
(2002) 11 PAT CK 0012

In the Patna High Court

Case No : Criminal Appeal (DB) No. 99 of 1998

Ismail Mia

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2003) 1 PLJR 617

Hon'ble Judges : S.N. Jha, J; P.N. Yadav, J

Bench : Division Bench

Advocate : Santosh Kumar Sinha-2, Uttam Kumar Mishra and Arvind Prasad Singh, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha and P.N. Yadav, JJ.—There is one Appellant each in these two appeals. The Appellant in Cr. Appeal No. 99/ 98, Ismail Mia has been convicted u/s 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life. The Appellant in Cr. Appeal No. 173/98, Mumtaz Mia has been convicted u/s 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life.

2. The Appellants were put on trial in connection with an occurrence which took place on 29.5.95 outside the house of the informant, Razzak Mian, of village Baradih within Hilsa Police Station of Nalanda district. As per the fardbeyan lodged at 3.00 A.M. on 29/30.5.95, at 8 P.M. the informant and his elder brother Ibrahim Mian took their meal and were making preparation for going to bed outside the Darwaza of his house when the Appellants came there and started abusing them. Ibrahim Mian objected to their calling names on which the Appellant Ismail Mia caught hold of him and Appellant Mumtaz Mia gave Pasu below and cut his neck. Ibrahim Mia fell down injured and died instantaneously. Thereafter the Appellants fled away. On shout raised by him, Md. Noor Hassan Anwar Mian and several other villagers came there and saw the occurrence. The informant disclosed that the cause of occurrence was old enmity.

3. The fardbeyan was recorded by Sub-Inspector Dashrath Ram who held inquest, took steps for the post mortem of the dead body, examined the witnesses and finally after completing necessary formalities submitted chargesheet against the Appellants.

4. At the trial the prosecution examined 9 witnesses to prove its case out of whom two turned hostile and two others were examined as formal witnesses. The witnesses who turned hostile are P.W. 6 Md. Noor Hassan and P.W. 7 Razzak Mian, the informant himself. It may be mentioned here itself that Md. Noor Hassan is none else than the son of the deceased and Md. Razzak Mian is his brother, as indicated above. The formal witnesses are P.W. 1 Ram Pushkar Singh who proved the fardbeyan P.W. 4 Shambhu Sol, a police constable who took the dead body for the post mortem. Among the remaining witnesses two are official witnesses namely P.W. 5 Dr. Sita Ballav Sharan who had held post mortem and P.W. 8. Sub-inspector Dasharath Ram, the Investigating Officer. The only material witnesses are P.W. 2 Md. Anwar who was examined as an eye witness and P.W. 3 Md. Mumtaz Alam, a hearsay witness. P.W. 2 Md. Anwar is the son of informant.

5. It would thus appear that the only witness on whose evidence the fate of the case hinges is P.W. 2 Md. Anwar, besides the evidence of the doctor and the Investigating Officer. We may therefore straightaway come to the statement of P.W. 2.

6. P.W. 2 in his evidence stated that one and half years prior to the occurrence he was outside the Darwaza of Ibrahim Mian, the deceased. (Abuses were going on between Ibrahim Mia on the one hand and the Appellants on the other. In the meantime Ismail Mia caught hold of Ibrahim Mia when Mumtaz Mia gave Pasuli below cutting his neck, causing his death. The dead body was seized by the Sub-Inspector at 2 O'clock in the night in his presence and he signed on the inquest report.

7. Counsel for the Appellants submitted that in his previous statement before the police, P.W. 2 said nothing of the kind. Counsel referred to the evidence of the Investigating Officer in this connection. The Investigating Officer stated that P.W. 2 did not say in his statement before him about his being present outside the Darwaza of Ibrahim Mia. He did not also say that he saw Ismail Mia catching hold of Ibrahim Mia and latter being given Pasuli blow by Mumtaz Mia causing his death. P.W. 2 rather stated before him that he had heard the Appellants abusing his father i.e. the informant and the uncle i.e. the deceased, He had also stated that he heard his father shouting that his brother, the deceased, has been killed. He had further stated that on hearing the shout he came out of the house when he found his uncle Ibrahim Mia lying down in an injured condition and saw the Appellants fleeing away.

8. Counsel for the State submitted that it is true that in his earlier statement before the police P.W. 2 did not claim to have seen the actual occurrence but he did say that he saw the Appellants fleeing away from the place immediately after

the occurrence. He submitted that the act of fleeing away from the place of occurrence immediately after the incident, and the dead body is found; points to the guilt of the person. We find it difficult to accept the submission for upholding the conviction of the Appellants. It is to be kept in mind that the Appellants are not only residents of same village but had their houses adjacent to the house of the deceased and therefore their presence at the place of occurrence at about 8 O'clock cannot be said to be unnatural. Be that as it may, the question is whether his evidence in Court can be said to be sufficient to give rise to only conclusion about the Appellants committing the murder of the deceased. It may be recalled that in his statement before the police he had stated three things--he heard abuses going on between the Appellants on the one hand and his father i.e. the informant and the deceased on the other. He also heard his father shouting. When he came out of the house he saw the deceased lying injured with cut injury on his neck. He also saw the Appellants fleeing away. Nothing of the sort was stated by him in Court. There he claimed to have seen the occurrence himself whereas in his statement before the police he stated that he came out of the house on hearing the shout of his father, in Court he claimed that he was present outside the Darwaza of the deceased and thus saw the occurrence from the very beginning.

9. The law is well settled that though conviction can be based on the evidence of sole eye witness, the Court must be satisfied that the witness is truthful and his evidence is wholly reliable. Having made inconsistent statements before the police and in Court, P.W. 2 cannot be said to be a truthful witness as it is difficult to say as to which of the two versions was correct. The fact that he saw the Appellants running away from the place would merely give rise to a doubt and on that basis the Appellants cannot be conclusively said to have committed the crime. As noticed above, the Appellants had house nearby and their running away cannot necessarily give rise to the conclusion that they were running away after committing the crime. The position, if we may say so, could have been different, if they were seen running away with blood stained weapon. Allegedly Mumtaz Mia gave Pasuli blow causing bleeding injury but neither the Pasuli was found from the place of occurrence nor Mumtaz was seep running away with any such weapon. P.W. 2 did not make any such claim.

10. The other witnesses who claimed to have seen the occurrence as per the prosecution case did not support the case. Even the. informant did not support his case. They are none else than the deceased's son and brother. In the above view of the matter, we are constrained to hold that the prosecution has failed to. prove its case and the Appellants are entitled to be acquitted.

11. In the result, the appeals are allowed and the conviction and sentence awarded to the Appellants are set aside and they are acquitted of the charge. Appellant Ismail Mia; is on bail. He is discharged of the liability of bail bond. Appellant Mumtaz Mia is in custody. He is directed to be released forthwith, if not wanted in any other case.