
(2019) 07 JH CK 0257

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 532 of 1996

Baburam Murmu @ Bahuram Murmu

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Arms Act, 1959 — Section 27
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 114(g)

Citation : (2019) 07 JH CK 0257

Hon'ble Judges : Aparesh Kumar Singh, J; Kailash Prasad Deo, J

Bench : Division Bench

Advocate : P.K. Verma, Bandna Sinha, Priya Shreshtha

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the appellant and learned Additional Public Prosecutor representing the State.
2. This criminal appeal is directed against the judgment of conviction dated 28.09.1996 passed in Sessions Trial No. 33 of 1993 by the court of learned Sessions Judge, Godda, whereunder the sole appellant has been convicted for the offence punishable under Section 302 of the IPC and Section 27 Arms Act and sentenced to undergo rigorous imprisonment for life with a fine of Rs.2,000/- with default sentence under Section 302 of the IPC and further ordered to undergo rigorous imprisonment for five years under Section 27 of the Arms Act vide impugned order of sentence dated 30.09.1996.
3. Informant, Dular Tuddu is the widow of the deceased (Jetha Murmu) whose fardbeyan was recorded at 03:00 P.M. on 02.07.1991 in the Police Camp at Primary Health Center, Boarijore upon which the criminal law was set into motion.
4. As per fardbeyan of the informant (P.W.3) recorded at 3:00 P.M. on

02.07.1991 in the presence of her aunt- Duli Kisku (P.W.4), brother- Patwari Tuddu (P.W.5) and ten other villagers, a case of land dispute was going on between her brother (P.W.5) and some agnates- Karan Murmu, S/o Late Arjun Murmu and Lakhan Murmu, S/o Late Karan Murmu. A decree had been passed in favour of her brother. She along with her husband and her aunt-in-law were staying there since long after constructing a house. Her husband was threatened on regular basis by the agnates (1) Mangal Murmu, (2) Siri Murmu, (3) Dhenu Murmu, (4) Jee Murmu, (5) Sido Murmu @ Namki Murmu, (6) Baburam Murmu (appellant), (7) Gera Murmu and (8) Lakhan Murmu, stating to the informant that you take your husband away otherwise he would be killed and thrown away. Three days prior to that, accused, Baburam Murmu @ Bahuram Murmu and other accused persons had come to their house and threatened them that if do not leave the place voluntarily then your brother Patwari Tuddu (P.W.5) and your husband would be killed. She further alleged that on this day at around 12:00 in the noon when she was in her house with her husband having meal, their agnates from the village namely, (1) Baburam Murmu with a pistol in his hand (2) Sido Murmu @ Nimki Murmu, (2) Siri Murmu, (3) Gera Murmu with a lathi in his hand, (4) Mangal Murmu, (5) Siri Murmu (6) Dhenu Murmu (7) Jee Murmu and (8) Lakhan Murmu all came variously armed and entered into her house. In the meantime, Baburam Murmu (appellant) shot from his pistol at the left eye of her husband and on account of the injury he started profusely bleeding. In the meantime, other accused persons also started assaulting by lathi. Her husband fell unconscious and she felt that because of the assault her husband had died. She came out of the house and raised a brawl. On her brawl her brother, Patwari Tudu (P.W.5), Telu Tuddu (P.W.2) and Dhananjay Tuddu whose house were close to the house of her aunt came running. They saw the accused persons running away. Her brother also chased them when he was also threatened by showing the pistol. He got scared. Thereafter her injured husband was taken to Boarijore Hospital by her brother, her aunt and other villagers. Doctor arrived there and after examination declared her husband dead. On these allegations informant alleged that on account of land related dispute, the accused persons have entered into their house and killed her husband, Jetha Murmu by a pistol and assault by lathi.

5. On the basis of this fardbeyan, Boarijore P.S. Case No.59 of 1991 dated 02.07.1991 under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act was instituted against eight accused persons.

6. Upon conclusion of investigation chargesheet was submitted bearing No. 41 of 1991 dated 31.12.1991 against five accused persons under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act.

7. After Cognizance and commitment, charges were framed by the learned Sessions Judge, Godda against five accused persons under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The charges were read over to the accused persons in Hindi to which they pleaded not guilty and claimed to

be tried.

