

Reyaz Ansari Vs. State of Bihar

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Court : Patna

Decided On : Dec-13-1996

Judge : Lok Nath Prasad and P.K. Sarkar, JJ.

Appeal No. : Criminal Appeal No. 82 of 1994 (R)

Appellant : Reyaz Ansari

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

Lok Nath Prasad and P.K. Sarkar, JJ.

1. This appeal is directed against the judgment of conviction passed by Shri Gauri Shankar Choube, Sessions Judge. Dhanbad in S.T.No. 281 of 1990 through which he found the sole appellant guilty under Section 302 of the IPC and convicted and sentenced him to undergo imprisonment for life.

2. The prosecution case in short is that the deceased Israfil Mian, father of the appellant was widower and sometime in October 1989 he again married with Ajmunissa who is the informant of this case. Due to this Second marriage by the deceased ill relation developed between the deceased and his only son the appellant and the appellant was forced to leave the quarter occupied by the

deceased in Bhuli within Bank More P.S. and the appellant was living separately in Azadnagar in the ancestral house. It has been alleged by the informant that on 25-12-89 in the evening when it was raining the appellant came and knocked the door then it was opened by the informant and the appellant entered and forcibly dragged his father outside the quarter and he gave several blows by knife one after another. An alarm was raised by the informant and several witnesses arrived on the spot. More particular Manzoor Alam, Surrender Rajk, Chandradip Kumar, Bijali Khatoon etc. and with the help of the Mohalla People the appellant was apprehended overpowered and detained in the tea stall shop of Chandradip Kumar, P.W. 5. It is also the prosecution case that the injured was taken to Central hospital at Bhuli by the informant and the witnesses where he was declared dead and in that very hospital the police came and recorded the fardbeyan of the informant i.e. Ext. 5 and on that basis this case was instituted. At that time also the police came near the residential house of the deceased and took custody the appellant who was being detained in the tea stall of P.W. 5 and some incriminating articles i.e. knife used by the appellant, his shoes etc. were seized in presence of the witnesses. The police after investigation submitted charge-sheet against the appellant.

3. During trial before the Sessions Judge, Dhanbad the appellant claimed himself innocent and denied to have committed the murder, on his father and defence was set up that the informant was working as a maid servant in the house of her father and somehow or other developed intimacy and remained as a concubine and hatched up a conspiracy and due to that the appellant was forced to leave the house of his father and for that informant with the hope of his other paramours got the deceased murdered and set up a case as against the appellant so that she can grab the property of his father.

4. At the very outset it can be said that the appellant had not specifically challenged the murder of the deceased which took place on 25-12-89 and only a defence was taken that actually the informant in league with her associates got the deceased murdered. Further more the Investigating Officer prepared an inquest of the deceased on 25-12-89 and the dead body was also subjected to post mortem examination on 26-12-89 by P.W. 3, Dr. Binod Kumar and according to P.W. 3 he

found as many as 12 incised injuries caused by sharp cutting weapons and according to doctor these injuries were sufficient to cause the death in ordinary course so this fact is well proved that if some time in the evening of 25 12-89 the deceased received several stab and incised sharp cutting injuries which resulted in his instantaneous death.

5. Now the question of enquiry before us if at all the appellants because of his annoyance with his father as he married for the 2nd time at a very late stage, gave several blows by knife just outside the quarter of the father situated in Mohalla Bhuli in the evening of 25-12-89 as alleged.

6. No doubt according to the prosecution case P.W.I, Manzoor Alam, P.W. 2, Surrender Rajak, P.W. 5, Chandradip Kumar, P.W. 6 Bijali Khatoon and other mohalla people had seen the occurrence but all these witnesses examined on behalf of prosecution had not supported the prosecution case so they were declared hostile. The only evidence and the eye witness relief upon by the prosecution and on whose evidence the prosecution could able to secure an order of conviction from the learned Sessions Judge is P.W. 4 is none-else the than the informant and 2nd wife of the deceased. According to P.W. 4 on the alleged date of occurrence the appellant came and forcibly took her husband Israfil Mian with whom she was married only a month or two ago and gave several blows by knife just outside the house and when she raised alarm then Manzoor Alam, Surrender Rajak, Chandradip Kumar and several others arrived and she with the help of the witnesses took her husband to Bhuli Hospital where he was declared dead and then he lodged the fardbeyan i.e. Ext. 5. No doubt an order of conviction can safely be recorded even on the testimony of the single witness provided the evidence of this single witness is wholly reliable and absolutely there is no chance for the prosecution to adduce any corroborative evidence. In the instant case the evidence of this single witness is very shaky and inconsistent because in the FIR she has clearly stated that at the time of occurrence she raised alarm and several persons including P.W.I, Manzoor Alam, P.W. 2, Surrender Rajak, P.W. 5, Chandradip Kumar and Ors. arrived and they apprehended the appellant with knife and detained and handed over the appellant to the police but she had completely resile this portion of the statement and had introduced anew story that at the time

of occurrence her younger sister was present though this fact has not been mentioned in the FIR nor the younger sister of the informant was examined as a witness. Further more according to the prosecution case several witnesses including P.Ws. 1, 2, 5 and 6 had seen the occurrence and they are the neighbours and naturally competent witnesses but surprisingly all of them had not supported the prosecution case to show that the appellant came and gave blow by knife to his father and so they were declared hotiled.

7. Moreover, the seizure list witness and other witnesses had also denied about the fact that from the possession of the appellant a blood stained knife was recovered by the investigating officer and the investigating officer seized the shoes and other articles near the P.O.P.W. 9 the investigating officer in his evidence has not stated that he seized blood stained knife from the possession of the appellant. So the independent witness had not supported the informant in any way. In that view of the matter and as the evidence of the informant is shaky and inconsistent we are not inclined to rely upon her evidence. More over there is also specific allegation that as the deceased married the informant for the 2nd time at a very late stage no she too was instrumental in killing of her husband. In such a situation we are inclined to hold that at least the appellant is definitely entitled for benefit of doubt.

8. For the reasons mentioned above we are inclined to allow this appeal and as this appeal is allowed and the judgment of conviction and sentence as recorded by Shri Gauri Shankar Choube, Sessions Judge, Dhanbad in S.T. No. 281/90 is hereby set aside and the appellant, Reyaz Ansari is hereby acquitted of the charges levelled against him and he is in jail custody so he is to be released forthwith, if not required in any other case.

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