

Ismail Khan Vs. State of Bihar

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Court : Jharkhand

Decided On : Dec-07-2016

Appellant : Ismail Khan

Respondent : State of Bihar

Judgement :

-1- IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Appeal (D.B.) No.253 of 1991(R) ----- (Against the Judgment of conviction and order of sentence dated 9.10.1991 passed by learned 2nd Additional Judicial Commissioner, Ranchi, in Session Trial No. 439 of 1989 / 2 of 1990) Ismail Khan . Appellant -Versus - The State of Bihar (Now Jharkhand) .. Respondent PRESENT HONBLE MR. JUSTICE H.C. MISHRA HONBLE MR. JUSTICE Dr. S.N. PATHAK .. For the Appellant : Mr. A.K. Kashyap, Sr. Advocate Mr. Swami Nath Prasad, Advocate For the State : Mr. Pankaj Kumar, APP Reserved on:

16. 11.2016 Pronounced on:

7. 12.2016 H.C. Mishra, J.

- Heard learned counsel for the appellant and the learned counsel for the State.

2. The sole appellant is aggrieved by the Judgment of conviction and Order of sentence dated 9.10.1991, passed by learned 2 nd Additional Judicial Commissioner, Ranchi, in Session Trial No. 439 of 1989 / 2 of 1990 whereby, the appellant has been found guilty and convicted for the offence under Section 302 of

the Indian Penal Code for committing the murder of a girl, namely, Hamida Khatoon, and upon hearing on the point of sentence, the appellant has been sentenced to undergo life imprisonment and a fine of Rs.50/-.

3. According to the prosecution story, the appellant was the tenant in the house of the informant, in the portion situated across the courtyard. On 13.2.1989 at about 9:15 PM, the informant heard the screams of his daughter Jahida Khatoon from the courtyard crying that Ismail Bhaiya (the accused appellant) had assaulted her sister Hamida by knife. The informant came out of the house and saw that Ismail was attempting to inflict the knife blow upon himself also, and he saw Hamida injured and she was bleeding. Thereupon, she was brought to a nursing home at Harmu and in the morning, she was taken to RMCH, where in course of treatment, she died. The post mortem examination of the dead body of the deceased was conducted and thereafter the dead body was cremated. It is stated in the FIR that the brother of the informant, namely, Md. Nizam Khan had also given the statement before the Bariatu police at RMCH. After the cremation of the dead body, the fardbeyan of the informant was recorded on 14.2.1989 at 21 hours, on the basis of which Argora P.S. Case -2- No.56 of 1989 was instituted on 15.2.1989 and investigation was taken up. After investigation, the police submitted the charge-sheet in the case.

4. It may be stated that the fardbeyan of the Nizam Khan, which was recorded by Bariatu Police at RMCH on 14.2.1989, was registered as FIR No.659 of 1989 dated 14.2.1989 and it was sent to Argora Police Station for necessary action, as the place of occurrence was within the jurisdiction of the Argora police station.

5. After commitment the case to the Court of Session, the charge was framed against the appellant for the offence under Section 302 of the Indian Penal Code, and upon denial of the charge, the appellant was put to trial.

6. In course of trial, the prosecution has examined 11 witnesses, out of whom, PW-2 Alizan Khan is the informant of the case and is the father of the deceased. PW-1 Kasida Bano is the mother of the deceased. PW-3 Md. Nizam Khan is the uncle of the deceased. PW-4 Jahida Khatoon and PW-5 Shabab Ansari Khan are the younger sister and brother of the deceased, who at the time of occurrence

were with the deceased. PW-6 Tunu Khan is an independent witness, being the neighbour, who reached the place of occurrence upon hearing the connotation. PW-7 Md. Samsuddin and PW-8 Khurshid Ahmed are the two witnesses of the seizure list, but they have turned hostile. PW-9 is Dr. Vivek Kumar, who had treated the deceased when she was brought to the nursing home at Harmu in injured condition and PW-10 Dr. Niranjan Minz is the doctor, who had conducted the post mortem examination on the dead body of the deceased. Since the I.O. had not been examined in the case, necessary documents were proved by a formal witness PW-12, Jagannath Ram, constable, who has identified the fardbeyan and the FIR, which was marked as Exhibit-8 and Exhibit-9 respectively. The other documents proved by the prosecution, are the signature of the informant on the fradbeyan, which was proved by the informant and marked as Exhibit-1, Exhibit-2 is the signature of the uncle of the deceased Nizam Khan on his fradbeyan recorded before the Bariatu Police. Exhibit-3 is the signature of the Nizam Khan on the seizure list showing recovery of knife from the bedroom of the accused and Exhibit 3/1 is the signature of Nizam Khan on the production-cm-seizure list of a photograph and a letter, which have been identified by PW3Nizam Khan himself. Exhibit 3 /3 and 3 / 4 are the signatures of the seizure list witnesses, who turned hostile. Exhibits 5 and 6 are the signatures of the sister and brother of the deceased on their statements recorded under Section 164 of the Cr.P.C., which have been identified by these witnesses, who were examined as PW-4 and PW-5 respectively. Exhibit 7 is the post mortem report, proved by P.W.-10.