8. During the course of trial prosecution examined seven witnesses:-

Chota Karan Murmu as P.W.1, Telu Tuddu @ Narain Tudu as P.W.2, Dular Tuddu (informant) as P.W.3, Duli Kisku as P.W.4, Patwari Tuddu as P.W.5, Dr. Kula Nand Choudhary as P.W.6 and Jai Kishor Singh as P.W. 7.

Prosecution has also adduced certain documentary evidence, such as the postmortem report as Exhibit-1, farbbeyan as Exhibit-2 and formal FIR as Exhibit-3 all without objection.

9. After closure of the prosecution, statement of the accused persons were recorded under Section 313 Cr.P.C. to which they have denied their involvement and pleaded themselves to be innocent.

10. However, no oral or documentary evidence was adduced on behalf of the defence.

After consideration of the case of the parties and on the basis of the material evidence on record learned trial court acquitted four accused persons while convicting the present appellant for the charged offences.

11. Learned counsel for the appellant in support of the challenge to the impugned findings has inter alia made the following submissions: It is submitted that informant, Dular Tuddu (P.W.3) is wife of the deceased. Her evidence contains major contradictions from the original prosecution story made out in her fardbeyan. In her fardbeyan she has alleged fire-arm shot by the present appellant and assault by several accused persons totaling seven. P.W.6 (Dr. Kula Nand Choudhary) who conducted the postmortem report and proved it as Exhibit-1 did not find any injury caused by assault with lathi except the fire-arm injury.

Learned counsel for the appellant has further submitted that from perusal of the Post-mortem Report (Exhibit-1), it would appear that one bullet was found lodged inside the skull of the deceased which has neither been seized by the Investigating officer nor sent for Forensic Examination to connect the same with the weapon of assault and the appellant. It has neither been produced in the Court. P.W.3 (Dular Tuddu) has in her cross-examination denied that there was any case with the accused persons. P.W.3 (Dular Tuddu) stated that at the time of occurrence only appellant had entered into the room where husband of the informant was having meal and informant and her mother were at a distance inside the room. Rest of the accused persons did not enter the room. This belies her allegation of assault by lathi by other accused persons. Further, material prosecution witness in the nature of mother of the informant has not been produced by the prosecution to support their case regarding which adverse inference should be drawn under Section 114(g) of the Evidence Act. Similarly the sister of the deceased who was also reportedly in the house has not come forward to support the case of the prosecution. Other prosecution witnesses such

as P.W.1 (Chota Karan Murmu), P.W.2 (Telu Tuddu @ Narain Tudu, P.W.4 (Duli Kisku) and P.W.5 (Patwari Tuddu) are not witnesses to the occurrence but hearsay witnesses. It is submitted that the weapon of assault i.e. pistol has neither been seized nor connected to the appellant as the perpetrator of the fire-arm shot on the deceased. Investigating officer P.W.7 (Jai Kishor Singh) has not stated about the existence of any other witness as present in the house as per the case of the informant. On account of inconsistent testimony of the prosecutrix and major contradictions in her original case remaining four accused persons were acquitted by the learned trial court. As such, the findings of the learned trial court are not weighty and without proper appreciation of the evidence on record to uphold the judgment of conviction of this appellant. The appeal, therefore, be allowed and the appellant be acquitted of the charges.

12. Learned Additional Public Prosecutor representing the State has supported the impugned findings and inter-alia made the following submissions. It is the case of the prosecution based upon the fardbeyan of the wife of the deceased (Dular Tuddu) examined as P.W.3 during trial that the sole fire-arm shot inflicted by this appellant was the cause of death as per the evidence of Doctor (P.W.6) who proved the Post-mortem Report of Jetha Murmu (deceased) marked as Exhibit-1. There is no major contradictions in her statement so far as the culpability of this appellant is concerned. Minor inconsistency, if any in the details of description of the occurrence as to how many accused persons entered the room or were at the door apart from this appellant would not avail of any benefit to this appellant. If the testimony of the sole eye-witness is cogent and reliable, conviction can be recorded on that. It is further submitted that defence has not been able to elicit any contradiction in the statement of the informant (P.W.3) as to existence or non-existence of any other eye-witness from the mouth of P.W.7 (the investigating Officer). The case of the prosecution stands on its own legs without any lacunae. As such, the findings recorded by the learned trial court do not warrant any interference while re-appreciating the evidence on record, in appeal by this Hon'ble Court. As such, the instant appeal deserves to be dismissed.

