
(2000) 02 PAT CK 0079
In the Patna High Court
Case No : Criminal Appeal No. 163 of 1996 (R)

Louis Khalkho

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2000) CriLJ 2483

Hon'ble Judges : P.K. Deb, J;A.K. Prasad, J

Bench : Division Bench

Advocate : Dilip Jerath, for the Appellant; S.N. Prasad, APP, for the Respondent

Final Decision : Allowed

Judgement

1. The sole appellant has been convicted u/s 302 of the Indian Penal Code, on the charge of committing the murder of Harbhajan Singh, the informant-deceased, and sentenced to life imprisonment by judgment dt. 26-6-1996 and order dt. 28-6-1996 respectively in S.T.No. 664 of 1992 passed by Sri Alok Kumar Sinha, the then Addl. Judicial Commissioner, Ranchi,

2. Briefly stated, the prosecution case, as made out in the fard-beyan of Harbhajan Singh, the deceased, which was recorded by the police officer (PW 10) on 14-11-1991 at 11.30 p.m. at R.M.C.H. (Rajendra Medical College and Hospital), Ranchi, is as under :

In Simritoli, within Chutia police station, near Munda Chowk, the informant owned a flour mill as well as a grocery shop. Those living in the neighbourhood used to demand articles on credit, but he declined to sell on credit. On 14-11-1991 at about 8 p.m. he was at his shop, when all of a sudden two unknown persons came and started to abuse him and questioned why he did not give articles on credit to the customers and accused him for posing to be a big shot and threatened to finish him. Thereafter a scuffle took place between him and the two unknown culprits. Meanwhile, one of the unknown culprits fired

revolver shot, hitting him on the abdomen. He fell down after sustaining the wound and on the sound of gun firing, Nitya Kumar Lakra (not examined), ShiwanToppo (PW 2) and other neighbours arrived who finding him to be severely wounded, carried him to the hospital, where he was admitted and treated for the wound(s), He claimed to identify the culprits, who were residents of nearby locality, on seeing them. P.W. 10 (Devendra Pd. Singh), on getting some information based on rumours that on 14-11-1991 at about 8.45 p.m. the ownerof flour mill-cum-grocery shop was wounded, recorded the stationdiary entry No. 320 on the same day and proceeded with some police personnel to verify the matter and in the process, he reached the RMCH and recorded the fard-beyan (exhibit) of the informant Harbhajan Singh.

On its basis the present case came to be instituted against un-known miscreants u/s 307 read with Section 34 of the Indian Penal Code, a formal first information report (exhibit 5) was drawn up and P.W. 10 assumed and commenced investigation, recorded the further statement of the informant who eventually died on 15-11-1991 at 10 a.m. in RMCH while undergoing treatment, whereafter Section 302 of the Indian Penal Code was added in the case, visited and inspected the place of occurrence and effected seizure of blood stained earth from the spot. The police officer of Bariapu Police Station held inquest over the dead body (exhibit 1 is the inquest report). The dead body was sent for post-mortem examination and after making the main investigation in the case, he handed over the charge of the case to PW 9 (Sheolal Nayak), who on the basis of the materials collected during the investigation, submitted charge-sheet in the case against the accused/appellant. The case was, ultimately, committed to the Court of Sessions vide order dt. 27-8-1992.

3. The main defence is of innocence, bare denial of the accused/appellant of his involvement in the murder of the deceased and of false implication.

4. At the trial, the prosecution examined 10 witnesses in support of its case. Out of them, PW 2 (Shiwan Toppo) and PW 4 (Jagdish Kaur) the widow of the deceased, are formal witnesses.

PWs. 1 and 3 have stated that the informant/deceased has stated to them that he had scuffle with two boys, one of whom had shot at and wounded him. They do not claim to be the eye-witnesses to the alleged occurrence, nor did they state that the informant/deceased had named the culprits involved, including his assailant. PW 1 has stated that on the way to his home he had found the informant/deceased lying wounded in pool of blood and was taken to the hospital.

PW 5 (Ashok Kumar Verma) is a witness to the inquest. The other P.Ws. are PW 6 (Sardar Harmesh Singh), PW 7 (Dilip Kumar Purty), who claimed himself to be the sole eye-witness to the occurrence, PW 8 (Dr. (Mrs.) Renu Bala) who held autopsy on the corpse of Harbhajan Singh, P.W. 9 (Sheolal Nayak), the formal Investigating Officer, and PW 10 (Devendra Pd. Singh) the main Investigating Officer.

5. The trial Court, on consideration of the materials and evidence on record and mainly relying on the solitary testimony of PW 7, the sole eye-witness, as well as the medical evidence, held the appellant guilty of the offence u/s 302 of the Indian Penal Code and convicted and sentenced him, as stated above.

6. Mr. Dilip Jerath, learned counsel for the appellant, has assailed the impugned conviction, mainly on the grounds that PW 7 is not a truthful witness; that he claims to have witnessed the scuffle between the deceased (the informant) and the culprits and he has named the appellant as the assailant of the deceased, who had inflicted the firearm wound to the deceased with revolver in his abdomen, but the doctor (PW 8) apart from the firearm injury had found three antemortem stab wounds on the person of the deceased and PW 7 does not whisper in his evidence about the stab wounds suffered by the deceased; that PW 7 disclosed the name of the appellant as the assailant of the deceased for the first time when the Investigating officer (PW 10) recorded his statement as late as on 22-11-1991 and for that there is no satisfactory explanation and in the event, P.W. 7, in fact, had witnessed the actual assault on the deceased, he would not have failed to narrate it to those who had assembled on the spot or to the police officer when he had visited his house the same night. He further submitted that in the circumstances of the case, the appellant is entitled to benefit of doubt.

