

Kamal Ram Vs. State of Bihar

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Court : Patna

Decided On : Dec-04-2003

Judge : R.N. Prasad and Rajendra Prasad, JJ.

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

Appeal No. : Criminal Appeal No. 517 of 1987

Appellant : Kamal Ram

Respondent : State of Bihar

Advocate for Def. : Sheo Shankar Prasad, Adv.

Advocate for Pet/Ap. : Satyanand Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

R.N. Prasad, J.

1. The appeal has been preferred against the judgment and order dated 22.8.1987 passed by Sessions Judge, West Champaran, Bettiah in S.T. No. 108/86 whereby the sole appellant has been convicted for the offence under Section 302, IPC and sentenced to undergo imprisonment for life.

2. Sudama Ram gave his fardbeyan on 15.4.1984 at 11 p.m. in M.J.K. Hospital, Bettiah before Asstt. Sub-Inspector of Police that at about 9.30 p.m. his father Phuleshwar Ram had gone to the house of Sita Ram Harijan to attend the feast at the occasion of Katha (Puja). He was standing there as he had already taken food. Kamal Ram the appellant, was also there. He told one Mangal Ram as to why he was chewing like bone on which the father of the informant Phuleshwar Ram asked him not to speak in such a manner as they have assembled at the occasion of Puja. On this there was altercation between the father of the informant and Kamal Ram, the appellant. Kamal Ram went to his house and came with a gupti. His father also after taking meal proceeded towards his house. He was also with him. When they reached near the house of Mewa Mian, Kamal Ram started abusing and pierced gupti in the abdomen of his father. His father fell down. He tried to catch him but he ran away. His father was taken to the hospital for treatment. He was not in sense or in a condition to give statement.

3. On the aforesaid fardbeyan, formal first information report was drawn, investigation was taken up and after completion of investigation charge-sheet was submitted against Kamal Ram, the appellant. On receipt of charge-sheet, cognizance was taken and the case was committed to the Court of Sessions for trial. The trial Court convicted the appellant as indicated above.

4. The defence of the appellant was that he was innocent. He had not committed any offence and had falsely been implicated in the case.

5. In support of the prosecution case nine witnesses were examined, out of which PWs 2, 3 and 4 have claimed to have seen the occurrence. PW 6 is the informant and also claimed to be an eye-witness to the occurrence. PW 1 is a hear-say witness. PW 5 has been declared hostile. PW 7 is a doctor who examined the deceased. PW 8 is the investigating officer and PW 9 is also a doctor who held post-mortem over the dead body.

6. PW 6 is son of the deceased. PW 3 is wife of the deceased. PWs 1 and 2 are relation of the deceased. Learned counsel for the appellant pointed out that witnesses are relation and as such their evidence should not be relied upon. In this regard it would not be out of place to mention herein that law does not require that

evidence of such witness should be thrown outright rather requirement of law is that evidence of such witness should be scrutinised with care and caution. Keeping the aforesaid well established rule of law in mind I proceed to examine the evidence of these witnesses. The occurrence took place on 15.4.1984 at 9.30 p.m. The fardbeyan of PW 6, the son of the deceased, was recorded at about 11 p.m. i.e. after one and half hours of the occurrence and as such possibility of concoction of the case is ruled out. The evidence of PW 6 is that on the date of occurrence there was katha (Puja) and feast in the house of Sita Ram. His father had gone there. He had already taken meal but he was there. Kamal Ram, the appellant was sitting near his father and was taking meal. Kamal Ram asked why he was chewing like bone. His father protested and said that he should not say like this on which there was altercation between them. Kamal Ram went to his house and in the meantime after taking meal his father proceeded towards the house of Mewa Mian. Kamal Ram came with a gupti and pierced it in the stomach of his father and fled away. His father fell down. He was taken to the hospital. In the hospital the doctor interrogated his father. When the Asstt. Sub-Inspector of Police came in the Hospital the operation was going on and as such his fardbeyan was recorded by the police. However, his father died. In cross- examination the witness gave vivid picture of the place of occurrence and stated that after taking meal when his father proceeded towards the house of Mewa Mian he was assaulted with gupti. At that time Mewa Mian, PW 4, was sitting on the chauki in front of his house. To the north of the land of Bhoju Mian there is vacant land and to the south there is house of Mewa Mian. No blood had fallen on the ground at the place of occurrence as the wound was bandaged. The shirt was cut because of injury. Blood clot was also on the shirt. The shirt was shown to the police. He had no talk with his father before he lost sense. The statement of his father was recorded but he did not say before the police. Before his arrival his father was in sense. His father was answering the questions of the doctor and the doctor was recording the same. Suggestion was given to the witness that there was no feast in the house of Sita Ram which has been denied.

