

(2019) 01 JH CK 0148

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 28 Of 1994 (R)

Bishun Bhuian

APPELLANT

Vs

State Of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 165A, 302
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 154, 161

Citation : (2019) 0 FFLT(JHH) 28

Hon'ble Judges : Aniruddha Bose, CJ;B.B. Mangalmurti, J

Bench : Division Bench

Advocate : Gautam Kumar, Ram Prakash Singh

Final Decision : Dismissed

Judgement

B.B. Mangalmurti, J

1. This appeal is directed against the Judgment of conviction dated 16th December, 1993 and Order of sentence dated 18th December, 1993 passed by 6th Additional Sessions Judge, Dhanbad in S.T. No. 64 of 1991 convicting the appellant under Section 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The short fact of the case is that fardbeyan of Ghanshyam Pandey son of Trilokinath Pandey of Kariatpur, P.S.Barhi, District- Hazaribagh at present resident of Anugrah Nagar, P.S.Dhansar, District- Dhanbad recorded by S.I. Fozil Ahmed, Officer-in-Charge of Dhansar P.S., District-Dhanbad that on 14th November, 1989 at about 6 p.m. he was sitting with Raju Yadav by the side of Chandmari Railway Line, meanwhile someone called Raju. Raju went there and on return asked informant to accompany. When both went there he saw Rajendra Bhuian and his two elder brother Mahendra Bhuian and Bishun Bhuian were present. When they reached the eastern side of Chandmari Mohalla near the house of Kali Bhuian then near the field suddenly Mahendra Bhuian and Bishun Bhuian caught Raju

Yadav and had thrown him on the ground. Then Raju Yadav cried for help. Informant tried to run toward him then Rajendra Bhuian stopped him from going there. Both Mahendra Bhuian and Bishun Bhuian were assaulting Raju. Raju raised alarm and managed to flee away. After some time informant met with Nunu to whom he narrated the incident and also informed him that Rajendra Bhuian along with his brother Mahendra Bhuian and Bishun Bhuian assaulted Raju Yadav causing his death. Later it came to his knowledge that all had taken meal at the residence of Baldeo Bhuian. He claimed that Rajendra Bhuian, Mahendra Bhuian and Bishun Bhuian have murdered Raju Yadav. Only the previous day Raju Yadav had solemnized marriage and had returned on that day.

3. On the basis of above fardbeyan, Dhanbad P.S. Case No.793 of 1989 dated 15th November, 1989 was drawn up under Section 302/34 of the Indian Penal Code. After investigation, police submitted charge- sheet against three accused persons namely Bishun Bhuian, Mahendra Bhuian and Rajendra Bhuian. The police could arrest only Bishun Bhuian and other accused Rajendra Bhuian and Mahendra Bhuian remained absconder.

On the basis of the charge-sheet, the cognizance was taken and the case was committed to the Court of Session. In this situation, the charge was framed only against Bishun Bhuian and rest two were declared absconder.

4. The prosecution altogether examined six witnesses but the defence has not adduced any oral evidence.

5. P.W.1 Naurangi Bhuian is a formal witness who has proved his signature on seizure list which was marked as Ext.1. The police had seized blood stained soil, Hawai Chappal, leather Chappal, blood stained big size stone, spectacles, a twenty rupee note and an old red pen.

6. P.W.2 Nunu Dhobi did not recognize accused Bishun Bhuian standing in the court and also denied about the knowledge of the incident. On the prayer of prosecution, this witness was declared hostile and prosecution was allowed to cross-examine this witness. During cross-examination, he stated that the police had not recorded his He denied the suggestion that he had given statement before the police that Ghanshyam Pandey came running and stated that accused Rajendra Bhuian had called Raju Yadav and other accused person have thrown him on the ground. On this information, when he reached he saw accused Rajendra Bhuian threatening that whosoever come here, he will be killed in the same manner Raju Yadav was killed. He also denied to have given statement before the police that Rajendra Bhuian and Bishun Bhuian were assaulting Raju Yadav. Rajendra Bhuian was holding knife and Bishun Bhuian had thrown a big size stone upon head of Raju Yadav. When the people started assembling there then accused persons fled away. He also denied to have given statement before the police that when he went near Raju Yadav, then he found him dead. He also denied the suggestion that he is giving false evidence to save accused persons. During cross-examination on behalf of the defence, he stated that he is residing

in Chandmari for the last five years and without any fear or pressure he deposed before the court.