7. The learned APP, appearing on behalf of the State, on the other hand, has supported the impugned judgment.

8. The point which now falls for consideration is whether the impugned conviction can be sustained.

9. The factum that the informant-deceased met with homicidal death is not in dispute. The doctor (PW 8) has stated that she had held post-mortem examination on the dead body of Harbhajan Singh on 16-11-1991 at about 1 a.m. and apart from abrasion, she had found a firearm injury near the illiac crest with blackening and tatooling, and three stab wounds, one on left side of lumbar region and the other on the right side of upper part of abdomen which had penetrated the right lobe of liver and the third on the right side of abdomen, which are fully described in her evidence and which were ante-mortem, besides the midline stitched surgical wound and the death was due to shock and haemorrhage, resulting from antemortem wounds.

10. Now the point, which is to be considered is whether the accused/appellant was instrumental in the murder of the deceased.

11. PW 6 (Sardar Harmesh Singh) has stated in his chief-examination that on 14-11-1991 at 8 p.m. while he was going from Chutia to the overbridge, on the way near the shop of the informant/deceased he saw a crowd and he also saw a tall man fleeing towards the north with a pistol in his hand. He has further stated that he stopped near the shop of the informant and found that he was unconscious with the firearm wound in his abdomen. He identified the accused/

appellant in Court to be the person whom he had seen fleeing away with the pistol. He has admitted that he did not take part in Test Identification Parade for identification of the suspect/culprit, whom he had seen fleeing from the scene of the occurrence with pistol. It is axiomatic that PW 6 identified the accused/appellant for the first time in Court. His evidence on identification has rightly been discarded by the trial Court.

12. The conviction of the appellant is based on the solitary ocular testimony of PW 7. Conviction can be based on the solitary testimony of an eye-witness, if it is found to be wholly true and reliable. Keeping this principle in mind, one may now proceed to discuss and analyse the evidence of PW 7. He is the landlord of the deceased. On the part of his premises, on rent, the informant/deceased was running his flour mill. He has stated that on 14-11-1995 (the actual date of occurrence is 14-11-1991) at about 8 p.m. he was returning home from Sujata Chowk and when he was at a distance of about 25 yards, he saw two boys on the verandah of the flour mill of the informant/deceased. The accused/appellant was scuffling with the informant, while his unknown associate was standing and in the scuffle, the informant lifted the accused/appellant and threw him into a drain, whereupon his unknown associate grappled with the informant, who threw him down and was pressing him and meanwhile, the accused/appellant got up and fired the revolver shot, which hit the informant in the abdomen. He has further stated that at the time of retreat, the accused/appellant had threatened to shoot those who would depose against him or disclose his name to the police. He has further stated in his chief-examination that on the next day he went to Bhanbad for some business purpose and when he returned he came to know that the informant had succumbed to the wound in the hospital where-after his statement was recorded by the police officer. He identified the accused/appellant as the assailant of the deceased in Court.

He claims in his cross-examination to be the lone witness to the actual occurrence and admits that on the sound of the firing the people had assembled from all the directions. He claims to have carried the injured with the assistance of some persons to the Sadar hospital on a mini bus where the doctor was not available and, ultimately, he was taken to RMCH. He brought and got him admitted into RMCH the same night at about 11 p.m. He has admitted in his cross-examination that on the night of the occurrence, the police officer had met and enquired from him about the whereabouts of the informant and he had told the police officer that he had just returned after reaching him to RMCH. But at that time, he did not give any statement before the police officer about the incident. He has further admitted that after 5/6 days he had returned from Dhanbad and on its following day, he had given his statement before the police officer. PW 10 the Investigating Officer has deposed that the statement of PW 7 was recorded on 22-11-1991 that is after a week of the incident. PW 7 has not whispered in his evidence that he had disclosed the name of the accused/appellant soon after the occurrence to the witnesses who had collected on the scene of the occurrence. It is intriguing that he did not disclose to the

Investigating Officer, when he had met him on the same night, that he had witnessed the occurrence and identified the appellant/accused as the assailant of the informant. He claims that he had friendship with the accused/appellant. He has not explained the nature/urgency of the business when he had proceeded to Dhanbad the next day and returned after four five days. The belated statement made by him before the police, implicating the appellant/accused as the assailant of the deceased, casts a serious doubt on his credibility. He does not even whisper in his evidence that the informant/deceased had suffered stab wound(s) in the incident, although he claims to have witnessed the actual assault on the deceased from a short distance. In the facts and circumstances, stated above, on close scrutiny of his testimony, we are of the considered view that it is doubtful that he had witnessed the incident and identified the appellant as the assailant of the deceased. We are further of the view that it would not be safe to rely on his sole testimony to sustain the conviction of the appellant u/s 302 of the Indian Penal Code.

13. In the result, this appeal is allowed and on giving benefit of doubt, the sole appellant (Louis Khalkho) is acquitted of the offence u/s 302 of the Indian Penal Code. The impugned order of conviction u/s 302 of the Indian Penal Code and sentence of life imprisonment passed on him by the trial Court are set aside. The appellant (Louis Khalkho) is directed to be released from custody forthwith, if not required in any other case(s).