7. The defence has also examined two witnesses, who are DW-1 Md. Sidique, and DW-2 Jalaluddin Khan, who is the father of the appellant. -3- 8. PW-1 Kasida Bano, the mother of the deceased, PW-2 Alizan Khan, father of the deceased, PW-4 Zahida Khatoon, sister of the deceased and PW-5 Shabab Ansari Khan, brother of the deceased have fully supported the prosecution case. PW - 1 Kasida Bano has stated that the accused was living in the tenanted portion of her house, which was across the courtyard. In the night of occurrence, Jahida came out of the house in the courtyard and who was followed by Hamida Khatoon and Shabab. In the meantime, the accused Ismail came running and inflicted knife blow on Jahida Khatoon, upon which Hamida screamed that Ismail has assaulted her. Thereafter, she was brought to Harmu Hospital and on the next day, she died. This witnesses

has also stated that there was a photograph of the accused Ismail with another girl and a letter was also found and Ismail was threatening the deceased to return the said letter and photograph, otherwise, she would be killed. This witness has been put to a detailed cross-examination, but there is nothing in the cross-examination to discredit her testimony. PW-2 Alizan Khan, the father of the deceased, PW-4 Jahida Khatoon, the sister of the deceased and PW-5 Shabab Ansari Khan, brother of the deceased, have stated that the deceased Hamida Khatoon, Zahida Khatoon and Shabab Ansari Khan were going to view T.V. in the house of the accused and in the courtyard, the accused came and assaulted the deceased by knife. Upon hearing the screams, the father of the deceased came out of the house and she was brought to nursing home at Harmu and thereafter, she was taken to Ranchi Medical College and Hospital, where she died. Both PW-1 and 2 have denied the suggestion in their cross-examination that they had stated before the doctor in the nursing home that the deceased was injured by falling on scissors. All these witnesses have identified the accused in the Court. PW-4 and PW-5 have also stated that the statements were recorded under Section 164 of the Cr.P.C., before the Magistrate, upon which, they had put their signatures and they identified it. It may be stated that PW-5 is a child witness and his evidence was recorded by the Court below upon being satisfied that he was competent to depose.

9. PW - 3 Nizam Kahn is the uncle of the deceased, who has also fully supported the prosecution case, and has stated that when he came out in the Courtyard, he found that the accused was trying to assault himself, his niece Hamida was injured and bleeding and she told that she was assaulted by the accused Ismail. He has also stated that she was brought to the nursing home and then to RMCH. This witness has also stated that his statement was recorded by the police at RMCH also, on which he put his signature, which he identified as Exhibit-2. He has identified his signatures in the seizure list of the recovery of the knife as also the production-cum-seizure list of the photograph and a letter. He has also proved the photograph and the letter as Exhibit-4 and Exhibit-5 respectively, out of which, Exhibit-4 was marked with objection. This -4- witness was also cross-examined at length, but there is nothing in cross examination to discredit his testimony. PW-6 Tunu Khan, is the neighbour of the deceased and he has also fully supported the

prosecution case. He has stated that upon hearing the noise, he came to the house and he saw that the accused was trying to assault himself by knife and the deceased was lying injured. She informed that Ismail had assaulted her by knife. The deceased was brought to nursing home and thereafter, he learnt that she died on the next day. He is also a witness to the seizure of the knife from the house of the accused and he has proved his signature in seizure list as Exhibit 3/2. This witness was also cross examined at length, but there is nothing in his cross-examination to discredit his testimony.

