

Bikram Das Panik Vs. State of Assam

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Court : Guwahati

Decided On : Sep-05-2007

Judge : Aftab Hussain Saikia and R.B. Misra, JJ.

Appellant : Bikram Das Panik

Respondent : State of Assam

Judgement :

R.B. Misra, J.

1. Heard Mr. R.M. Chowdhury, learned Amicus Curiae for the accused-appellant. No Public Prosecutor for the respondent-State of Assam is present at the time of hearing of this Criminal Jail Appeal.

2. This Criminal Jail Appeal Under Section 374(2) of Code of Criminal Procedure has been preferred against the judgment and order dated 31.03.2003 passed in Sessions Case No. 35 of 2002 holding the accused-appellant guilty Under Section 302 of IPC and sentencing him to undergo imprisonment for life along with a fine of Rs. 1000/-, in default of payment of fine to undergo further rigorous imprisonment for 1 (one) month.

3. The prosecution case, in short, is that on 25.10.2000 at about 12.00 of mid night, one Bikram Das Panik (accused-appellant) assaulted Jayanti Panika (since deceased), the brother's wife of the informant, severely on he person while she

was sleeping in her house. The F.I.R. was lodged on 26.10.2000 at 9.30 a.m. and a GR. Case No. 1077 of 2000 was registered with Patharkandi P.S. in Karimganj District and after investigation a charge-sheet was submitted Under Section 302 of I.P.C. against the accused-appellant in the Criminal Court at Karimganj. After receipt of the charge-sheet, learned Chief Judicial Magistrate, Karimganj took cognizance of the offence Under Section 302 of I.P.C. However, since the case was triable by the Court of Session, the same was committed to the Court of Session at Karimganj.

4. To bring home the charge, the prosecution examined as many as eight witnesses, whereas the defence has produced none. The Court has, however, examined one witness. From the trend of prosecution witnesses as well as the statement of the accused-appellant recorded Under Section 313 of Cr.P.C, the defence plea was complete denial of the charge.

5. In order to deal with the present Criminal Appeal, it is necessary to analyze the evidence of the prosecution witnesses. P.W. 1 (Manik Das Panika), the informant, is also the brother of the husband of the deceased. According to him, the said incidence took place on the fateful day i.e. in midnight of 25.10.2000, when he was sleeping in his house situated at a distance of about 200 cubits from the house of the deceased, he woke up on a call of the brother of accused Birbal Panika informing him about causing of hurt to Jayanti Panika (deceased). When he rushed to the house of deceased (Jayanti Panika), he found her lying dead in pool of blood and had observed a cut injury over her neck. P.W. 1 also noticed that deceased's minor son Surti Das Panika (P.W. 2) was weeping side by uttering that his mother was cut by the accused person. On the following morning Birbal, brother of accused-appellant showed some papers to him and thumb impression was taken there but the contents of that ejahar was read over to him. In the cross-examination P.W. 1 reiterated his statement recorded in the examination-in-chief.

6. P.W. 2 Shri Surti Das Panika, aged about 10 years has also stated that after the death of his father he was living with his mother. The accused-appellant Bikram Das Panika was related uncle and has been residing in his house at the time of occurrence. On the fateful day during mid night of occurrence, while he was

sleeping with his mother, he woke up after hearing shouting of his mother and has observed that the accused-appellant was stabbing his mother with a dao over her neck. P.W. 2 also deposed that at that time one light was burning in his house, therefore, he could recognize the stabbing of his mother by the accused-appellant. The accused-appellant fled away. Seeing this occurrence when he cried, the neighbours, namely, Manik Das Panika (P.W. 1), Birbal and Smti. Nakalu Naidu (P.W. 4) came at the spot to whom he told about the said occurrence. In his cross examination on the suggestion of defence he stated that he did not state before the Investigating Officer that a light was burning in his house at the time of occurrence, however, had reiterated that he had stated before the Investigating Officer that Manik Das Panika, Birbal Panika and Nakalu Naidu came on the spot and he told them regarding stabbing of his mother. In his deposition (P.W. 2) stated that after the death of his father accused-appellant came to his house for cultivation and to look after cows etc. Subsequently his mother asked him to leave their house.