7. P.W.3 Dr. Vinod Kumar, Assistant Professor in the Department of Forensic Medicine, P.M.C., Dhanbad conducted post-mortem examination on the dead body of Raju Yadav, son of Dhanu Yadav on 15.11.1989. Dead body was brought and identified by Constable Bhog Narain Yadav. He found the following ante-mortem injuries on the body of the deceased:-

(1) Lacerated wound 1/2" x 1/5" x bone deep on the right side of face. (2) Full thickness into 3/4" long incised wound of right pinna. (3) Incised wound 1/2" x 1/2" x muscle deep on the outer side of left side of upper part of face.

(4) Incised wound 1"x 1/4" x muscle deep on the left index finger. (5) Incised wound 3/4"x1/4"x muscle deep on the root of left middle finger.

(6) Stab wound 1" x 1/4" x cavity deep on the left side of abdomen along the costal margin.

(7) Stab wound 1"x1/4" x cavity deep on the midline of abdomen situated 3½" above the umbilicus. Loops of intestine were protruding out. (8) Stab wound 1½" x 3/4" x cavity deep on the lower part of left side of abdomen. Loops of intestine were protruding out.

(9) Stab wound 3/4" x 1/5" x 1½" on the upper part outer side front of the thigh.

(10) Incised wound 3/4" x 1/4" x muscle deep on the root of right middle finger.

(11) Incised wound 3/4" x 1/4" x muscle deep and 1" x 1/4" x muscle deep. 1/2" apart situated, 1" left to the mid line on the back of abdomen.

(12) Stab wound 1"x 1" x cavity deep on the lower part of left flank of chest.

(13) Incised wound 3" x 1/2" x muscle deep on the lower part of left hip. On dissection:-

Head-Frontal, parietal and right side facial bone were broken. Meninges and brain were lacerated.

Both side chambers of the heart were empty. Abdominal cavity contains blood and blood clot. Loops of intestine showed multiple stab wounds. Stomach contained about 2 ½ ounce fluid only. Urinary bladder was empty. All the internal organs were pale.

In his opinion, death was caused due to hemorrhage and shock as a result of aforementioned multiple stab and incised wounds caused by sharp pointed weapon may be a Chhura and multiple lacerated wound may be by stone. He proved post-mortem report as it was in his pen and handwriting and bears his signature and the same was marked as Ext.2. The signature of witness on the dead body challan was marked as Ext.1/1 and on the inquest report as Ext.1/2. The defence declined to cross examine this witness.

8. P.W.4 Kishun Mahto is an eye witness and independent witness examined in this case. He deposed that on 14.11.1989 while he was returning to his Quarter, he heard the cry and went there. He saw Bishun Bhuian and Mahendra Bhuian both had surrounded and suppressed the body of Raju Yadav on the ground and Mahendra Bhuian was stabbing from a large knife. Besides that Rajendra Bhuian had caught hold Ghanshyam Pandey who wanted to help Raju Yadav. He saw some persons near railway line shop then he raised alarm so that they could hear the alarm. Some person came running but by that time Raju Yadav became dead. He further deposed that Ghanshyam Pandey informed the police and police took possession of the dead body. He further stated that Mahendra Bhuian, Bishun Bhuian and Rajendra Bhuian are brothers and he recognized Bishun Bhuian standing in the dock and claimed to recognize rest two accused also. During cross-examination, he denied the suggestion that he is deposing with a view to implicate accused in a false case.