13. Considered the submissions of the learned counsel for the appellant and learned Additional Public Prosecutor representing the State and perused the materials evidence on record including the fardbeyan of the informant (P.W.3), framing of charge, evidence of seven prosecution witnesses, three prosecution exhibits, statement of accused/appellant recorded under Section 313 of the Cr.P.C. and also impugned judgment of conviction and order of sentence.

14. We have scanned the prosecution evidence, in detail and in depth. As per the case of the informant (P.W.3- Dular Tuddu), widow of the deceased (Jetha Murmu), her brother (P.W.5- Patwari Tuddu) and her husband were being threatened by the accused persons including the present appellant on account of a case relating to land dispute in which a decree was passed in favour of her brother. They had also repeated their threat on subsequent occasions asking the

informant to take her husband away otherwise he and her brother, both would be killed. Motive for the occurrence and previous enmity has been duly corroborated by the informant (P.W.3), in her deposition. It has been pointed on behalf of the appellant that there is a contradiction on this point in her deposition. However, perusal thereof, shows that at Para-11 of her evidence, she has stated that case between the appellant/accused (Baburam Murmu) and her brother in relation to land dispute was going on since long. The timing of the incidence is at 12.00 noon when she along with her husband were having meal in a room having one door in their house. In her testimony, she has described the place of occurrence and supported her version made in the fardbeyan so far as the entry of the appellant/accused armed with a Pistol in the room is concerned and the infliction of Pistol shot on the left eye of her husband is concerned. Her evidence shows that the rest of the accused persons had not entered the room though they were armed with lathi. There might be inconsistency so far as the minor details of the occurrence is concerned, but so far as the role of this appellant in infliction of the fire-arm shot on her husband is concerned, we do not find any reason to doubt her testimony, as it remains intact. Her evidence on this point stands corroborated by the Medical evidence. P.W.6 (Dr. Kula Nand Chaudhory) conducted post-mortem on the dead-body of Jetha Murmu on 3rd July, 1991 at 9.30 A.M. and found the following ante-mortem injuries:-

"(I) One wound of entry (penetrating wound) just below the left eye-ball, margins charred, blood oozed from margins, the wound traversing medially and posteriorly margins inverted.

Size, 6.3 c.m. circular, depth about 15 c.m.

On dissection :- Brain damaged along with course of the bullet and one bullet found inside the brain (Right Cerebral hemisphere occipital lobe), Neck normal, Heart- all chambers almost empty, Lungs normal, Liver & G.B. normal, Kidneys normal, spleen atrophic & shrunken a little, Stomach blackish green partially digested food material mixed with gastric juice, Intestines gas & faecal matter, urinary bladder empty.

Cause of Death :- Doctor (P W.6) has opined that death was due to haemorrhage and shock resulting from the above-noted injuries. Time since death :- Within 24 hours.

Nature of injury :- grievous and dangerous to life caused by firearm."

Perusal thereof shows that the victim died because of bullet injury on his head below the left eye-ball being the wound of entry, margins whereof were charred. Inside the brain, the bullet was lodged. Cause of death in the opinion of P.W.6 was due to haemorrhage and shock resulting from the aforesaid injuries and time since death was within 24 hours. The nature of injury was grievous and dangerous to life caused by fire-arm. Having analyzed the evidence of the informant, who is an eye-witness and widow of the deceased together with the medical evidence (P.W.6- Dr. Kula Nand Chaudhory) and the Post-mortem report

(Exhibit-1), we find no reason to doubt the prosecution case. The learned trial court has weighed the evidence in proper perspective and rightly convicted the appellant for the charges though rest of the accused persons were granted the benefit of doubt and acquitted. As such, we do not find any reasons to interfere with the impugned judgment of conviction dated 28.09.1996 and order of sentence dated 30.09.1996, passed by learned Sessions Judge, Godda, in Sessions Trial No. 33 of 1993. Accordingly the same is hereby upheld and affirmed.

15. The instant Criminal Appeal stands dismissed.

16. Appellant is on bail. His bail bonds stand cancelled. He should surrender immediately to serve out remainder of the sentence.

17. Let L.C.R. be returned to the court below along with a copy of this judgment.