

Criminal Appeal (D.B.) No. 76 of 1995 (R)

Against the judgment and decree of conviction and sentence dated 07.07.1995 (sentence passed on 10.07.1995) by Shri P. Kumar, Additional Sessions Judge, Gumla in S. T. No. 174 of 1994.

Malku Singh Appellant

Versus

The State of Bihar (now Jharkhand) Respondent

For the Appellant : Mrs. Vani Kumari, Amicus Curiae
For the Respondent : Mr. Pankaj Kumar, P. P.

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

R. Mukhopadhyay, J.

Heard Mrs. Vani Kumari, learned Amicus Curiae for the appellant and Mr. Pankaj Kumar, learned P. P. for the State.

2. This appeal is directed against the judgment and decree of conviction and sentence dated 07.07.1995 (sentence passed on 10.07.1995) by Shri P. Kumar, Additional Sessions Judge, Gumla in S. T. No. 174 of 1994 whereby and whereunder the appellant has been convicted for the offence punishable under Section 302 of I.P.C. and has been sentenced to undergo rigorous imprisonment for life.

3. The prosecution case arises out of the fard beyan of Falinder Singh wherein it has been stated that on 16.11.1993 at about 5:00 P.M. when the informant was at his home, he had come to know that his father Sukra Singh had been murdered by Malku Singh (appellant), Chandradeo Singh and Bilas Singh. It has been alleged that the accused persons were having a land dispute with his family for the last 10 years. The informant came to the place of occurrence along with the villagers and had seen the dead body of his father in front of the house of Malku Singh with his head separated from his body. It has been stated that the suit with respect to the dispute was decided in favour of the informant party and they were in cultivable possession of the same. It has been alleged that a villager namely, Birbal Singh had witnessed the incident

and other villagers on hearing the cry of alarm had also come to the place of occurrence.

Based on the aforesaid allegations, Palkot P. S. Case No. 73 of 1993 was instituted for the offences punishable under Sections 302/34 of I.P.C. against the appellant and others. On conclusion of investigation, charge-sheet was submitted under Section 302/34 of I.P.C. and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as S. T. No. 174 of 1994. Charge was framed under Section 302/34 of I.P.C. which was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as 11 witnesses in support of his case.

5. P.W. 1 – Birbal Singh did not support the case of prosecution and accordingly was declared hostile by the prosecution.

6. P.W. 2 – Thiru Singh was also declared hostile by the prosecution.

7. P.W. 3 – Jagdishwar Kharia has stated that he had heard on 11.11.1993 that somebody has committed the murder of Sukra Singh. He has proved his signature and that of Devilal Singh in the inquest report which have been marked as Exhibit 1 and Exhibit 1/1. He has also identified his signature and that of Devilal in the seizure list of blood-stained earth which has been marked as Exhibits 2 and 2/1 respectively. He is the Mukhiya of the village panchayat.

8. P.W. 4 – Jamin Singh had stated that the incident is of 16.11.1993 at 5:00 P.M. He had learnt that his brother had been murdered. On hearing such news, he went and saw the dead body of his brother lying near the door of the appellant. The head was severed from the body and blood was scattered everywhere. On enquiry, he came to know that his brother has been murdered by Malku Singh, Bilas Singh and Chandradeo Singh and the reason for the occurrence is a land dispute. The deceased Sukra Singh got some land of 4.78 acres from his in-laws and there was a case going on between the deceased and Chandradeo Singh, Lalu Singh, Birsa Singh and Chhotku Pal Singh. The case was going on from 10-20 years and ultimately the decree was passed in the name of Sukra Singh and he used to till the land. He has stated

that Malku Singh and Chandradeo Singh were not happy with this and as a result of which they committed the murder of Sukra Singh.

In cross-examination, he has deposed that he had received the information of murder at 6:30 P.M. He has stated that he had seen the decree in relation to the land of his brother.

9. P.W. 5 – Devi Lal Singh had identified his signature over the inquest report and seizure list.

10. P.W. 6 – Amin Singh has stated that his brother was murdered about 11 months ago. He was informed about the murder at 6:30 P.M. on the date of occurrence by his nephew Falinder. He had gone to the place of occurrence and had seen the dead body of Sukra lying in front of the door of Malku Singh. The head was severed from the body. The blood was splattered on the wall and there was a pool of blood at the place of occurrence. The deceased Sukra Singh had a dispute with Chander Singh, Bilas Singh, Kotho Singh and others. The case which was going on was decided in favour of Sukra Singh and after the decision of the court Sukra Singh was tilling the land and because of the said reason, his brother was murdered by Malku Singh and others.

