

(2005) 03 PAT CK 0032
In the Patna High Court
Case No : Criminal Appeal No. 464 of 2001

Anisur Rehman and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 107, 302, 34

Citation : (2005) 4 PLJR 349

Hon'ble Judges : Sadanand Mukherjee, J; M.L. Visa, J

Bench : Division Bench

Advocate : Jagdish Prasad and Virendra Kumar, Shakil Ahmad Khan, Humayun Ahmad Khan, Jay Prakash Singh and Sajid Salim Khan, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Judgement

M.L. Visa, J.—The appellants, who are three in number, have questioned the legality of the judgment and order dated 31.8.2001 passed by 1st Additional Sessions Judge, Buxar in Sessions Trial No. 183 of 1993 convicting and sentencing them to undergo rigorous imprisonment for life under Sections 302/34 of Indian Penal Code (In short "IPC") for committing the murder of Md. Umar. The case of prosecution, as disclosed by the Fard-e-bayan of informant Md. Usman (PW 2), in short, is that on 20.6.1993 at about 11.20 AM, an altercation took place between Md. Umar, maternal uncle of informant on one side and his neighbours, the appellants and Sheikh Ibrahim father of appellant Nezamur Rehman and grandfather of remaining two appellants on the other side in respect of a Parti land in front of the house of Sheikh Umar when appellants were throwing earth on this land which was objected to by Sheikh Umar. At that time, appellant Nezamur Rehman had ordered to assault Sheikh Umar and Sheikh Umar then came in his room. On the same day at about 11.30 AM, informant found Sheikh Ibrahim sitting on a cot on Parti land and found all the three appellants coming out from the room of his maternal uncle Sheikh Umar and when he went inside the room, he found froth was coming out from the

mouth of his maternal uncle and urine was also flowing and when he examined the pulse of his maternal uncle, he found him dead. The informant became convinced that the appellants had committed the murder of his maternal uncle by strangulation. About the motive, informant in Fard-e-bayan, stated that his maternal uncle Sheikh Md. Umar was having land dispute with Sheikh Ibrahim and Sheikh Jamalu and a title suit was also pending in Court. About the occurrence, he stated in the Fard-e-bayan that it was witnessed by Masood Alam (PW 1). On the basis of Fard-e-bayan of informant, formal first information report under Sections 302/34 of IPC was drawn and police, after investigation, submitted chargesheet against all the three appellants under Sections 302/34 of IPC. Cognizance of the case was taken and the case was committed to the Court of Session where charges under Sections 302/34 of IPC were framed against the appellants who denied the charges and were put on trial and after trial, they were found guilty and were convicted and sentenced, as indicated above. The case of appellants, as it appears from the evidence of defence witnesses examined on their behalf and from the trend of cross-examination of prosecution witnesses, is of complete denial of charges and their false implication in this case on account of enmity.

2. In order to prove its case, prosecution has examined five witnesses in this case. Nurool Islam (PW 4) is the formal witness who has proved his signature (Ex-hibit-1/1) on Fard-e-bayan and his signature (Exhibit-1/2) on inquest report. He has also proved signature (Exhibit-1/3) of Masood Alam, another witness on inquest report. Dr. Shyam Sunder Singh (PW 3) is the doctor who held autopsy on the dead body of Sheikh Umar. Md. Usman (PW 2) is the informant. Masood Alam (PW 1) is said to be eye witness of this case and Rajendra Singh (PW 5) is the Investigating Officer of this case.

3. Dr. Shyam Sunder Singh (PW 3), in his evidence, has said that on 20.6.1993, he was posted as Medical Officer of Subdivisional Hospital, Buxar and on that day at 5.15 PM, he held post mortem examination on the dead body of Sheikh Umar and found the following ante mortem injuries:

Contusion and echymosis over both sides of neck 2" x 2" and 1-1/2" x 1/4".

He has further stated that on dissection, nothing abnormal was detected in the skull and scalp but found that trachea was found congested and ruptured and there was rupture of thyroid and hyoid bone and dislocation of cervical vertebra.