10. PW-9 Dr. Vivek Kumar is the doctor, who had treated the deceased at nursing home at Harmu. He has stated that the girl Hamida Bano was brought for treatment with bleeding injury in her abdomen. He wanted to perform operation but the attending persons did not allow him to perform the operation and thereafter he referred the injured girl to RMCH for treatment. In course of cross-examination, this witness has stated that he was informed by the girls father that she received the injury as she fell on the scissors from the bed. PW-10 is Dr. Niranjan Minz, who had conducted the post mortem examination on the dead body of the deceased. He found two stitched injuries, apart from the surgical stitched wound. The first injury was 2 x 1 cm into cavity deep on the left side of the upper part of the abdomen situated at 12 cm left of the mid line and 15 cm below the left nipple. The weapon passed through the abdominal wall into the abdominal cavity and perforated the small intestine at one place. The second injury was 2 cm x 1 cm on the front and upper part of the abdomen, 4 cm right to the mid line. The weapon had passed through the abdominal wall and entered into the liver 6 cm deep. There were presence of blood and blood clot in the abdominal cavity. Injuries were ante mortem in nature and the death was caused due to these injuries. This witness has identified the post mortem report to be in his pen and signature, which was marked as exhibit-7. In his cross examination, he has stated that he had conducted the post mortem examination in connection with Bariatu P.S. Case No.659 of 1989 and not in connection with Argora P.S. Case No.56 of 1989. He has also stated that the injuries may be possible by scissors also.

11. The defence is the denial of charge and according to the defence case, the appellant had falsely been implicated in the case due to the fact that the appellant

was tenant in the house of the informant and the informant was trying to evict him. The deceased was having an affair with another boy, but her marriage was being fixed against her wishes, due to which, she had committed suicide by scissors in her house, which was readily available as her father is a tailor, or the deceased had fallen from bed on scissors, due to which, she was -5- injured, as this was the version, which was informed to the doctor at nursing home, where she had been taken for treatment. It is also the defence case that there was no electricity and T.V. in the house of the appellant and as such there was no occasion for the deceased, her sister and brother, for going to view the T.V. at the appellants house.

12. DW-1 Md. Sidique has stated that there was difference between both the parties for vacating the house, in which, the appellant was living as tenant. This witness has also stated that there was an affair between the deceased and another boy and her marriage was being fixed against her wishes. He has stated that he had inquired from the father of the deceased about the occurrence, whereupon he was informed that she was injured by scissors. He has also stated that there was no electric connection in the house of the appellant. In his cross examination, this witness has stated that he had only heard about the affair between the deceased with another boy, but he has no personal knowledge about the same. He has also stated that there was no T.V. in the house of the appellant. DW-2 Jalaludin Khan is the father of the appellant, who has also stated about the difference between the parties for eviction from the house under tenancy. He has also stated that there was no T.V. in his house.

13. Learned counsel for the appellant has submitted that the appellant has been falsely implicated in this case, due to difference between the parties for getting the tenanted portion of the house vacated. It is further submitted that according to the defence case, the deceased had affair with another boy and her marriage was being fixed against her wishes, due to which, she might have committed suicide by piercing scissors in her abdomen, or she fell from the bed on the scissors, due to which she was injured and which ultimately proved fatal. Learned counsel has submitted that though, as to the motive of the occurrence, it has been stated in the evidence that there were a photograph of the appellant with a girl as well as a

letter also, which the appellant was demanding from the deceased threatening to kill her, but it is submitted that this is only an afterthought and this motive has not been stated in the FIR. Learned counsel also submitted that the FIR has been lodged after about 24 hours by the informant, in as much as, the occurrence had taken place on 13.2.1989 at about 9:15 PM, whereas the fardbeyan of the informant was recorded on 14.2.1989 at 9:00 PM, thereafter the formal FIR was drawn on 15.2.1989 and it was sent to the Court of CJM on 16.2.1989. Learned counsel submitted that there was inordinate delay in lodging the FIR, which goes to show that the prosecution story, as alleged, is only an afterthought, in view of the fact that the deceased had died due to scissors' injury, which fact was also disclosed at nursing home to the Doctor. Learned counsel further submitted that the knife, by which the offence was allegedly committed, had not been produced in the Court below and the seizure list shows that it was recovered from the briefcase in the house of the -6- appellant, which also makes the story of seizure very doubtful. Learned counsel further submitted that there are discrepancies in the evidence of the prosecution about the occurrence also, in as much as, the father had stated that it was the sister of the deceased, who screamed, upon which he came out, whereas the mother PW -1 has stated that the deceased herself screamed, upon which, they went in the courtyard.

