

(2012) 05 JH CK 0051

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1905 of 2004

Azimullah Ansari, Majlum Ansari, Nasir Ansari and Samaun Ansari

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 10-05-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : (2012) 3 JLJR 52

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : Ajay Kr. Singh, Om Prakash Parsuram Prasad In 1905/2004, M/s Rajiv Kumar, R.S. Singh and Ajay Kr. Singh In 1648/2004, for the Appellant; V.S. Sahay, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. By Court. Both these appeals are directed against the judgment of conviction and sentence dated 21/09/2004 and 22/09/2004 respectively, passed by the learned Additional Judicial Commissioner (F.T.), Ranchi in Sessions Trial No. 232 of 1998, convicting the appellants for the offences u/s 302/149 of the Indian Penal Code and sentencing them to undergo R.I. for life for the offences u/s 302 IPC and R.I. for 3 years for the offences u/s 148 IPC and to pay a fine of Rs. 20,000/payable to the widow of the deceased and in default thereof, to undergo R.I. for six months. However, both the sentences were directed to run concurrently. The prosecution case, in short, is that PW7 Saimum Khatoon lodged a fardbeyan on 28/11/1996 at R.M.C.H. Hospital at about 14.30 hours alongwith PW6 to the effect that at about 10 A.M., when she was sitting in her Angan and her husband Jamrudding Ansari (deceased) was going to court with a bag, the accused persons alongwith several other persons armed with Lathi, Dagger, Nepla, Bhala and Bomb proceeded towards the disputed land for harvesting. The accused persons asked the deceased to come alongwith hem for harvesting and then Naimuddin Ansari (died during trial) chased Jamruddin and

threw him on the ground and then assaulted him by Nepla and accused Allauddin Ansari (died during pendency of the appeal) assaulted by Dagger. The other accused persons, who were also going for harvesting, surrounded Jamruddin and started assaulting him. On hulla, Khatibul Ansari (PW3) Sadik Ansari and others came there and saved her husband. Due to injuries, the intestine of Jamruddin came out, which was tied with a towel and he was taken for treatment in a Tempo to RMCH during which he died.

2. Counsel for the appellants submitted that there are vital contradictions in the manner of occurrence narrated by the informant in the fardbeyan and the evidences of the witnesses are not reliable. Thus it is submitted that the appellants deserve benefit of doubt.

3. On the other hand, counsel for the State supported the impugned judgment of conviction and sentence.

4. 17 persons were put on trial, 8 persons were convicted, 7 are appellants in these two appeals. One Allaudding Ansari filed separate appeal, which was not pressed on the ground that he died.

It was pointed out that the appellant Mubarak Ansari in Cr. Appl No. 1648/2004, has also died during pendency of the appeal and, therefore, the appeal on his behalf is not being pressed.

5. The prosecution examined 12 witnesses. PW1 has been projected as eyewitness. According to him, he saw only Nasir Ansari assaulting the deceased and did not see who others assaulted. This witness further said that out of the assailants, he did not recognize anybody other than Nasir and Samaun. During cross-examination he said that Samaun, Azimullah and Allauddin were standing at the place of occurrence and they did not assault the deceased. Thereafter, this witness was declared hostile.

PW2 is the other hostile witness, whose name was disclosed in the fardbeyan as one of the persons, who tried to save the deceased. This witness gave a different story that the deceased Jamruddin hurled bomb and then Nasir assaulted. This witness was also declared hostile.

PW3 is the another witness, whose name has been disclosed in the fardbeyan as one of the persons, who tried to save the deceased. This witness said that while he was passing through near the place of occurrence, the deceased was crying for help. Nasir assaulted him by Bhujali, Samaun with Dagger, Azimullah with Nepla, Allauddin with Dagger and Majlum with Bhala.

PW4 interalia said that Jamruddin was winnowing paddy. The accused persons came armed with weapons. Majlum assaulted with Bhala due to which Jamruddin fell down and thereafter, Nasir, Samaun, Allauddin, Azimullah assaulted him with Dagger.

PW5 interalia said that Nasir, Azimullah, Allauddin, Naimuddin, Samaun and

others were assaulting the deceased. The others were standing there. Nasir assaulted with Dagger due to which he fell down. This witness further said that he saw only Nasir assaulting Jamruddin, and others were present at the place of occurrence armed with Lathi, Danda and did not indulge in any overt act.

PWs6, 11 and 12 are the hearsay witnesses.

PW7 is the informant. She gave a complete goby to her specific statement made in the fardbeyan. It is true that fardbeyan is not the encyclopedia but she specifically named Naimuddin (died during trial) and Allauddin (died during pendency of his appeal) as the persons, who assaulted the deceased with weapons and about others it was specifically stated that they surrounded the deceased and assaulted. Similar statement was given by her in her statement before police. But in her evidence in Court, she gave a different story. She said that when her husband was arranging papers for going to court, some of the accused persons came at her home armed with weapons. Allaudding, Majlum and Azimullah caught her husband and threw him on the ground and Nasir inflicted injury on her husband in his stomach by Dagger and Samaun slit his neck. The defence pointed out this contradictions to the Investigating Officer PW9. The credibility of this witness becomes doubtful. She said that she knew about the conspiracy hatched up by one Mubarak Ansari to kill her husband but she forgot to tell about such conspiracy to her husband.

PW8 is the Doctor, who found several antemortem injuries on the deceased caused by sharp cutting weapons, which were the cause of death.

PW9 is the Investigating Officer, to whom the contradictions made by the informant in her fardbeyan, in her restatement before police and in her evidence made in Court, was pointed out.

PW10 is the son of the deceased. He tried to project himself as an eyewitness but it appears that he is not an eyewitness. The informant has not said about the presence of this witness at the place of occurrence.

6. Thus, it appears that so far as the appellants Idris Ansari and Jhubba @ Abrar Hasan in Cr. Appeal No. 1648/2004, are concerned, there is no allegation at all.

7. So far as appellants Azimullah Ansari, Majlum Ansari, Nasir Ansari and Samaun Ansari in Cr. Appeal No. 1905/2004, are concerned, there are vital contradictions in the manner on occurrence and manner of inflicting injuries on the person of the deceased. PWs1,2 and 3 have been declared hostile. PWs4 and 5 have been projected themselves as eyewitnesses but it appears that they are chance witnesses and there are vital contradictions in their statements. The best eyewitness is the informant PW7 herself but as already indicated there are vital contradictions in her statement made in the fardbeyan and in her restatement before police and in her evidence made in Court. After carefully going through the records and hearing the parties at length, we are inclined to give benefit of doubt to the appellants.

Accordingly, both these appeals are allowed. The impugned judgment of conviction and sentence, passed by the trial court against the appellants is hereby set aside. The appellants, Nasir Ansari and Samaun Ansari, (in Cr. Appeal No. 1905/2004), who are in jail custody for about eight years, are directed to be released forthwith, if not wanted in any other criminal cases.

Appellants Azimullah Ansari and Majlum Ansari (in Cr. Appeal No. 1905/2004) and Idris Ansari and Jhubba @ Abrar Hasan, (in Cr. Appeal No. 1648/2004), who are on bail, are discharged from the liabilities of their bail bonds.