According to him, cause of death was due to asphyxia as a result of throttling of neck and time elapsed since death was within about twelve hours. He has proved his post mortem examination report which is marked Exhibit-2. His evidence suggests that death of deceased was homicidal.

4. Md. Usman (PW 2) is the informant of this case and he, in his evidence, has stated that on the day of occurrence at about 11.30-11.45 AM, after hearing hulla, he went to the Darwaza of Sheikh Umar where he found that Sheikh Ibrahim was sitting on a cot on the land of deceased Sheikh Umar and he found

all the three appellants hurriedly coming out from the house of deceased Sheikh Umar and when he entered the house of Sheikh Umar, he found froth was coming out from his mouth and urine was dropping and when he checked the pulse of Sheikh Umar, he could not understand anything and he thought that Sheikh Umar had died. He has further said that about ten to fifteen minutes prior to occurrence, all the three appellants were throwing earth in the field of deceased and on this point, some altercation had taken place between them and deceased and he had seen that altercation from his Darwaza. In para-6 of his evidence, he has said that he went to the place of occurrence on hearing the call of Maqsood Alam (PW 1) and except PW 1, he did not find anyone else at the place of occurrence. In para-7 of his cross-examination, he has said that he had not seen the appellants entering the house of deceased. Maqsood Alam (PW 1) has said that on the date of occurrence at about 11-11.30 AM, he was at his Darwaza which is in front of the Darwaza of deceased Md. Umar and about half an hour before 11 AM, he had seen some altercation concerning a land between deceased and appellants and about 11.30 AM, he, from his Darwaza, saw all the appellants entering the house of Sheikh Umar and three to four minutes thereafter, he also went there and saw that appellant Nezamur Rehman had caught hold of legs of deceased, appellant Fazlur Rehman @ Chhote Rehman was sitting on the chest of deceased Sheikh Umar and appellant Anisur Rehman was pressing the neck of deceased as a result of which froth started coming out from the mouth of deceased and he raised hulla on which witnesses came there and appellants, after jumping from cot, fled away but by that time, deceased had already died. He has proved his signature (Exhibit-1) on Fard-e-bayan. In para-4 of his cross-examination, he has said that half an hour before the occurrence, deceased was relaxing in his room and when he entered the room at that time, appellants did not flee away and they had caught hold of deceased and neither he asked anything to appellants nor appellants asked him anything. In para-12 of his evidence, he has said that he had seen the three appellants entering the room one by one and first of all, Anisur Rehman entered followed by Fazlur Rehman @ Chhote Rehman and lastly Nezamur Rehman and all were about one to two steps from each other and except him, no body else had seen them entering the room of deceased and when the appellants started entering the room of deceased, he raised hulla and he came near the room of deceased but remained outside the room and turning his back, he started raising alarm and on his alarm, first of all informant came and appellants then started running away. In para-18 of his evidence, he has said that fifteen minutes after appellants fled away, he entered the room of deceased and two to three minutes before he entered the room of deceased, all mohalla people had already entered the room of deceased. Rajendra Singh (PW 5), who is the Investigating Officer of this case in para-11 of his evidence, has said that this PW 1 had stated before him that all the appellants, following deceased, had entered his room and he had further stated that he and deceased both were having land dispute with appellants. The Investigating Officer has further stated that this witness had stated before him that after appellants fled away, he went in the room of deceased and found him

dead. About informant, Investigating Officer, in para-20 of his evidence has said that he stated before him that at about 11.30 AM, deceased went inside the room and after sometime when informant went to the place of occurrence, he saw appellants coming out from the house of deceased giving rise to some suspicion then he went in the house of deceased and informant had not stated that on hulla, he had gone to the place of occurrence. In the Fard-e-bayan, informant has stated that at about 11.20 AM, an altercation between deceased and appellants had taken place on the point of some Parti land and, thereafter, deceased went in his room and at about 11.30 AM, he saw the appellants coming out from the room of deceased and immediately he went inside the room of deceased and found him lying dead. In Fard-e-bayan, informant has nowhere stated that he had gone to the place of occurrence after hearing hulla. In Fard-e-bayan, informant has simply stated that occurrence was witnessed by PW 1 but he has nowhere stated that what part of occurrence was seen by PW 1 who, in his evidence, has now claimed to be an eye witness of entire manner of occurrence. Evidence of PW 1, who is claiming to be an eye witness to the occurrence, is also not free from contradictions because before Investigating Officer, he stated that he saw the appellants following the deceased entering his room but, in his evidence, he has said that deceased was already in his room half an hour before the occurrence and was relaxing and then appellants entered the room.