9. P.W.5 Ghanshyam Pandey is informant of this case. He stated that occurrence is of 14th November, 1989 evening. He was sitting with Raju Yadav then a person came and said that Mahendra Bhuian and Bishun Bhuian have come. Raju Yadav went near the Chandmari railway line where Mahendra Bhuian and Bishun Bhuian were present and thereafter Mahendra Bhuian and Bishun Bhuian and Raju proceeded. After some time, he saw and heard Raju was crying for help as they were assaulting him. When he tried to intervene then he was caught by someone so he could not reach and save him. After some time, he saw Raju Yadav. He recognized Bishun Bhuian. He further stated that the police has recorded his statement and finding it correct, he put his signature on fardbeyan which has been marked as Ext.3.

At this juncture, this witness was declared hostile and prosecution was allowed to cross-examine. During cross-examination, this witness denied to have stated that Mahendra Bhuian and Bishun Bhuian took Raju Bhuian and when they reached near a field Rajendra Bhuian thrown Raju Yadav on the ground and caused assault. When he tried to save Raju he was stopped by someone. He also denied that he had narrated the incident to Nunu Dhobi and have stated to heard that Rajendra Bhuian along with his brother Mahendra Bhuian, Bishun Bhuian have caused murder. He denied the suggestion that he is deposing false in connivance with the accused persons. During cross- examination on behalf of defence, he stated that he met the police at the police station where his statement was recorded and after that it was read over to him. He put his signature on the insistence of Daroga Ji. He further deposed that at the time of occurrence there was some darkness and there was no arrangement for light. He stated that he is not aware that Raju Yadav was having enmity with someone which caused his murder. He also denied that he had not seen anyone killing Raju Yadav.

10. P.W.6 is Tara Prasad Singh, I.O. of this case. He stated that on 14.11.1989 he was posted at Dhansar Police Station at that time Fozoil Ahmed was Officer-in-

Charge who had recorded fardbeyan and recognized his handwriting and signature over it which has been marked as Ext.4. After recording fardbeyan it was read over by the Officer-in-Charge to Ghanshyam Pandey. After that informant had put his signature. He proved formal F.I.R. as Ext.5 and seizure list as Ext.6 and inquest report as Ext.7. He recorded re-statement of Ghanshyam Pandey and had sent the body of Raju Yadav for post-mortem and received post-mortem report. He tried to arrest accused persons and after arrest of one of the accused, charge-sheet was submitted against him showing Mahendra and Rajendra as absconder.

11. The prosecution took contradictions from this witness. He replied that witness Nunu Dhobi has stated before him that while Ghanshyam Pandey was fleeing away, informed that Raju Yadav was being taken by accused Rajendra Bhuian and with help of two other caused his murder. Ghanshyam went running there where Rajendra Bhuian was threatening that if someone will come near they will be killed like Raju Yadav. He had also stated that Rajendra Bhuian and Bishun Bhuian had caught Raju Yadav and Mahendra was holding knife and was causing assault from it. Bishun Bhuian has thrown a big stone over the head of Rajendra Bhuian. He also deposed that witness Ghanshyam Pandey has stated before him that Mahendra Bhuian and Bishun Bhuian took Raju Yadav and he followed Raju Bhuian. He had also stated that while Raju Yadav was being assaulted he tried to save him but was stopped by Rajendra Bhuian. At that time, Mahendra Bhuian was stabbing Raju Yadav. I.O. also stated that witness Kishun Mahto was also murdered after he deposed in this case. During cross-examination, he stated that fardbeyan was recorded by the Officer-in-Charge before him. The distance between Dhansar and Chandmari is about 1 Km. and he went there on foot and reached in few minutes. He narrated about the place of occurrence and its surrounding areas. At the place of occurrence he had met Nunu Dhobi, Kishun Mahto and informant and had recorded the statement of Kishun Mahto.

12. After closure of the prosecution evidence, statement of accused was recorded under Section 313 of the Code of Criminal Procedure.

13. No witness was examined on behalf of defence.

14. After consideration of the evidences adduced on behalf of the prosecution the court below found Bishun Bhuian guilty under Section 302/34 of the Indian Penal Code and sentenced him to life imprisonment.

