

Krishna Mohali Vs. State of Bihar

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Court : Patna

Decided On : Feb-17-1997

Judge : Loknath Prasad and N.N. Singh, JJ.

Appeal No. : Criminal Appeal No. 129 of 1995 (R)

Appellant : Krishna Mohali

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

1. This appeal is directed against the judgment and order of conviction passed by Sri A.P.Ram, Additional Sessions Judge, Seraikella, S.T.No. 12 of 1994 by which the sole appellant was held guilty under Section 302 of Indian Penal Code and convicted and sentenced to undergo imprisonment for life.

2. The prosecution case, in short, is that in the evening of 12.4.1993, the informant Jhingi Birua alongwith her husband Raghu Birua, sister-in-law Dosma and other family members were in the house situate in the village Turi Sai, P.S. Kharsawan and the husband left the house at about 600 p.m. but he was in the village. It has been alleged that the appellant, Krishna Mahali and one Manbodh Sarangi came and began to talk with the wife of the Bhainsur of the informant, but in the meantime, the husband of the informant came at about 7.30 p.m. and protested and asked the appellant and Manbodh to leave the house and this caused

annoyance to the appellant and he went to his house and brought a knife and gave a blow on the palm as also on the stomach causing serious injuries to the husband of the informant and after that, the appellant and Manbodh escaped away. It is also the prosecution case that the injured husband was removed inside the house, but immediately, he succumbed to the injuries and as it was a rainy day and there was no male member in the house, so in the night the matter could not be reported to the police. On the next day, the matter was reported to Kharsawan P.S. Sub-Inspector of Police came to the place of occurrence and recorded fard-beyan of the informant in the morning at 7.30 a.m. on 13.4.1993 and on the that basis, the case was instituted as against this appellant and Manbodh. An inquest of the deadbody was prepared and sent for post-mortem examination and after completing the investigation, the police submitted charge-sheet as against the appellant and Manbodh. During trial, the co-accused Manbodh is said to have died. So, the prosecution as against the deceased Manbodh was dropped and the trial proceeded against this appellant.

3. The appellant claims himself to be innocent and has denied to have committed the murder of the deceased and it is his defence that the informant and his family members used to sell illicit inqur for which the appellant protested and some unknown persons might have committed the murder of the deceased and the appellant has been implicated- The trial court believe the prosecution story and convicted and sentenced the appellant in the manner indicated above. The question of consideration before us is whether the appellant caused the injuries in the evening of 12.4.1993 In village Turisai, which resulted in the death of the deceased, as alleged.

4. To prove the case on behalf of the prosecution, as many a seven witnesses were examined, out of the whom PW 1 is Dr. N.K. Prasad, who held postmortem examination on the dead of the deceased on 13.4.1993, where-as PWs 2 and 3 are the wife and Bhabi of the deceased and are witnesses to the occurrence. PW 4 is Patthal Singhdeo, a formal witness and a witness on the point of inquest, whereas PW 5 and 7 are tendered witnesses. So to prove the case, the prosecution heavily relied on the evidence PWs 2 and 3. It is the evidence of PW2 that in the relevant evening/this appellant alongwith Manbodh came in a drunken

state and after that, her husband deceased Raghru came and asked the appellant and his friend to have the house and the appellant left the house of the informant. But immediately, he came with a bhujali and inflicted two bhujali, blows due to which the husband of the informant was seriously injured and he was brought inside the house, but immediately he died and that as it was a rainy day, they could not report the matter to the Police on the night and it was reported to the police, rather on the next day. So the evidence of this witness indicates that this appellant came and gave blow with the bhujali. On the other hand, the fardbeyan recorded by the Sub-Inspector, or even the formal FIR has not been proved and have not been legally brought on the record. Furthermore, PW 1 is the doctor, who held post-mortem on the deadbody of the deceased and he found as many as two punctured wounds and according to him, these injuries were caused by the knife. So, the evidence of the doctor is contradictory to the evidence of informant. So far as the use of weapon is concerned, no doubt, in the first information report, there is a reference that 'a knife was used, but the FIR has not been brought on the record.

5. The other important witness examined on behalf of the prosecution is PW 3, Dosma, Birua who is the sister-in-law of PW 2. In cross-examination, she has stated that at the time of the occurrence, she was in the kitchen and when she came out, she saw the appellant and his friend had escaped away. Furthermore, she has also admitted in cross-examination that she was given the evidence as whatever she was asked by the lawyer of the prosecution side. Accordingly, learned Counsel for the appellant submitted that the evidence of PW 3 is not be accepted in any way, as she had not seen the actual occurrence and further she is a tutored witness and had given evidence whatever she was asked to do by the counsel for the prosecution side. If the evidence of PW 3 is not accepted for the reasons mentioned above, then there is solitary evidence of PW 2, the informant, whose evidence also is not consistent so far as the weapon used is concerned. Furthermore, though this occurrence took place in evening and there are several houses in its surroundings, not even a single independent witness was examined to prove the occurrence. Furthermore the investigating officer has also not been examined and even the fardbeyan was not brought on the record. In the circumstances, it is thoroughly unsafe to rely on the solitary evidence of the

informant for recording the order of conviction and sentence of the appellant.

6. In the result, this appeal is allowed and the order of conviction and sentence of the appellant by Trial Court in S.T.No. 12 of 1994 is hereby, .set aside and the appellant is acquitted of the charges. The appellant is in custody. He is directed to be released forthwith, if not required in connection with any other case.

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