5. On behalf of appellants, fourteen witnesses have been examined. Brij Bihari Singh (DW 1) has simply stated that Maqsood Alam (PW 1) is a torch repairer and on 19.6.1993, he had given his torch for repairing and on 20.6.1993 at 10 AM, he met PW 1 in his shop who called him after half an hour and at about 10.30 AM, he took back his torch from PW 1 at his shop. This witness has been examined in order to show that PW 1 on the date and time of occurrence was in his shop and he could not have remained at place of occurrence. Shiv Nandan Pandey (DW 2) has said that from the house of PW 1, house of deceased is not visible because there are houses in between the house of PW 1 and house of deceased. Md. Sarfraz Sheikh (DW 4) has said that he is nephew of deceased and his family and family of deceased is still joint because no partition has taken place and he resides at Burdwan in West Bengal and on hearing the news of death of his uncle, he had come to the village of his uncle where he came to know that his uncle died of heart attack. He has further said that he came to know that a case for the murder of his uncle was lodged but then this case is false which has been lodged on account of enmity between appellants and informant and PW 1 is also instrumental in getting this false case lodged. Anirudh Trivedi (DW 3), Shivjee Yadav (DW 5), Nagendra Narayan Lal (DW 9), Banshidhar Burma (DW 10), Nurul Islam (DW 11), Shashi Lal (DW 12), Shri Bhagwan Prasad (DW 13) and Nagendra Prasad Singh (DW 14) are formal witnesses who have proved affidavits (Exhibits-A and H), informatory petition (Exhibit-G), signatures (Exhibits-C and C/1) of Parikh Gosai and Ganesh Thakur on affidavit, non-first information report of a proceeding u/s 107 of Criminal Procedure Code (Ex-hibit-

D), signature of Jehangir Khan (Exhibit-E), station diary entry (Exhibit-F), signature of one Laxman on a sale deed (Exhibit-E/1), rent receipt (Exhibit-G). Harihar Singh (DW 7) has said that distance between Bhojpur and Buxar is eighteen kilometres and it takes one hour in travelling from Bhojpur to Buxar by bus. Md. Sultan Qureshi (DW 8) has said that in his Gram Panchayat, there are three Chaukidars and one Dafadar. In para-3 of his evidence, he has said that before the occurrence of this case, there was land dispute between informant and appellants. Exhibit-A is the affidavit said to be sworn by one Moti Ram Thakur swearing therein that he is the owner of mini truck No. NLM 9339 which was hired by PW" 1 for a sum of Rs. 300/- for carrying the dead body of Sheikh Umar and at that time, PW 1 had stated that no body knows who had killed the deceased. Exhibit-B is an informatory petition filed by one Sheikh Manzar in the Court of Chief Judicial Magistrate, Buxar in which it is stated that informant was pressing his uncle to depose falsely in a case. Exhibits-C and C/1 are signatures of Parikha Gosai and his advocate on an affidavit sworn by Parikha Gosai which shows that he is the Dafadar of new Bhojpur Gram Panchayat and there are three other Chaukidars, namely, Bhola Chaukidar, Matu Yadav Chaukidar and Chandradeo Paswan. Exhibit-D is the report of police for initiating a proceeding u/s 107 of Criminal Procedure Code between informant and some others as first party and Sheikh Ibrahim who, as stated above, is father of appellant Nezamur Rehman and grandfather of appellant Anisur Rehman and Fazlur Rehman @ Chhote Rehman as second party. Exhibits-E and E/1 are signatures of witness Jehangir Khan and scribe Laxman Prasad on a sale deed said to be executed by Shaukat Ali in favour of Nurul Islam, brother of appellant Nezamur Rehman. Exhibit-H is the affidavit sworn by Sheikh Md. Hasan Imam, brother of appellant Nezamur Rehman stating therein that land of Plot No. 309 purchased by his brother Nurul Islam from Shaukat Ali on 11.10.1982 has been purchased by informant from the brother of Shaukat Ali on 8.3.1991. Exhibit-J is the certified copy of the order-sheets of Consolidation Officer in Case No. 165 of 1981-82 of Moza-Bhojpur between Md. Islam Sheikh and Sheikh Md. Ibrahim. Exhibit-J/ 3 is the copy of order of the Court of Subdivisional Judicial Magistrate, Dumraon showing that a proceeding u/s 107 of Criminal Procedure Code was initiated in which appellant Anisur Rehman and his grandfather Sheikh Md. Ibrahim were members of first party whereas informant and others were second party.