In cross-examination, he has deposed that he had not witnessed Indradeo, Bilas Singh and Malku Singh committing the murder of his brother.

11. P.W. 7 – Babu Singh has proved his signature in the seizure list which has been marked as Exhibit 3.

12. P.W. 8 – Dhanmai Kumari is the daughter of the deceased who has stated that on the date of occurrence, she and her father were returning home and her father was walking 15-18 feet ahead of her. When her father reached near the house of Malku Singh, Malku Singh who was hiding behind the door came out and assaulted her father with an axe on his neck, face and back. She out of fear fled away and informed her brother and villagers and thereafter she along with her brother Falinder and villagers came to the place of occurrence, where they found the dead body of her father lying. His head was lying severed from his body and there was blood on the ground as well as blood was splattered on the wall of the house of Malku Singh. Her parents had gifted her a piece of land of 4.88 acres from her maternal grand-father and there was a case going on with the accused persons in

which a decree was passed in favour of her father. She has stated that the reason for the occurrence is previous enmity.

In cross-examination, she has deposed that adjacent to the house of Malku Singh lies the house of Bilas Singh, Chandradeo Singh and Ghamra Kharia. The incident occurred at the time of dusk and there were no one present at the place of occurrence. After the incident, she had rushed to her house where she informed her aunt and brother about the incident, but she had not met any villagers on the way. When she had gone to the place of occurrence with her brother and aunt, there was no one present. The police had recorded her statement in which she has stated about the assault committed upon her father by Malku Singh.

13. P.W. 9 – Dr. A.D.N. Prasad was posted as Civil Assistant Surgeon at Sadar Hospital, Gumla and on 18.11.1993, he had conducted autopsy on the dead body of Sukra Singh and had found the following injuries:

“(i) Completely beheaded body with thorax and head separately present. The vine cervical vertebra was transversely chopped of with just one blood. All blood vessels, nerves, soft tissues, bones larynx & pharynx and visnal chord were chopped off completely and the head and thorax were blood shocked.

(ii) One sharp injury on left parietal bone with depressed fracture of skull and laceration of the brain matter, size 3 ½ “ x 1” x 2”.

(iii) Sharp injury on left mastoid region 4”x 1 x 2 ½ “.

The cause of death was opined to be on account of haemorrhage and shock and due to transection of the spinal cord. He has proved the post mortem report which has been marked as Exhibit 4.

14. P.W. 10 – Falinder Singh is the informant and the son of the deceased who has stated that at the time of the occurrence, he was in his house when his sister came and intimated him about the incident. He went along with his sister to the place of occurrence, where he found the dead body of his father and his head was severed from the body. The dead body was in front of the house of Malku Singh. There was a land dispute with Malku Singh for which a case was going on and which was decided in favour of his father. He has proved his signature in the fard beyan which has been marked as Exhibit 5.

In cross-examination, he has deposed that when he had gone to see the dead body, none else were present. He had raised an alarm in the

village and when he came back to the place where the dead body was lying, villagers had also come along with him. When the police came, his fard beyan was recorded and he has stated about receiving the information about the incident from his sister.

15. P.W. 11 – Sri Krishna Singh is the Investigating Officer who has stated that on 17.11.1993 he had heard a rumour about a murder committed in the village Goindhara and after making a station diary entry, he had left along with other police personnel for the said place and on reaching there, he had recorded fard beyan of Falinder Singh. He had proved the fard beyan which has been marked as Exhibit 6. He has also proved the formal FIR which has been marked as Exhibit 7. He had recorded the re-statement of the informant at the place of occurrence itself and he had inspected the place of occurrence which is at village Goindhara in front of the house of accused Malku Singh. He had prepared the inquest report which has been marked as Exhibit 8. He had seized blood-stained earth for which a seizure list was prepared and which was proved and marked as Exhibit 9. He had also seized the axe and a seizure list was prepared which was marked as Exhibit 10. He had taken the statement of the witnesses, obtained the post mortem report and after completion of investigation had submitted charge-sheet.

