

Milap Toppo Vs. State of Bihar

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Court : Jharkhand

Decided On : Apr-06-2007

Reported in : [2007(3)JCR476(Jhr)]

Judge : D.G.R. Patnaik and D.K. Sinha, JJ.

Appellant : Milap Toppo

Respondent : State of Bihar

Disposition : Appeal dismissed

Judgement :

D.G.R. Patnaik, J.

1. The appellant has challenged the judgment of conviction and sentence dated 26th July, 2002 passed by the Sessions Judge, Simdega, in Sessions Trial No. 225 of 1997 whereby the appellant was convicted for the offence under Sections 302 of the Indian penal Code for committing murder of one Anjala Tete and sentenced to undergo imprisonment for life.

2. The case against the appellant was registered on the basis of fard beyan of the informant, Pascal Dungdung (PW8), husband of the deceased Anjala Tete recorded by the police officer (PW 11) at the informant's village at Keyonddih Dabhapani, P.S. Simdega, Dist. Gumla. The fard beyan was recorded at 16.20

hours on 1.1.1997.

3. Prosecution case is that on 1.1.1997 at about 8.00 a.m. while the informant sitting in front of his house was preparing a drum, he saw the appellant passing through having a tangi in his hand. In response to the informant's query, the appellant stated that he was on his way in search of his cow. However, the appellant suddenly entered into the house of the informant and began assaulting Anjala Tete, the wife of the informant, who was washing utensils within her courtyard. On hearing her alarms as also the alarms of his minor son, the informant entered into the courtyard where he saw the appellant repeating assault with tangi on the back portion of the head of the victim. When the informant went to her rescue, the appellant ran away out of the house and seeing the informant on his chase, he picked up a Basila and attempted to assault the informant with the weapon. The informant resisted by trying to snatch away the Basila from the hand of the appellant. Meanwhile, neighbouring residents arrived there and succeeded in snatching away the Basila from the hand of the appellant whereafter the appellant managed to escape. The informant thereafter asked his neighbour Tanis Toppo to inform the Mukhiya as also the police station.

4. The appellant has denied the allegation pleading not guilty and claiming his innocence.

5. Altogether 12 witnesses including the informant, the doctor who had conducted the post mortem examination on the dead body of the deceased and the investigating officer, besides the minor son of the informant, were examined by the prosecution at the trial.

6. The trial court placing reliance on the testimony of the informant (PW8) and his son, Golden Dungdung (PW9) and finding support from the evidence of the doctor PW12 as also the evidence of the investigating officer (PW11), held the appellant guilty for the offence under Section 302 IPC.

7. Sri Sanjay Saxena, Advocate, has offered assistance to the Court as amicus curiae on behalf of the appellant.

Assailing the impugned judgment of conviction and sentence, learned Counsel for the appellant submits that the trial court has seriously erred in recording finding of guilt against the appellant without appreciating the evidence on record in proper perspective and has further erred in placing reliance entirely on the testimony of the informant (PW8) and that of his minor son (PW9), despite the fact that both these witnesses are highly interested witnesses being nearest relations of the deceased and that none of the independent witnesses examined by the prosecution has supported the case of the prosecution. Elaborating his arguments, learned Counsel explains that out of 12 witnesses examined by the prosecution, PWs 1, 2, 6 and 7 have been examined as formal witnesses while PWs 3,4 and 5 who are neighbouring residents, have been declared hostile by the prosecution. The evidence of PW10 is hearsay, as admittedly, the witness has not himself seen the alleged occurrence. Learned Counsel explains further that even the testimony of the PW9 who is the minor son of the informant is not directly on the point of the occurrence and the same is hearsay and in this view of the matter, the conviction of the appellant, based on the sole testimony of the informant, cannot be sustained. Referring to the evidence of PW9, learned Counsel submits that this witness, who is the son of the informant, was hardly six years of age on the date of the alleged occurrence. Reading out his evidence, learned counsel explains that in paragraph 3 of his cross examination, this witness has categorically denied to have seen the assault made on his mother and that it was his father who had told him that the appellant had assaulted the deceased. Learned Counsel submits that in view of the above deposition of PW9, he cannot be considered as an eye-witness to the occurrence.