6. The defence has examined witnesses and has filed a number of documents in order to show that informant had enmity with appellants on account of land dispute much before the date of occurrence. The learned counsel of appellants has argued that columns 5 and 6 of the inquest report (Exhibit-4) which are meant for describing the visible injuries or wounds or any other type of marks and the nature of weapons by which those were caused and circumstances, if any, showing the suspicion of any mischief are completely blank suggesting that when this inquest report on 20.6.1993 at 2 PM was prepared, no sign of any injury or wound or any mark was found by Investigating Officer on the dead body but the post mortem examination report shows that when subsequently

post mortem examination was held, the doctor, conducting autopsy, found contusion and echymosis over both sides of neck 2" x 2" x 1-1/2" x 1/4". According to him, if the Court finds that there is discrepancy in inquest report and the post mortem examination report, a benefit of doubt arises and benefit of such situation will go to the appellants.

7. Mr. Lala Kailash Bihari Prasad appearing on behalf of the State submits that in no case inquest report will override the post mortem examination report because inquest report is generally prepared by Investigating Officer who simply mentions visible injuries found on the dead body of deceased whereas post mortem examination is a scientific examination conducted by medical expert. There is no dispute on the fact that inquest report will not surpass the post mortem examination report but then the Court will take a different view of the matter when it finds that in inquest report, there is no mention of any injury on the dead body of deceased but during post mortem examination, some visible injuries are found on the dead body. The discrepancy in inquest report and post mortem examination report of the present case cannot be easily ignored particularly considering the fact that Investigating Officer, in para-12 of his evidence, has clearly stated that on the neck of deceased, he did not find any type of mark and neither there was any swelling or fracture on the neck and he had examined the entire body of deceased but he did not find any mark of assault on the body of deceased. If for the sake of argument it be assumed that Investigating Officer failed to notice the injuries which were subsequently found on the dead body by the doctor conducting post mortem examination, I find that this itself is not sufficient to prove charge against the appellants because in this case, as discussed above, only PW 1 claims to be an eye witness but then his evidence is not consistent and is full of contradictions although the Fard-e-bayan of informant states that PW 1 had witnessed the occurrence but then in Fard-e-bayan, there is no indication to suggest that PW 1 witnessed the occurrence as minutely as has been deposed by him in his evidence because in that case, informant must have given that description in the Fard-e-bayan which is silent on the point that appellants were seen committing the murder of deceased and only suspicion has been raised against them on the ground that they were seen hurriedly coming out from the room of deceased.

8. Considering the entire evidence on record, I find that prosecution in this case has not been able to prove its case against the appellants beyond all reasonable doubts.

9. In the result, this appeal is allowed. The judgment and order of Court below convicting and sentencing the appellants is set aside and the appellants are acquitted.

10. As appellant No. 3 is on bail, he is discharged from the liabilities of his bail bonds. For appellants Anisur Rehman and Fazlur Rehman @ Chhote Rehman who are in custody, issue release order at once for their release from jail if they are not wanted in any other case.

S. Mukherjee, J.

I agree.