7. P.W. 3 (Sanjura Bai Panika) the wife of P.W. 1, in her deposition has stated that the deceased was her own sister and the accused-appellant was also in relation being cousin of her deceased sister's husband.

8. The deposition of C.W. 1 Shri A.N. Ghosh, learned Addl. Chief Judicial Magistrate, Karimganj who recording the statement of P.W. 2 on 30.10.2000 Under Section 164 of Cr.P.C. as Ext. X reveals about his observation on the test of his capability and rational judgment of P.W. 2 by indicating that P.W. 2 being even a minor was capable of understanding the questions put to him. From the statement of P.W. 2 it is divulged that on 25.10.2000 at about 10 a.m./his uncle Bikram Das Panika entered into his house and raised hue and cry and at this he woke up and observed that the accused-appellant was standing with a dao in his hand and was having altercation with his mother and suddenly dealt a cut blow upon the body of his mother by the dao and after inflicting cut blow fled from there and his mother died on the spot.

9. As noted by the learned Ad hoc Additional Sessions Judge in the impugned order, the defence questioned the credibility of the testimony of the minor witness

(P.W. 2) relying upon the decisions of the Apex Court in 1995 SCC (Criminal) 182 (Chhagon Dame v. State of Gujarat); 1982 CrL. Law Journal NOC 39 (Gau.) (Mobeni Minji. v. Union Territory of Arunachal Pradesh); as well as in 2001 (1) Crimes 197 (Dulu Sutradhar Naru Das v. State of Assam), whereas, in the Chhagon Dame (supra), the Apex Court has observed that Court must carefully consider whether the child witness was under influence of any tutoring. In Dulu Sutradhar Naru Das (supra), it has been observed that when evidence of sole eye witness of crime is found not wholly reliable or wholly unreliable, conviction cannot be based without corroboration in material particulars by reliable testimony, direct or circumstantial. In Mobeni Minji (supra) the Gauhati High Court has observed in para C & D as below: 'Under Section 4 provision in the case of child witness it is desirable that the Judge or Magistrate should always record his opinion that the child understands the duty of speaking the truth and state why he thinks that; otherwise the credibility of the witness may be seriously affected so much so that in some case it may be necessary to reject the evidence altogether. But whether the Judge or Magistrate really was that opinion can be gathered from the circumstances when there is no formal certificate. When in a murder case from the manner of his deposition and demeanor the Judge was of the opinion that the child was a competent witness his evidence would be admissible 1952 Cri.L.J. 547 (SC), Rel on X.'

In a murder case while a child witness (aged about 07 years) can be expected to give out a true version because of his innocence there is always the danger in accepting his evidence because he might have been coached to give out a version by a person who may have influence on him. Secondly when he claims to be the only eye witness his evidence has to be scrutinized with care and caution. Although there is no rule of law that the evidence of a child witness cannot under any circumstances be acted upon without corroboration, it requires corroboration as a rule of prudence. The corroboration must come from independent source and may be direct or circumstantial.

10. P.W. 3 is the wife of P.W. 1 (Manik Das Panika). In her deposition she has also corroborated the manner of occurrence of incidence and has also corroborated the testimony of P.W. 1 by saying that on the fateful day during the

night of occurrence at the relevant hours she had also gone to the house of the deceased along with her husband P.W. 1 where she observed that Jayanti was lying dead in a pool of blood and has also observed cut injury over her neck. She also stated that P.W. 2 informed her that the accused persons stabbed his mother. P.W. 3 as further divulged that the accused-appellant used to live in the house of the deceased after the death of her husband.

11. P.W. 4 Nakalu Naidu, a door step neighbour of the deceased residing at a distance of 150 cubits has stated in his testimony that while she was sleeping at the relevant house, she heard hullah-baloo and when she went to the place of occurrence, she observed that the deceased was lying in the pool of blood and she could learnt from P.W. 2 that accused-appellant stabbed his mother by means of a dao.

