

(1997) 01 PAT CK 0001
In the Patna High Court
Case No : Criminal Appeal No. 189 of 1989 (R)

Krishna Korah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1997) 1 PLJR 753

Hon'ble Judges : N.N. Singh, J; Loknath Prasad, J

Bench : Division Bench

Advocate : Sumir Prasad, for the Appellant; I.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Loknath Prasad and N.N. Singh, JJ.—This appeal is directed against the judgment of conviction passed in S.T. No. 409/86 by 2nd Addl. Sessions Judge, Singhbhum at Chaibasa through which the sole Appellant was found guilty u/s 302 of the Indian Penal Code and he was convicted and sentenced to undergo R.I. for life and further the Appellant was found guilty u/s 201 of the Indian Penal Code but no separate sentence was awarded under this count.

2. The prosecution case in short is that on 7-5-1985. In village Nawagaon within Sonua Rs. the dead body of the deceased Bijay Singh Kora was found in a well duly concealed after commission of his murder. So village Manki, Ando Manki (P.W. 1) informed Sonua police and gave fardbeyan and it has been alleged that actually on 1-5-85 the deceased along with Parmanand Korail (P.W. 3), Konke Chirwa (R.W. 4) and others had gone to jungle for hunting and they were returning in the night at about 8 RM. and when they reached near the house of Appellant then the Appellant came all of a sudden and gave tangi blow to the deceased due to that he had fallen on the ground and out of fear Parmanand and Konke Chirwa escaped away and subsequently the dead body of the deceased was taken to a distance from the village Jhilriua within Goilkera Rs. and was kept in concealment in a well. The eye witnesses i.e. P.W. 3 and P.W. 4 disclosed about

this very occurrence to the local Manki i.e. the informant on the date of detection of the dead body and has further submitted that the (sic-Appellant?) threatened them with dire consequences so they did not disclose the occurrence earlier.

3. The fardbeyan recorded by police was referred to Goilkera police in whose jurisdiction the P.O. lies and on that basis this case was instituted and officer-in-charge Goilkera Rs. took up the investigation and visited the P.O. i.e. the village Jhilriua, prepared the inquest of the deceased on 7-5-85 and the dead body was sent for post mortem examination. After completion of the investigation chargesheet was submitted as against the Appellant.

4. The Appellant claimed himself innocent and denied to have committed the murder of the deceased. Only a suggestion was given to the witnesses that informant i.e. the village Manki took a loan of Rs. 400/- from the Appellant and did not repay the same and so he had been falsely implicated.

5. The trial court believed the prosecution story and convicted and sentenced the Appellant in the manner indicated above. Being aggrieved by and dissatisfied with the order of conviction this appeal has been preferred by the sole Appellant and the findings of the trial court has been challenged on the various grounds. Admittedly the murder of the deceased which took place some time on 1-5-85 in village Jhilriua within Goilkera P.S., is not being specifically denied by the defence and only the Appellant denied that he had not participated in the occurrence. No doubt the prosecution could examine as many as 7 witnesses including Investigating Officer and the doctor but admittedly P.W.3 (Parmanand Korai) and P.M.4 (Konke Chirwa) are the witnesses of the occurrence. According to P.W.3 on 1-5-85 he along with the deceased and several villagers had gone to jungle for hunting and it is also his evidence that in the night of about 8 P.M. or so he along with P.W. 4 and the deceased were returning to the village but when they reached near the house of the Appellant, who is the cousin brother of the deceased, the Appellant came all of a sudden and gave tangi blow due to that he had fallen on the ground and the Appellant also threatened them with dire consequences so they escaped away and out: of fear they had not disclosed about this occurrence to any body but subsequently they disclosed about this occurrence to the village Manki i.e. the informant. The evidence of P.W.4 is also more or less similar, so this witness and he had stated that on 1-5-85 at about 8 P.M. or so while they were returning from the jungle at about 8 P.M. and reached near the house of the Appellant, the Appellant gave a tangi blow on the deceased due to that he had fallen on the ground. Subsequently the dead body of the deceased was recovered from a well from a neighbouring village Nayagaon on 7-5-85 and the inquest was prepared by the Investigating Officer on that very day i.e. Ext. 5. The dead body was tied with a heavy article that is the head of hand pump to avoid floating of the body and the head of the hand pump was also seized by the Investigating Officer i.e. P.W.7. Thus, it appears from the evidence of P.Ws. 3 and 4 coupled with the evidence of the Investigating Officer and the informant who is the village Manki that as the deceased was the cousin of the

Appellant and due to previous enmity while the deceased was returning from jungle he was murdered on 1-5-85 and his dead body was concealed in a well.