14. Learned counsel for the defence further submitted that even according to the prosecution case, the statement of the uncle of the deceased was recorded by the Bariatu Police earlier and FIR No.659 of 1989 was also instituted, but the present FIR has not been instituted on the basis of the said fradbeyan, rather it has been instituted on the basis of the subsequent fradbeyan of the father of the informant, which is hit of Section 162 of the Cr.P.C. It is also submitted by the learned counsel that even PW-10 Dr. Niranjan Minz, had stated that he had conducted the post mortem examination in connection with Bariatu P.S. Case No.659 of 1989 and not Argora P.S. Case No. 56 of 1989 and, as such, the present post mortem report did not belong to this case. Learned counsel also pointed out from the evidence of PW-10 that he admitted that such injuries could be inflicted by scissors also. Learned counsel finally submitted that all the witnesses examined by the prosecution are interested witnesses being the near relatives of the deceased, and the independent witnesses have not been examined, and

accordingly this makes the prosecution case very doubtful.

15. In support of his contention, learned counsel for the appellant has placed reliance upon the decision of this High Court in *Jai Hari Bera and Ors. Vs. State of Bihar (Now Jharkhand)*, reported in 2003 (2) East Cr Case 314 (Jhr), wherein it is held that where there is enmity existing and alive between the deceased and the informant on the one hand and the appellants on the other hand, prior to the occurrence in question, the examination of all the closely related and partisan witnesses having animus against the appellants, had to be looked into with great care and caution. Learned counsel has also placed reliance upon the decision of the Honble Supreme Court in *Meharaj Singh Vs. State of U.P.* reported in 1994 SCC (Cri) 1390, wherein it is held that the delay in sending the FIR to the Magistrate is indicative of the fact that the prosecution story was recorded later on after due deliberations and consultations. Placing reliance on these decisions, learned counsel submitted that the prosecution had not been able to prove the case beyond all reasonable doubts and it is a fit case, in which, the accused appellant be acquitted of the charge.

16. Learned counsel for the State on the other hand has submitted that the occurrence had taken place in the courtyard of the informant and in presence of his sister PW-4 Jahida Khatoon and brother PW-5 Shabab Ansari Khan and these are the natural eyewitnesses to the occurrence, who have stated that it was the appellant, who assaulted their sister by knife, due to which, she -7- subsequently died. PW-1 Kasida Bano, the mother of the deceased, PW-2 Alizan Khan, the father of the deceased, PW-3 Md Nizam Khan, the uncle of the deceased and PW-6, the Naibhour, Tunu Khan reached the place of occurrence upon hearing the screams and they found the deceased lying injured. They all stated that the accused was also present there and he was trying to inflict knife blow upon himself, but he was apprehended. The injured informed them that Ismail had assaulted her by knife. Learned counsel submitted that in view of the evidence of these witnesses, the motive behind the occurrence has become absolutely immaterial and it makes no difference whether the motive was stated in the FIR or not. Learned counsel further submitted that though the fardbeyan of the uncle of the deceased was recorded earlier at that point of time, but since the occurrence

had been taken place within the jurisdiction of Argora Police Station, only the FIR number was given by Bariatu Police station and the dead body was sent for post mortem examination and thereafter the FIR was forwarded to the Argora police station, in whose jurisdiction, the occurrence had taken place, where on the basis of the fradbeyan of the father of the deceased, the another FIR was instituted. It is submitted that in both the fradbeyans, there is no material difference, in as much as, in both the fardbeyans, it is only alleged that it was the accused, who had inflicted the knife blow upon the deceased. Learned counsel submitted that there is no delay in lodging the FIR, in as much as, the occurrence had taken place on 13.2.1989 in the night hours and thereafter the deceased was taken to hospital and when she died on the next day, after cremation, the fradbeyan was recorded on the same day, i.e., 14.2.1989 in the night and on the next day, the FIR was instituted on 15.2.1989, which was received in the Court of Chief Judicial Magistrate on 16.2.1989, learned counsel submitted that there is no delay in lodging the FIR. Learned counsel for the State further submitted that the ocular evidence of the PWs are fully supported by the medical evidence of PW-10 Dr. Niranjan Minz, who has proved two stabbed wounds caused by knife on the deceased, which were the cause of the death and he has also proved the post mortem report. Learned counsel for the State accordingly, submitted that minor discrepancies, here and there, are not fatal to the prosecution case and the prosecution has been able to prove its case beyond all reasonable doubts and the appellant has been rightly convicted and sentenced for the offence as aforesaid.