12. P.W. 5 Dr. Rabindra Nath Das who conducted Post Mortem Examination on the dead body of the deceased has noticed one incised wound over the left side of the neck-size 6' x 4' x bone deep and one abrasion over the right hand-size 1' x 1/2' x 1/2' and has opined that the death was caused due to shock and haemorrhage resulting from the injury caused by sharp cutting weapon.

13. P.W. 6 (Menu Kanu) and P.W. 7 (Kanai Kumari), the two neighbours of the deceased were declared hostile by the prosecution.

14. P.W. 8 Bhusan Das, the Investigating Officer in his testimony has supported the prosecution version.

15. After analyzing the facts and circumstances and testimony of P.W. 2, the minor witness, learned Ad hoc Additional Sessions Judge has arrived at a conclusion that P.W. 2 was not a tortured by anybody and there was nothing to reject the testimony of P.W. 2. However, Ms testimony was trustworthy and could be relied upon without any hesitation as he was capable of understanding the questions put to him. In our respect consideration, in the facts and circumstances of the case, the testimony of P.W. 2 has rightly been relied upon by the learned Ad hoc Additional Sessions Judge.

16. The analysis of the materials on record and the evidence of the prosecution witnesses and also relying upon the testimony of the P.W. 2 (Surti Das Panika), the minor witness, the learned Ad hoc Additional Sessions Judge had held the accused-appellant guilty of the offence Under Section 302 of IPC and has convicted and sentenced him to undergo for life imprisonment along with a fine of Rs. 1,000/- and in default of payment of fine of Rs. 1,000/- to undergo rigorous imprisonment for one month.

17. Out of the prosecution witnesses though P.W. 6 and P.W. 7 were declared hostile but P.W. 5 has corroborated the testimony and the manner of occurrence as divulged by P.W. 2, the sole eye witness of the occurrence though minor has in his natural course divulged that he woke up from the sleep having heard shouting of her mother and has observed that the accused-appellant was stabbing his mother with a dao over her neck and on his crying other persons had arrived at the spot to whom he divulged about the manner of occurrence, P.W. 1 and P.W. 3 both though related witnesses had, however, seen the deceased in a pool of blood and had also learnt from P.W. 2 that the deceased was assaulted by the accused-appellant with dao on her neck thereby she succumbed to her injuries. The prosecution story was also supported by other prosecution witness, namely, P.W. 4.

18. Even sole testimony of P.W. 2 is sufficient to prove the prosecution case. Though P.W. 1, 2, 3 and 4 have corroborated the prosecution case, however, it is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact as observed by the Supreme Court in : 2003 CriLJ3548 (Chittar Lal v. State of Rajasthan). Similar view was also taken by the Supreme Court in : 2005 CriLJ2618 (Seeman @ Veeranam v. State, by Inspector of Police).

19. The occurrence took place in the mid night where P.W. 2, the minor had witnessed that his mother was attacked by the accused-appellant with a dao on her neck during altercation (with his mother and accused-appellant). Though in the

present case P.W. 2 as well as other prosecution witnesses, namely, P.W. 1 and P.W. 3 are related witnesses, however, the testimony of P.W. 2 was so natural, reliable and trustworthy that such testimony was not necessary to be proved by other witnesses in view of the observation of the Supreme Court in : 2004 CriLJ280 (Chaudhari Ramjikhai Narasagbhai v. State of Gujarat and Ors.). While scrutinizing the related witnesses it has to be seen that if the evidence is reliable and trustworthy, the same can be acted upon but cautious and careful approach is required while appreciating the evidence of such related witness in view of the observation of the Supreme Court in (Chaudhari Ramjibhai Narasangbhai (supra).

20. The prosecution witnesses, namely, P.W. 1, P.W. 3 and P.W. 4 were said to be living in and around the place of occurrence and, therefore, their presence at the relevant time, seems to be not only normal and natural, but their claim that they rushed to the place of occurrence on hearing the halla-boolla appears to be genuine and acceptable. Since no independent or impartial witness was present to give evidence at the mid night in the house of the deceased except the sole minor related witness P.W. 2 who legitimately claimed and has deposed boldly, in natural course, therefore, his evidence is reliable. In respect of reliability of related witness, there is no rule or any presumption that the evidence of a related witness will always be an interested one or that such witness will have only a hostile attitude towards the accused facing trial as has been observed by the Supreme Court in : 2003 CriLJ3545 (Amzad Ali @ Amzad Kha and Ors. v. State of Assam.)