6. The learned Counsel for the Appellant vehemently criticised the evidence of P.Ws. 3 and 4 and it was contended that both these witnesses are not reliable and their conduct at the time of occurrence and subsequent to that is highly suspicious and unnatural because at the time of occurrence they neither raised any alarm nor made any attempt to save the deceased and further they maintained a strict silence at least for six days so the witnesses are definitely not trustworthy. In support of this contention reliance was placed by the learned Counsel for the Appellant in a case of the Supreme Court reported in 1997 BCCR 1 (SC) (Ali Mollah and Ors. v. State of West Bengal). No doubt in the case relied upon by the learned Counsel for the Appellant it was held by the Apex Court that single testimony of an unreliable witness is not to be made basis for recording conviction and if witness is not wholly reliable then definitely some corroboration is necessary. It was also held that solitary witness who deposed in the trial court as a witness of occurrence remained scrupulously silent about the occurrence for some time and had neither made an attempt to save his own master nor disclosed about the occurrence to any body even on the next day. In that view of the matter, it was held that in such a situation and for such suspicious conduct the evidence of solitary witness can not be relied upon.

7. But in the instant case no doubt P.Ws. 3 and 4 though are the witnesses of the occurrence had not disclosed about the occurrence for about 6 days but they had given a satisfactory explanation that they were threatened with dire consequences by the sole Appellant and that was the reason for non-disclosure and they disclosed about the entire occurrence to the local Manki when the dead body of the deceased was recovered. Moreover both these witnesses are not at all any way connected with the deceased. In that view of the matter, it is quite possible that a stranger to the deceased will not take that much risk which is expected from a close relation or a servant. In the, case of Ali Mollah's case (supra) reliance was not placed on the sole testimony because relation of the witness and that of the deceased was that of the master and servant which naturally gives an indication that a prudent servant should have raised alarm or at least disclosed about the occurrence to other person to prove his loyalty. In the instant case there is no such relationship and the witnesses are also reliable and they considered for their welfare to maintain silence for some time that too out of fear. Furthermore in the instant case both these witnesses are definitely independent witnesses and not connected with the deceased or in hostile term with the Appellant. In such a situation when a reasonable and satisfactory explanation has been given by these witnesses for their non-disclosure about the occurrence earlier which after scrutiny by the Court appears to be convincing then in such a situation reliance can be placed on the testimony of such witnesses though they made disclosure of the occurrence at a belated stage otherwise there is no two opinions and on the principle laid down by their Lordships of the Apex Court that if the witnesses made concealment and their

conducts are not above board or suspicious and the relationship between the deceased and the witnesses are of such a nature that disclosure is necessary and if such disclosure about the occurrence is not made then definitely witnesses are not trustworthy. But in the case in hand the witnesses are independent witnesses and a satisfactory explanation was given which appears to be convincing that a threatening was made by the Appellant and for that they had not disclosed about the occurrence. Moreover in the instant case conviction was not based on the testimony of a solitary witness whereas as many as two witnesses supported the prosecution case and above all P.W.2 also claimed that the deceased also made an extra judicial confession and admitted that he had committed murder of the deceased and concealed the dead body.

8. No doubt there is no two opinion that the extra judicial confession is definitely a weak evidence and it cannot be made a basis for conviction but the trial court was definitely justified in order to lend support to the finding of conviction of the Appellant that also there is extra judicial confession and that can always be used not as a basis for the conviction but only for satisfying the conscience of the trial court. So in the instant case apart from direct evidence on the point of occurrence, there is extra judicial confession.

9. Further the evidence of P.Ws. 3 and 4 also finds support from the evidence of doctor who has figured as P.W.6 and the doctor found sharp cutting injury on the right shoulder and on the both sides of the neck and the injury of the neck was such a serious that cervical vertebra was also cut and trachea was cut leading to the death of the deceased. Thus, it can be said that the Appellant with the sole intention to commit murder of the deceased gave two blows that too on the vital part with such a force which resulted in the death of the deceased and after that the dead body was concealed in a well in order to escape himself from legal punishment.

10. Learned Counsel for the Appellant submitted that the evidence of the doctor also completely demolished the prosecution case and the evidence of the eye witnesses because the doctor has mentioned in the post mortem report i.e. Ext. 5 and also in his evidence that the death took place 24 hours after the post mortem examination and in the evidence he has also admitted that the death might have taken place prior to one or two days of the post mortem examination. On the other hand it is the prosecution case that murder was committed on 1-5-85 and dead body was recovered on 7-5-85. From the post mortem report and the evidence of the doctor it can be said that the doctor has no doubt given his opinion that the death took place more than 24 hours prior to post mortem examination which I think the doctor was under the impression that the death took place definitely at least one day prior to post mortem examination and he had not been able to give a definite time of death of the deceased. However from the post mortem report i.e. Ext.5 itself it can be said that the dead body was in a highly decomposed condition. In that view of the matter, it can be said that the death of the deceased definitely took place about 6 days ago or so

and as such there is no discrepancy in the evidence of the doctor and that of the evidence of the witnesses that actually the deceased was done to death on 1-5-85.

11. So on careful consideration of the entire evidence on the record and the surrounding circumstances we are of the opinion that the Appellant committed murder of the deceased on 1-5-85 and as such the trial court was perfectly justified in convicting and sentencing the Appellant u/s 302 of the Indian Penal Code and further convicting the Appellant u/s 201 of the Indian Penal Code. In that view of the matter, there is no merit in this appeal and so the appeal is dismissed and the bail bond of the Appellant is hereby cancelled and the Appellant is directed to surrender before the court below immediately without any further delay for undergoing the remaining part of the imprisonment failing which the trial court will take steps for apprehension of the Appellant for undergoing the imprisonment.