

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.516 OF 2004

MUNNA KUMAR

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent(s)

O R D E R

The appellant Munna Kumar was found guilty by the 10th Addl.Sessions Judge, Patna for

the offence punishable under Section 302 read with Section 34 of the I.P.C. He challenged his

conviction and sentence in the appeal preferred before the High Court of Judicature at Patna. The

High Court confirmed and conviction and sentence. The prosecution case is that the appellant Munna

Kumar and his friend Dilip Kumar went to the house of the deceased Ashok Kumar on 1.6.1994 at

about 2.00 p.m. and took him away from his house on the pretext of for playing football. As Ashok

Kumar did not return home in the evening, his father got suspicious and went in search of him. When

he reached near the office of Damodar Valley Corporation he saw her son Ashok Kumar in the presence

of these appellants. Ashok Kumar was raising alarm and was trying to escape from the appellants. The

case of the prosecution is that the appellant fired a short at deceased Ashok Kumar and he sustained

injury on his head. In the injured condition he was taken to the Patna Medical College Hospital but his

life could not be saved.

The Investigating Officer came to know of the incident and he went to the Patna Medical

College Hospital and thereafter he visited the place of incident and conducted further investigation.

The body of the deceased Ashok Kumar was subject to post-mortem examination and it was found that

there was a bullet injury on his head. The Sessions Judge as well as the High Court relied on the

evidence of PWS 1 to 3 who were eye-witnesses. The High Court accepted the evidence of these three

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witnesses and we do not find any infirmity in this and the evidence of these witnesses were rightly

accepted by the High Court.

One significant aspect of this case is that the post-mortem examination produced by the

prosecution was not proved by the examining doctor who prepared it or any person who had any

acquaintance with the handwriting of the doctor was examined on the side of prosecution. An advocate's

clerk was examined to prove the post-mortem examination. He candidly admitted in cross-examination

that he had no acquaintance with the doctor who prepared the post-mortem examination and that he

had no familiarity with the handwriting of the doctor. Therefore, it is clear that the post-mortem report

was not proved as per the prescribed procedure. On this basis, counsel for the appellant contended that

the prosecution evidence would not show the cause of death of Ashok Kumar and it is submitted that the

prosecution failed to prove the offence of murder against the appellant.
We find some force in this

contention. The prosecution should have produced the best evidence by proving the post-mortem

certificate. It should have examined any person who had some acquaintance with the handwriting of

the doctor who prepared the post-mortem report, either one of his colleagues or anybody who had been

working in the hospital where the doctor worked. The prosecution failed to produce the best evidence

and the appellant is certainly entitled to the benefit of doubt arising out of this.

However, there is evidence to the effect that the appellant Munna Kumar fired a shot at the

head of the deceased Ashok Kumar. The inquest report also would show that Ashok Kumar sustained

an injury on his head but there is no satisfactory evidence to prove the cause of death of Ashok Kumar.

In the absence of any satisfactory evidence it is difficult to convict the appellant for the offence of

murder punishable under Section 302. However, there is satisfactory evidence beyond all reasonable

doubt to show that the appellant Munna Kumar fired a shot at the head of deceased Ashok Kumar.

The offence would certainly come within the purview of Section 307 I.P.C..

In the result, we set aside the conviction and sentence of the appellant for the offence

punishable under Section 302 and found him guilty and sentence him to undergo imprisonment for a

period of 8 years under Section 307 of I.P.C. We are told that the appellant has already undergone a

long period in jail and he is entitled to set off for the period already undergone and if he has already

completed 8 years, he released forthwith. Dilip Kumar, the co-accused, who had been convicted along

with Munna Kumar has not filed any appeal in this Court. He would be entitled to the benefit of this,

in case he comes before this Court in appeal. Accordingly, the appeal is allowed.

.....J.

KRISHNAN)

(K.G. BALA

.....J.

SRIKRISHNA)

(B.N.

NEW DELHI;

3RD MARCH, 2005

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ITEM NO.102

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 516 OF 2004

MUNNA KUMAR

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent(s)

(With appln(s) for bail and office report)

Date: 03/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)

Mr.Kameshwar Singh, Adv.

Mr. Naresh Kumar,Adv.

For Respondent(s)

Mr.Kumar Rajesh Singh, Adv.

for Mr.B.B.Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

(G.V.Ramana)

(Veera Ve

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Court Master

Court Mas

ter

(Signed order is placed on the file)