7. PW 2 is also an eye-witness. He had gone to take meal in the house of Sita Ram on the occasion of Satyanarain Puja. While taking meal Kamal Ram, the appellant, uttered why chewing like bone. Phuleshwar Ram, father of the

informant, protested on which there was altercation. Kamal Ram went to his house and came with a gupti and pierced it in the stomach of Phuleshwar Ram who fell down on the ground. He was taken to the hospital where he died during treatment. In cross-examination he admitted his relationship and stated that he and the deceased had gone together. Some people had taken meal before they reached. He reiterated his evidence in Chief in the cross-examination. However, he stated that his house is at a distance of one and half laggi north from the place of occurrence. He had gone near the deceased. The informant was also there. The deceased was assaulted on the land of Bhoju. The police had recorded his statement in the hospital. He denied the suggestion that the deceased was a man of bad character. He also denied the suggestion that the deceased had enmity with Gobardhan. In fact nothing could be taken out by the defence in cross-examination to doubt his evidence.

8. PW 3 is wife of the deceased. She had deposed that her husband had gone to the house of Sita Ram to attend the feast. There was only a road in between her house and Sita Ram's house. Kamal Ram uttered as to why chewing like bone on which there was altercation between them. Kamal Ram went to his house, came with a gupti and pierced the gupti in the stomach of her husband. Her husband was taken to the hospital where he died, she had given vivid picture of the place of occurrence and stated that she had seen giving gupti blow to her husband. No blood had fallen. On receipt of injury her husband was in sense. No one snatched the gupti from the hand of Kamal. Her husband had no enmity with Gobardhan. Her husband was not a characterless man. It appears that the witness stood the test of cross-examination.

9. On scrutiny of evidence of eye-witnesses related to the deceased. It appears that their evidence is consistent to each other. They have supported the feast in the house of Sita Ram on the occasion of katha (Puja) of Satyanarain Bhagwan and also assault by the appellant to the deceased at the place of occurrence. They were cross-examined at length but nothing could be taken out to doubt their evidence on record. However, there is also one independent witness i.e. Mewa Mian, PW 4. He was at his house at the time of occurrence. His evidence is that the appellant and the deceased both came in front of his house. Kamal had a

weapon 1 cubic long. He assaulted Phuleshwar, the deceased, with the weapon. He fell down and Kamal, the appellant, ran away. In cross-examination the witness stated that house of Kamal is in the north after three houses from his house and house of the deceased is in the south after 4- 5 houses from his house. The occurrence took place at a distance of 1 laggi from his house. He had no talk with any one. He did not see blood at the place of occurrence. He did not say before the police that Phuleshwar came first and thereafter Kamal, the appellant, came. He cannot say that any body had followed Kamal. This witness is independent witness and has no relation either with the prosecution witness or the deceased. His evidence corroborates the evidence of eye-witnesses discussed above on the point of place of occurrence and also assault by the appellant. The witness was cross-examined at length but nothing could be brought to doubt his evidence. Therefore, it is evident that evidence of eye-witnesses are consistent to each other on all material points.

10. PW 1 is relation of the deceased. However, he did not claim to have seen the occurrence rather the witness categorically stated that when he went near the deceased on alarm he saw Phuleshwar in injured condition. He spoke that Kamal, the appellant, has assaulted him with gupti. The evidence of the witness also corroborates the evidence of eye-witnesses.

11. The doctor, PW 7, initially examined the deceased Phuleshwar. His evidence is that on 15.4.1984 at 10.10 p.m. he examined Phuleshwar Ram and found one incised wound 3/4' x 1/4' deep not probed but when abdomen was opened wound was found cavity deep and internal wall of abdomen was found punctured. There were blood and blood clots in the cavity. Injury was grievous caused by sharp pointed weapon like gupti. The witness stated that he recorded the statement of the injured in presence of Noor Mohammad the Dresser and others. He read it out to Phuleshwar who on finding it to have been correctly written put LTI on the statement. He proved the statement of the injured, Ext. 3, which has been treated as dying declaration. In cross- examination the witness stated that seeing the condition of the injured he recorded the statement of Phuleshwar Ram. One of the persons present there was Dresser who put his signature over Ext. 3. he admitted the patient at 10.10 p.m. and recorded the statement of injured at 10.30 p.m. He

did not remember that he wrote for deputation of a Magistrate. He stated that on sustaining such injury as noted above the man may go in comma. It is a fact that Phuleshwar was not in sense. In dying declaration, Ext. 3, it has been stated that Phuleshwar Ram in the evening had gone to attend katha (Puja) of Satyanarain Bhagwan and feast. The appellant said why he was chewing like bone. He protested on which there was altercation and he pierced gupti in his stomach. The people have brought him to the hospital. There is signature of Noor Mohammad, Dresser, Kailash Ram and Bishun Ram over the Ext. 3. Out of the aforesaid three persons who put their signature on Ext. 3 only Kailash Ram has been examined as PW 1. PW 1 has stated that statement of the deceased was recorded before the Magistrate and the police. He denied the suggestion that the deceased was not in sense.

