Therefore, it is manifest that, at least, P.W. 10 could have never heard the deceased disclosing the name of his assailant or assailants. In course of his cross-examination P.W. 12 has stated that the deceased had uttered the name of Budhna meaning thereby appellant in Cr. Appeal No. 30/91, 4 or 5 times although in the first information report he had stated that the deceased could not utter anything except that Budhna had stabbed him and fled away. If he was actually capable of uttering the name of Budhna 4 to 5 times, there was nothing to prevent him from disclosing the name of other assailant or assailants, if any. It may be mentioned that in course of his evidence P.W. 7 has stated that when the witnesses reached, the deceased could utter only one word and lost his senses.

7. Learned counsel for the appellants has drawn our attention to the statement of P.W. 1 who had performed post mortem on the dead body of the deceased to the effect that the injury was sufficient in ordinary course of nature to cause instantaneous death. From this statement of P.W. 1, the learned counsel for the appellants has tried to draw a conclusion that the deceased might have died instantaneously on receiving the fatal state wound on his chest. However, when put to cross-examination the witness stated that keeping in view the nature of the injury the injured could have survived for, at least, two hours, and denied the defence suggestion that he might have died instantaneously. Therefore, the medical evidence on the point whether the deceased could have survived for a few minutes for making disclosure of the name of his assailant or assailants to the witnesses who rushed to the place of the occurrence on hearing his cries is vacillating. Almost all the witnesses have stated that the deceased could utter only this much that he was stabbed by Budhna and before he could utter anything more he lost his senses. Therefore, whether the deceased could be still alive and in complete senses to make such disclosure is a matter of border line. Even though the witnesses named above have stated uniformly that when they reached the P.O. the deceased was in his senses and disclosed the name of Budhna as his assailant, when put to cross-examination they have made varying statements. For example, P.W. 4 has stated that when he reached at the place of the occurrence

the deceased was lying there all alone and asked for water and after uttering something lost his senses, while others have said that he uttered 'Budhna' only once and according to the informant 4 to 5 times.

8. In any event, the dying declaration attributed to the deceased is of oral nature. By its very nature such a declaration is considered to be weak in comparison to a dying declaration reduced to writing. Therefore, without any corroboration it is not safe to base conviction on such declaration. Attempt has been made by the prosecution to get corroboration of the dying declaration by examining two witnesses to say that before the occurrence both the appellants had taken toddy at the shop of P.W. 11 and then both of them went away. According to P.W. 11, it was at about 3 or 4 in the afternoon that the appellants had taken toddy at his shop and went away at about 5 or 6 in the evening. The witness has not stated where the said toddy shop was situated. However, P.W. 14 Ramdeo Rai, a resident of Methurapur Bharthi, has stated that at about 4 in the evening he was at Methurapur Bazar when he saw both the appellants emerging from a toddy shop and going towards their village. Simply because these appellants had taken toddy somewhere in the vicinity more than two hours prior to the incident of stabbing, it is difficult to connect them with that incident.

9. Learned counsel for the appellants has rightly contended that even if the prosecution version that the deceased disclosed the name of one Budhna as his assailant, it is very difficult to connect the said Budhna with the appellant in Cr. Appeal No. 30/91, because there were more than one Budhna or Budhan Mian in that locality. The evidence of the prosecution witnesses and the first information report do not disclose that the deceased had disclosed the parentage and address of Budhna who had allegedly stabbed him. What he appears to have stated is that it was Budhna who had stabbed him and fled. Witnesses have tried to state that at village Bangara there was only one Budhna and he was the appellant in Cr. Appeal No. 30/91. However, when put to cross-examination, almost all of them tumbled and admitted that they were not knowing all the persons of muslim community of the neighbouring villages. Therefore, even relying on the evidence of the prosecution witnesses brought to the witness box, it is difficult to say with certainty that when the deceased said that it was Budhna who stabbed him, he

meant the appellant in Cr. Appeal No. 30/91.

10. Thus, on giving anxious consideration to the evidence adduced by the prosecution, I find that the prosecution has not been able to prove the charge of murder against the appellants by adducing cogent and convincing evidence. Therefore, both the appeals succeed and are, accordingly, allowed. The appellants are acquitted of the charge and set at liberty. Appellant Motiur Rahman alias Budhan Mian (in Cr. Appeal No. 30/90) is directed to be released forthwith, if not required in any other matter. Appellant Kale Mian (in Cr. Appeal No. 1/91) is discharged from the liability of his bail bond.

J. N. Dubey Actg., C.J.

11. I agree.

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