Referring next to the evidence of PW 8, learned Counsel submits that the narration regarding the manner of the occurrence as given by this witness in his fard beyan is totally different from the narration appearing in his deposition. Learned Counsel explains that whereas in the fard beyan, this witness has claimed that the assault was made on back portion of the victim's head, but in his deposition, he claims that the assault was made on the neck of the victim. Learned Counsel adds further that the improvement in his deposition amounts to contradiction and inconsistency in the manner of occurrence and made with intent to tally with the medical evidence vide the post mortem report. Learned Counsel further submits that though the

witness has claimed that his next door neighbour, Tanis Toppo (PW4), had arrived immediately at the spot and as per the fard beyan, he had snatched away the 'Basila' from the hand of the appellant, yet, PW4 has not supported the contention of this witness and in fact, none of the independent witness has corroborated the statement of the informant (PW8). Learned Counsel sums up by submitting that the testimony of the informant cannot be relied upon on account of the fact that he had indulged in making improvement over his earlier version of the incident and also on account of the fact that he being the husband of the deceased is a highly interested witness and corroboration to his testimony is essentially lacking from any independent source.

8. On the other hand, while supporting the impugned judgment of conviction and sentence of the appellant, learned Counsel for the State has controverted the grounds raised by the learned Counsel for the appellant and has submitted that the evidence of the informant who is an eyewitness to the occurrence and whose presence at the time and place of occurrence was natural, is consistent in material particulars and even though the neighbouring witnesses have failed to support the prosecution case and were declared hostile by the prosecution, yet the evidence of PW9 whose presence at the time and place of the occurrence has not been disputed, supports the testimony of the informant that it was none else, but the appellant who, armed with a tangi, had entered into the courtyard of the informant's house and had inflicted fatal injuries on the deceased. Learned Counsel adds further that the evidence of the informant finds adequate support from the evidence of the doctor who had conducted the post mortem examination regarding the weapon used and the injuries inflicted on the body of the deceased as mentioned by the informant.

9. It is now well settled by a catena of decisions of the Supreme Court that conviction can be sustained even on the basis of statement of a solitary witness and merely because a witness is closely related to the victim, his testimony cannot be disbelieved or brushed aside. No doubt, rule of caution prescribes that the testimony of the solitary witness should be carefully scrutinized and evaluated and only if the testimony inspires confidence and is found trustworthy, reliance can be placed on the same to convict the accused.

10. From the evidence available on the record, it appears that most of the prosecution witnesses have failed to support the prosecution case and they were declared hostile by the prosecution leaving the prosecution to rely on the testimony of the informant and on the evidence of his minor son, besides the evidence of the doctor and the investigating officer. Before proceeding to examine the evidence of the aforementioned witnesses, certain facts, which appear to have been admitted by the defence, may be noted.

From the trend of cross-examination and the line of defence taken by the appellant, it appears that the fact that the deceased had suffered homicidal death has not been denied. The evidence adduced by the prosecution on this issue is that both the informant (PW8) and PW9 have asserted that the deceased had succumbed to fatal injuries sustained by her in the morning of 1.1.1997. The doctor (PW12) in his post mortem report as well as in his evidence has confirmed that the death of the deceased had occurred on count of three ante mortem incised injuries found on her neck and by the side of her neck. From the evidence of the investigating officer also, it is confirmed that the dead body of the deceased was seen by the police officer and had prepared the inquest report mentioning the injuries he had observed on the dead body of the deceased.

As regards the place of the occurrence, the defence does not appear to have raised any controversy. Both in his fard beyan as also his evidence, the informant (PW8) has stated that the incident had occurred within the court yard of his house. This fact is corroborated by the statement of PW9 as also the statement of PW5, though he was declared hostile. This is also confirmed by the evidence of the investigating officer who has affirmed that he had found the dead body of the deceased in pool of blood lying on the ground within the court yard of the informant's house from where he had collected blood stained earth. He had also found the blood-stained tangi lying near the dead body of the deceased which he had seized in course of investigation. He had prepared the inquest report at the place of the occurrence itself and thereafter he had forwarded the dead body to the hospital for post mortem examination.