15. Learned counsel appearing on behalf of appellant submitted that the prosecution has failed to prove the case beyond all reasonable doubt as the informant became hostile and had not supported the case in totality. He further submitted that P.W.4 Kishun Mahto could be termed as so called eye witness of this case but he has not supported the prosecution case. His evidence has not been supported/corroborated by informant who was examined as P.W.5. He further submitted that judgment and order of conviction by the court below is

based merely on conjecture and surmises. The court below failed to appreciate that the informant himself has not supported the prosecution story in full and also became hostile. There is no eye witness to the incidence of murder. The testimony of P.W.4 Kishun Mahto could be termed as a stranger to the prosecution case but the court below has accepted his evidence although the same was not corroborated by other witnesses. Lastly, he submitted that the motive of the murder was not brought on record.

16. Learned A.P.P. appearing on behalf of the State submitted that the entire evidence of hostile witness cannot be thrown out in order to contradict the evidence of the witnesses. No cross-examination on behalf of accused was done to discredit them. He also submitted that the informant narrated the prosecution story and has supported the prosecution version. He also submitted that taking together the evidence of P.W.3, P.W.4, P.W.5 and P.W.6, the prosecution have been able to prove the case and the court below has rightly passed the order of conviction.

17. Having heard learned counsel for the parties and on perusal of Lower Court Records and evidences adduced on behalf of prosecution, it appears that the informant has narrated the prosecution case but later on he resiled from his earlier version. This witness was cross-examined on behalf of prosecution but his entire evidence cannot be thrown out merely because he became hostile. The Hon'ble Apex Court in the case of Bhagwan Singh Versus State of Haryana reported in (1976) 1 SCC 389 has held as follows :-

"8. We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the prosecutor to cross-examine his own witness. Thus, characterizing him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 I.P.C. There is, therefore, clear abatement by the appellant of the offence under Section 161 I.P.C. and the ingredient of Section 165A I.P.C. are established against him."

18. In another decision of Sat Paul Verus Delhi Administration reported in (1976) 1 SCC 727, the Hon'ble Apex Court held as under :-

"52. From the above conspectus, it emerges clear that even in a criminal

prosecution when a witness is cross examined and contradict with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge of fact to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto."

19. Here in this case informant was examined as P.W.5 who had narrated the prosecution version and recognized appellant standing in the court as well as proved that his statement was recorded by the police and finding it correct, had put his signature on fardbeyan which was marked as Ext.3. Without his prompt assistance, the case would not have seen the light of day and he informed the police and his statement was immediately recorded by the police is amply corroborated by other evidence to inspire confidence of his testimony. His statement was corroborated by other witnesses P.W.4 Kishun Mahto, P.W.6 Tara Prasad Singh, I.O. of this case and also P.W.3 Dr. Vinod Kumar who had conducted post mortem and found broken Head-Frontal, parietal and right side facial bone which also indicate not only stab injury but also multiple lacerated wound caused by stone was found. The stone was recovered and seized from the place of occurrence. The credit of the witness has not been completely shaken and the witnesses could not be discredited. This appellant was found actively involved in the commission of the occurrence. The court below after consideration of the evidence of the witnesses in totality believed part of their testimony and came to its finding which is based on the proposition of the Hon'ble Apex Court with regard to the hostile witness.

20. In view of the above discussion, we do not find any occasion to interfere in the judgment of the court below. In the result, the Judgment of conviction dated 16th December, 1993 and Order of sentence dated 18th December, 1993 passed by 6th Additional Sessions Judge, Dhanbad in S.T. No. 64 of 1991 is affirmed.

21. In the result, this appeal is dismissed.

22. The appellant- Bishun Bhuian is on bail. His bail is cancelled and he is directed to surrender in the court below for undergoing the remaining part of sentence as awarded by the trial court. The court below is also directed to issue processes forthwith, compelling the surrender of appellant in court below for undergoing the sentence.

23. Let the Lower Court Record be returned to the court concerned immediately

along with a copy of this judgment.