

(2019) 12 JH CK 0158

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 251 Of 2015

Anil @ Deonath Mandal @ Anil Mondal

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 302, 307, 341, 394

Arms Act, 1959 — Section 27

Criminal Law Amendment Act, 1932 — Section 17

Citation : (2019) 12 JH CK 0158

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Divison Bench

Advocate : Jitendra S. Singh, A. K. Tiwary

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. A First Information Report was lodged against twelve accused persons on the basis of the fardbeyan of Shailendra Baskey which was recorded on

09.10.2007 at 13:00 hrs. After the investigation, a charge-sheet was submitted against Sonia Murmu and Gulachch Munda. The appellant has been

sent up for trial by a supplementary charge-sheet filed by the police in Dhalbhumgarh (Gurabanda) P.S. Case No. 43 of 2007.

2. The appellant has faced the trial on the charge under sections 341, 307, 302, 394 and 120B of the Indian Penal Code and under section 27 of the

Arms Act as well as under section 17 of the C.L.A. Act.

3. During the trial, the prosecution has examined 7 witnesses; the informant is P.W.1.

4. According to the prosecution, the informant and Mangal Hansda have seen the

occurrence and they have identified the appellant in the dock.

5. The informant of this case had formed Nagrik Suraksha Committee with the help of villagers. He was fighting a battle with the M.C.C extremists

and the Government has provided him two bodyguards for his protection. On 09.10.2007, at about 5:30 a.m, he was going with his wife on a

motorcycle to his house. His bodyguard was also coming with him on another motorcycle. When he reached near Gura picket, near Kasiabera river

bridge he saw four persons there, who on seeing him coming took out their carbine. Sensing threat, the informant jumped from the bridge and the

extremists also jumped and took position. They started firing from their carbine. In the meantime, police from Gura picket came there and exchanged

fire in return. Thereafter the extremists fled away towards Jian village. The informant has claimed that the extremists were aged between 20 to 22

years and he can identify them. In the incident he suffered bullet injuries on his waist and both the legs and his bodyguard died on the spot.

6. In the court, the informant has portrayed a similar picture of the crime scene. He has narrated a similar story of the occurrence as has been stated

by him in his fardbeyan. But, he has not named the appellant as an accused either in his fardbeyan which was recorded on 09.10.2007 or in his

examination-in-chief when he was examined in the court. He says that he has identified the appellant in the Test Identification Parade which was

conducted on 20.07.2009.

7. The identification of an accused in TIP is a primary evidence but not substantive evidence. The evidence on identification of an accused in TIP is

used to corroborate identification of the accused in the court. The law on the subject is by now well-settled. The identification of an accused in the

court by a witness is a substantive evidence but identification of an accused for the first time in the court has been held to be inherently of a weak

character and unless it is corroborated by his previous identification in TIP or with any other evidence, normally, conviction is not recorded on the

basis of identification of an accused by a solitary witness for the first time in the court.

8. In *Dana Yadav alias Dahu and Others V. State of Bihar* reported in (2002) 7 SCC 295, the Supreme Court has held that ordinarily

identification of an accused for the first time in Court by a witness should not be

relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by any other evidence.

9. The appellant was an accused and in custody in connection to Dhalbhumgarh P.S. Case No.13 of 2009. He was remanded in the present case on

02.06.2009. A Test Identification Parade was conducted on 20.07.2009 but the prosecution has not offered a plausible explanation why the Test

Identification Parade was not conducted early. Moreover, the delay of about 2 years when the appellant was put to Test Identification Parade has

substantially diminished evidentiary value of identification in T.I.P.; the appellant was already in jail custody and, therefore, known to the police and others.

10. In *Lal Singh v. State of U.P.* reported in (2003)12SCC 554, the Supreme Court has observed thus:

“43. It will thus be seen that the evidence of identification has to be considered in the peculiar facts and circumstances of each case.

Though it is desirable to hold the test identification parade at the earliest-possible opportunity, no hard-and-fast rule can be laid down in

this regard. If the delay is inordinate and there is evidence probalising the possibility of the accused having been shown to the witnesses,

the court may not act on the basis of such evidence. Moreover, cases where the conviction is based not solely on the basis of identification

in court, but on the basis of other corroborative evidence, such as recovery of looted articles, stand on a different footing and the court has

to consider the evidence in its entirety.”

11. A Test Identification Parade chart has been produced during the trial, however, none of the prosecution witnesses has proved the chart. The

Magistrate who has conducted the Test Identification Parade has not been examined during the trial and, in fact, the prosecution has not even

disclosed name of the Magistrate.

12. On such evidence, we are of the opinion that the prosecution has failed to prove identification of the appellant by the informant.

13. Another witness produced by the prosecution on identification of the appellant is Mangal Hansda-P.W.7. In his cross-examination, he admits that

for the first time in the court he has identified the appellant and before that he has not seen him. He further says that he has heard name of the

appellant for the first time on the day when the incident has taken place. According to him, at that time few persons were firing and calling name of

the appellant. But, it is the prosecution's case that 15 persons had come there and 4 of them have started firing at the informant and his bodyguard.

Now, on such evidence, P.W.7 cannot claim that he has identified the appellant as the one who has participated in the crime because some people were calling a name, namely, Anil.

14. Therefore, identification of the appellant by P.W.7 in the court cannot be relied upon by the prosecution.

15. The prosecution witnesses â?" P.W.2, P.W.3 and P.W.6 â?" have turned hostile. The investigating officer has recorded statement of several

persons but they were not examined during the trial. In his cross-examination, he has deposed that Mangal Hansda did not reveal complicity of the

appellant in the crime. The Test Identification Parade was held on 20.07.2009 at sub-Jail, Ghatshila and the Test Identification Parade chart was

prepared by the Judicial Magistrate in presence of the jail guard, but they were not examined during the trial.

16. It is elementary in every criminal trial that the person who has committed the crime must be identified with certainty and the evidence on

identification must be substantive as also sufficiently corroborated by other evidence. The only piece of evidence against the appellant is his

identification by the informant and P.W.7 in the Court, but then, identification of an accused by a witness for the first time in the court is inherently

weak evidence. Therefore, without corroboration from other evidences, such as, Test Identification Parade, on the basis of identification of an

accused by a witness for the first time in the court his conviction cannot be recorded and, that too, for a serious offence like murder.

17. In the present case, we find that the prosecution has failed to adduce reliable and trustworthy evidence on identification of the appellant as the

person who has participated in the occurrence and, therefore, his conviction in S.T. Case No. 420 of 2009 is held unsustainable.

18. Accordingly, conviction of the appellant under sections 341, 302, 307, 394, 120B IPC, under section 27 of Arms Act and under section 17 of

C.L.A Act and the order of sentence for the aforesaid offences, both dated 13.11.2014, passed against him in S.T. Case No. 420 of 2009 by the

learned District and Additional Judge-I, Ghatsila are set-aside.

19. The appellant is acquitted of the charges framed against him in S.T. Case No. 420 of 2009.

20. The appellant, namely, Anil @ Deonath Mandal @ Anil Mondal, who is in custody, shall be released forthwith, if not wanted in connection with any other cases.

21. In the result, Criminal Appeal (DB) No. 251 of 2015 is allowed.

22. Let a copy of the judgment be transmitted to the court concerned through FAX.

23. Let the lower-court records be transmitted to the court concerned, forthwith.