11. Now referring to the evidence of the informant (PW8), it appears that the witness has reiterated the contents of his fard beyan almost verbatim asserting that in the morning of 1.1.1997 while he was making a drum outside his house, he saw the appellant passing by ,who, on query, stated that he was going in search of his buffalo. Thereafter, the appellant had entered into the courtyard of the informant's house and assaulted the deceased from behind on her neck with tangi while she was washing utensils. The informant wanted to catch him whereupon the appellant picked up a 'basila' from near the door of the house. On alarms, his neighbour, Tanis Topno (PW4) arrived. His wife succumbed to her injuries at the spot. In his cross examination, he has elaborated stating that while he was sitting outside in front of his house, he saw the appellant entering into the court yard and he, the witness, entered into the court yard on hearing alarms of his son. He re-affirms that he had seen the appellant assaulting the deceased and had seen injuries on the neck of the deceased. He further re-affirms that the appellant had made repeated assaults on the victim.

12. PW9, the minor son of the informant, claims in his evidence that at the time of the occurrence, he was playing in house. He saw the appellant entering into the court yard with a tangi in his hand and assaulting his mother, though in his cross-examination, he falters saying that he did not see the actual assault and that it was his father who had told him that his mother was assaulted by the appellant. But his evidence confirms the fact that the appellant had entered into the courtyard; the deceased who was in the courtyard had suffered injuries on her body resulting in her instantaneous death and that at the time the assault was made, his father was sitting out side his house making a drum.

13. The informant (PW8) being the husband of the deceased, his presence at his house at the alleged time of the occurrence is natural. Equally natural is the presence of PW9, the minor son of the informant at the time of the occurrence in the house. There is consistency in the evidences of the informant not only regarding the identity of the assailant but also the manner of assault, weapon used and the injuries inflicted on the deceased. Support to the evidence of PW8 is available from the medical evidence of the doctor (PW12) who had found the following injuries on the deceased:

(i) Incised wound below right angle of mandible on right side of neck 3' x 1 1/2 ' x 2'.

(ii) Incised wound on back of neck on right side 3 1/2 'x 1'x 2 1/2 '.

(iii) Incised wound on back of neck below injury No. (ii) measuring 3' x 1'x 2'. The third cervical vertebra was found cut. The right carotid artery was damaged and there was considerable amount of blood clot below the right angle of mandible.

The doctor has opined that all the injuries which were ante mortem in nature, were caused by sharp cutting weapon as tangi and injuries (i) and (ii) were grievous in nature and dangerous to life. The death of the deceased was caused on account of shock and haemorrhage produced by injuries No. (i) and (ii). The evidence of the doctor (PW12) supports the statement of the informant that he had seen the appellant inflicting repeated blows with tangi on the backside of the neck of the deceased. His evidence finds corroboration from the testimony of the investigating officer who had found and seized a blood-stained tangi from the place of occurrence.

14. Though the prosecution has not offered any motive for the assault, but as learned Counsel for the State has rightly pointed out, in a case of direct evidence of murder, motive need not be essentially proved. On careful scrutiny of the evidence of the informant (PW8), there appears no reason to disbelieve his testimony. Rather, his testimony inspires confidence and has quality of credence, supported in material particulars from the evidence of PW9 as also that of PWs 11 and 12.

15. The trial court has rightly placed reliance on the testimony of PW8 to record its finding of guilt against the appellant. The argument advanced on behalf of the learned Counsel for the appellant is that no independent witness has corroborated the evidence of PW8 and therefore his evidence should not be relied upon is not acceptable. It is not a case where the prosecution could be accused of suppression of independent witnesses. On the contrary, the prosecution has examined at least five independent witnesses who are co-villagers of the informant (PW8). Therefore, no fault can be attributed to the prosecution merely because the

witnesses had chosen not to support the prosecution case, although as per the evidence of the investigating officer, each of these witnesses in their respective statements recorded under Section 161 Cr.P.C. had given incriminating evidence against the appellant.

For the aforesaid reasons, we do not find any merit in this appeal. This appeal is accordingly dismissed and the impugned judgment and order of conviction and sentence of the appellant by the trial court is hereby confirmed.

D.K. Sinha, J.

16. I agree.

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