In cross-examination, he has deposed that after preparation of the inquest report, he had recorded the statement of Dhanmai Kumari, Jamin Singh, Birbal Singh and Amin Singh. The witness Dhanmai Kumari in her statement had never stated that while returning home with her father the accused Malku Singh who was hiding behind the door had attacked and caused the murder of her father with an axe.

On recall, he has stated that he had recorded the statement of Birbal Singh at the place of occurrence who had disclosed about witnessing the assault committed by Malku Singh after which he fled away by raising alarm. The statement of Birbal Singh was recorded at paragraph 6 of the case diary.

16. The statement of the accused was recorded under Section 313 Cr.P.C. in which he had denied his involvement in the incident.

17. Mrs. Vani Kumari, learned Amicus Curiae has submitted that there are no eye-witnesses to the occurrence and only on account of the fact that the dead body was recovered in front of the door of the

appellant, he has been implicated. It has been submitted that the evidence of P.W. 8 is a concocted version and neither in her statement under Section 161 Cr.P.C., she had claimed to have witnessed the occurrence nor any of the witnesses had taken her name as the person who had witnessed the occurrence. P.W. 8 had developed a story in course of trial in order to implicate the appellant with whom the deceased was having a land dispute.

18. Mr. Pankaj Kumar, learned P.P. has submitted that the evidence of the witnesses clearly points to the guilt of the appellant and the prosecution has been successful in extracting from the witnesses the land dispute existing and which was the cause of murder.

19. We have heard the learned counsel for the respective sides and have also perused the lower court records.

20. The informant (P.W. 10) in his fard beyan has stated that he had come to know about the murder of his father and suspicion was cast upon the appellant and other named accused persons. The reason for such implication was a land dispute between his father and the other accused persons which was going on since long. The other incriminating factors stated by him showing the involvement of the appellant in the murder is the dead body of his father lying in front of the door of the appellant and one Birbal Singh having witnessed the incident.

21. It is not in dispute that the dead body of the father of the informant was found lying in front of the door of the appellant with the head severed from his body. Blood was found splattered on the wall as well as in the door. Birbal Singh has been stated to be the person who had witnessed the incident, but he in his evidence as P.W. 1 did not support the case of the prosecution and was declared hostile by the prosecution. In course of trial, P.W. 8, the daughter of the deceased has stated about her witnessing the occurrence and immediately thereafter rushing to her house and informing her brother (informant) and her aunt. Surprisingly the informant in his fard beyan had never disclosed his source of information though in his evidence as P.W. 10, he has tried to develop his story in order to co-relate with the evidence of P.W. 8. If at all, P.W. 8 was an eye-witness, her name would have surfaced in the evidence of the other witnesses, but for the first time she had narrated the incident of witnessing the murder in her deposition which leaves a

lot of doubt over the sanctity of her evidence. The evidence of P.W. 8 is further diluted when we consider the evidence of P.W. 11, who has categorically stated that during investigation, no such statement was given by her claiming herself to be an eye-witness. It is apparent from a perusal of the evidence of the prosecution that there is no eye-witness to the occurrence, but only in order to develop its case, P.W. 8 has been projected to be an eye-witness which in the backdrop of evidence of other witnesses and the circumstances narrated above does not merit any consideration. Enmity on account of a land dispute has been highlighted to be the cause of the incident, but no document has been brought on record regarding such land dispute since it has been stated that the case between the parties was decided in favour of the deceased. As in common knowledge enmity cuts both ways and the false implication of the appellant in such circumstances cannot be ruled out. So far as the recovery of the axe is concerned, in village it is a common appliance virtually found in every household and there being no FSL report, the usage of the axe recovered in the murder cannot be ascertained.

22. The circumstances noted above would not be a guiding factor in coming to a conclusion regarding murder of Sukra Singh committed by the appellant. The prosecution therefore has failed to prove its case against the appellant beyond any reasonable doubt and consequent thereto, the judgment and decree of conviction and sentence dated 07.07.1995 (sentence passed on 10.07.1995) by Shri P. Kumar, Additional Sessions Judge, Gumla in S. T. No. 174 of 1994 is hereby set aside. This appeal is allowed.

23. Since the appellant is on bail, he is discharged from the liabilities of his bail bond.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)