17. Having heard learned counsels for both the sides and upon going through the record, we find that the first objection of the learned counsel for the appellant that there are two FIRs in the case, has no locus to stand. Though, the fardbeyan of the uncle of the deceased recorded at RMCH, Ranchi, was given a FIR number, but after getting the post mortem conducted, that fardbeyan was sent to Argora police station, in whose jurisdiction the occurrence had taken place, where a fresh FIR was instituted on the basis of the fardbeyan of the -8- father of the deceased. Both the fardbeyans give the same manner of occurrence that in the courtyard of the house, the appellant inflicted the knife blows upon the deceased girl. The time of occurrence is also the same in both the fardbeyans. We find that no prejudice is caused to the defense due to the fact that the subsequent version of the father of

the deceased has been treated as FIR, in as much as, no difference was going to be caused in the final Judgement, even if the fardbeyan of P.W.-3, recorded by the Bariyatu police, had been treated as FIR.

18. The submission of the learned counsel for the appellant that there was difference between the parties as the informant wanted the house under tenancy vacated, in our considered view, cannot be such difference, so as to falsely implicate a person for that petty difference, if any. As regards the submission of the learned counsel for the appellant that the prosecution case has been supported only by the interested witnesses, we find that since the occurrence had taken place in the courtyard of the house, and that too, in the night hours, the family members, are the only natural witnesses of the occurrence. The prosecution case has also been supported by one neighbour PW-6. The witnesses have been subjected to extensive cross-examination on the manner of occurrence, but nothing could be taken in their cross examination, so as to discredit their testimony.

19. The defence version that the deceased might have inflicted the knife blow by a fall on scissors, is again a story, which cannot be believed at all. Scissors lying on a floor cannot cause such stabbing injuries, as have been proved by PW-10 Niranjan Minz, by any fall. The story that the deceased herself inflicted scissors blow also cannot be believed in view of the unimpeachable evidence of the prosecution witness. The evidence of the defence side that the deceased was having an affair with another boy, and her marriage was being fixed against her wishes, due to which she might have committed suicide, cannot be believed at all, in as much as D.W.-1 who had alleged this fact with certainty, has broken down in his cross examination and has admitted that he had no personal knowledge about that fact. This clearly shows that the defence has set up a false story, which cannot be believed. The defence evidence that there were no electric connection and T.V. in the house of the appellant, also cannot be relied upon, as the place of occurrence is situated in Ranchi town, and it is quite unlikely that there was no electric connection in the house of the appellant. The prosecution witnesses have stated that the deceased, her brother and sister were going to view T.V. in the house of the appellant, and there is nothing in their cross examination to discredit

their testimony on this point also. Even suggestions were not been given by the defence to any of the P.Ws.1 to 6, that there was no electric connection and T.V. in the house of the appellant. As such the defence evidence on this point also, cannot be believed at all. -9- 20. Though it is argued by the learned counsel for the appellant that there are discrepancies in the evidence of the P.Ws, in as much as, PW-1, the mother of the deceased stated that it was the deceased, who screamed upon being injured, whereas PW-2, the father of the deceased stated that it was the sister of the deceased, who screamed, in our considered view, is no discrepancy in the evidence at all. It is quite natural that when two sisters and one brother were there at the place of occurrence and one sister was stabbed by the appellant, all the children must have screamed. Even PW-5, Shabab Ansari Khan, the brother of the deceased, who is a child witness, has fully supported the prosecution case and fully stood the test of cross examination.

21. In our considered view, in the present case, the prosecution has been able to prove the case against the appellant beyond all reasonable doubts, and the appellant has rightly been convicted and sentenced for the offence under Section 302 of the IPC by the Trial Court below. Accordingly, we do not find any illegality and / or irregularity in the impugned Judgment of conviction and Order of sentence dated 9.10.1991, passed by the learned 2 nd Additional Judicial Commissioner, Ranchi, in Sessions Trial No.439 of 1989 / 2 of 1990, convicting and sentencing the appellant for the offence under Section 302 of the Indian Penal Code as stated above. We, hereby, affirm the Judgment of conviction and the Order of sentence.

22. Consequently, there is no merit in this appeal and the same, is accordingly, dismissed.

23. The appellant is on bail and his bail bond is hereby, cancelled. The Court below is directed to forthwith issue process compelling the production / surrender of the appellant for serving out of the sentence.

24. Let the Lower Court Record be sent back forthwith to the Court concerned, along with a copy of this Judgment. (H.C. Mishra, J.) Dr. S.N. Pathak, J.

(Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi Dated 7th December, 2016. R.
Kumar/NAFR

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