12. PW 9 held post-mortem over the dead body and found anti- mortem injuries on the person of the deceased. He stated that victim will not be unconscious usually after having sustained that injury.

13. PW 8 is the Investigating Officer. His evidence is that he recorded the fardbeyan of the informant, Ext. 4, on which formal First Information Report, Ext. 5, was drawn. Phuleshwar Ram died in the hospital. He prepared inquest report, Ext. 6. He inspected the place of occurrence and has given vivid picture of the place of occurrence and has stated that the occurrence took place on the land of Bhoju Ram. He did not find blood at the place of occurrence. He prepared sketch map, Ext. 7. He recorded the statement of witnesses. Sita Ram had stated before him that there were Puja and feast on the date of occurrence in his house and the deceased and the appellant had come there and there was altercation between them. The appellant gave gupti blow to the deceased. He received dying declaration written by the doctor. In cross-examination he stated that the Judicial Magistrate had gone to the hospital to record the statement of the injured but he could not record as he was not in sense. However, the doctor had earlier recorded the statement of the injured. The witness has also stated that PW 1 had stated before him that Phuleshwar had told him that Kamal had assaulted him with gupti. He put his signature over Ext. 3.

14. The submission of learned counsel for the appellant was that dying declaration, Ext. 3, is not worthy of reliance on the ground that the witnesses who signed Ext. 3 were not examined. If the deceased had given his statement first information report should have been recorded on his statement and also that the doctor, PW 7 has stated that after receipt of such injury the man may go in comma. Even if the comment as stated above is accepted, this much is obvious that PW 1 who went to the place of occurrence on hearing alarm has deposed that the deceased disclosed to him that the appellant gave him a gupti blow. Moreover, the evidence of eye-witnesses which has been discussed above clearly establishes that the appellant was responsible for committing murder of the deceased. The evidence brought on record is consistent and the witnesses stood the test of cross-examination. The defence failed to take anything to doubt the evidence of those witnesses. Moreover, dying declaration, Ext. 3, is not the only piece of evidence on which order of conviction is based. Even if the comments of the defence are accepted with respect to dying declaration, Ext. 3, there is cogent evidence on record to establish the prosecution case that appellant had committed murder. Thus on consideration, it is evident that evidence of prosecution witnesses is worthy of reliance and the prosecution has succeeded in establishing the case against the appellant beyond all reasonable doubts.

15. Learned counsel for the appellant pointed out that Sita Ram, in whose house, it is alleged, there were puja and feast, has been examined as PW 5. He has denied that there was feast in his house. In such a situation, when the root of the matter is denied the conviction of the appellant becomes illegal. In this regard it would not be out of place to mention herein that PW 5 has been declared hostile. However, he admitted that there was puja of Satyanarain Bhagwan and also that people were saying that Kamal assaulted Phuleshwar due to which he died. Moreover, all the eye-witnesses have categorically stated that there were puja and feast in the house of Sita Ram and the deceased and the appellant had gone to attend the feast and there was some altercation on which Kamal had assaulted the deceased with gupti. In such a situation even if PW 5 denied to have organised feast at his house the evidence of the witnesses who had been cross-examined at length and stood the test of cross-examination cannot be dis-believed. Moreover, PW 5 has been declared hostile and as such I find no substance in the submission

of learned counsel for the appellant.

16. Learned counsel for the appellant further pointed out that no blood was found at the place of occurrence which creates doubt about the prosecution case. The submission has no force at all because of the fact that the informant himself stated that no blood had fallen as the wound was bandaged. Moreover, doctor, PW 7, has stated in his evidence that when abdomen was opened he found blood and blood clot in the cavity. Thus the submission of learned counsel for the appellant, in my view, has no substance at all.

17. Thus on consideration, as discussed above, I find no merit in the appeal. Accordingly, it is dismissed.

The bail bond of the appellant, who is on bail, is cancelled and he is directed to surrender forthwith to serve but the remaining sentence.

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