21. We have analyzed the testimony of the prosecution witnesses, namely P.W. 1, P. W. 2 and P.W. 3 and after scrutiny we are of the considered view that these prosecution witnesses though otherwise truthful and credible, their testimony cannot be discarded simply by virtue of their relation to the deceased in view of the observation made by the Supreme Court in : 2004 CriLJ2527 (Anil Sharma and Ors. v. State of Jharkhand).

22. In : 2006 CriLJ1691 (State of J & K v. S. Mohan Singh) it was observed by the Supreme Court that the evidence of eye witness being close relation of deceased and as such being interested witness, cannot be rejected merely on that ground. Similarly, the Supreme Court has also observed in : 2006 CriLJ1616 (State of A.P.

v. S. Rayappa) that merely because witnesses were related to deceased, they cannot be said to be interested witnesses and on that ground alone their testimony cannot be rejected. Similar view was also taken by the Supreme Court in (2006) 9 SCC 535 (Gonchi Rajashekhar Reddy v. State of A.P.)

As observed by the Supreme Court regarding acceptability of interested or partisan or closely related witness that a careful and cautious scrutiny of such witnesses by the court is required in view of the decision of the Supreme Court in : 2006 CriLJ3899 (Pulicherla Nagaraju v. State of A.P.)

Mere relationship does not affect the credibility of related witnesses. Foundation has to be laid for overlooking the testimony of these related witnesses in view of the decision of the Supreme Court in : 2006 CriLJ4033 (S. Sudershan Reddy v. State of A.P.)

23. Though P.W. 1, P.W. 2 and P.W. 3 were not only related to the deceased but also were related to the accused. However, nothing was shown by the defence that they were inimical to accused or bore any grudge against the accused. As such their testimony cannot be discarded merely because of their relationship with deceased in view of the decision of the Supreme Court in : 2006 CriLJ2133 (Munivel v. State of T.N.)

24. Even the sole testimony of P.W. 2, the minor son of the deceased was sufficient to prove the guilt against the accused-appellant as he in his natural course was capable of understanding the incidence and the gravity of occurrence and was capable of understanding the situation and questions put to him, as such corroboration of such evidence of the minor (P.W.2) with other independent evidence in the facts and circumstances was not mandatory when on scrutiny of testimony of (P.W. 2), we have found nothing contrary in his testimony. As such no further corroboration to the testimony of P.W. 2 was necessary when his evidence inspires confidence and is credible and has divulged the incidence in a natural course as such no corroboration is necessary in view of the decision made by the Supreme Court in : 2005 CriLJ310 (Pratap Singh v. State of M.P.)

25. After scrutinizing the materials on record, the evidences of the prosecution witnesses and also after perusing that there was only one incised wound of serious nature over the left side of the neck and one abrasion over the right hand which has been observed by P.W. 5 the Doctor while conducting Post Mortem Examination on the dead body of the deceased were conclusive that the injuries were inflicted after altercation (between the accused-appellant and the deceased). We are of considered view that the prosecution has been able to prove its case beyond all reasonable doubt as such the accused-appellant is held guilty of offence and liable for death of Jayanti Panika.

26. Keeping in view the nature of injury in the facts and circumstances of the case, we are of the considered view that the conviction of the accused-appellant Under Section 302 of IPC cannot be sustained and it is a fit case to convert the conviction of the accused-appellant Under Section 304 Part I of IPC and accordingly the accused-appellant is sentenced to undergo rigorous imprisonment for 10 (ten) years along with a fine of Rs. 1000/-, in default of payment of fine, to undergo rigorous imprisonment for 3 (three) months.

27. The appeal is partly allowed. L.C. Records be sent down immediately.

Before parting with the case record, we would like to put on record our appreciation to Mr. R.M. Chowdhury, learned appointed Amicus Curiae for his help and assistance rendered to arrive at a decision in this jail appeal and accordingly, it is ordered that he is entitled to get his professional fee which