

(2016) 02 JH CK 0083

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 1451 of 2007 (Against the judgment of conviction and order of sentence dated 26.09.2007 and 27.09.2007 respectively, passed by Sri Anil Kumar Arya, 2nd Addl. Sessions Judge, Godda, in connection with Sessions Case No. 08 of 2005 / 01 o

Bishnu Kant Mandal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2016) 3 ECrC 431 : (2016) 2 JBCJ 606 : (2016) 2 JLJR 294

Hon'ble Judges : D.N. Upadhyay; Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Uday Kant Thakur, Advocate, for the Appellant; Amaresh Kumar, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

1. This criminal appeal has been directed against the judgment of conviction and sentence dated 26.09.2007 and 27.09.2007 respectively, passed by the 2nd Addl. Sessions Judge, Godda, in connection with Sessions Case No.08 of 2005/01 of 2007, corresponding to G.R. Case No.14 of 1999 arising out of Godda (M) P.S. Case No. 08 of 1999 whereby the appellant has been held guilty for the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act and sentenced to undergo R.I. for life under Section 302/34 of the Indian Penal Code and R.I. for three years under Section 27 of the Arms Act.

2. The prosecution case, as it appears from the fardbeyan of Sagar Fariyat recorded on 04.01.1999 at 4.00 hours at Godda (M) Police Station, is that on 03.01.1999 in the evening the informant with his father Gopali Fariyat was returning home after selling sweet meat. On the way they met with appellant and his associates. Since the appellant happens to be brotherinlaw of informant, he told him to accompany but the appellant refused. Thereafter, the informant

with his father proceeded ahead. Father of the informant was walking behind. Suddenly, the informant who was walking ahead attracted towards his father after hearing sound of firing. He found his father lying on the ground having gun shot injury and the appellant was seen fleeing from the place. Gopali Fariyat (father of the informant) died at the spot. Informant went to his village and reported the matter to his family members and other villagers. In the early morning at 4.00 a.m. police arrived at the place where dead body was lying and then fardbeyan of the informant was recorded. On the basis of fardbeyan of Sagar Fariyat, Godda (M) P.S. Case No.08 of 1999 under Section 302/34 of the Indian Penal Code was registered. The police, after due investigation, submitted charge sheet and accordingly cognizance was taken and the case was committed to the court of sessions and registered as Sessions Case No.08 of 2005/01 of 2007.

The charges under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act were framed against the appellant to which he pleaded not guilty and claimed to be tried. To substantiate the charges the prosecution has examined altogether ten witnesses including the informant and the doctor who conducted post mortem examination. The Investigating Officer has not been examined. The learned Addl. Sessions Judge, placing reliance on the evidence and documents available on record, held the appellant guilty for the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act and sentenced him, as indicated above.

3. The appellant has assailed the impugned judgment on the ground that the judgment of conviction under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act has been recorded only on the deposition of PW3 Sagar Fariyat who happens to be son of the deceased. PW1, PW6, PW7 and PW8 have turned hostile and they have not supported the prosecution case. Ramsewak Fariyat PW2 is son of the deceased and he is hearsay witness. He has deposed about the occurrence what was communicated to him by his brother Sagar Fariyat. Lata Devi PW9 happens to be daughter of the deceased and she is also hearsay witness and she has mostly repeated the same fact which was stated by her brother PW2. The Investigating Officer has not been examined. Madan Tiwari PW10 is a formal witness who has proved fardbeyan etc.

Now coming to the evidence of PW3 who is informant, it would reveal that he is not an eye witness. He had not seen the occurrence. It is submitted that the informant was walking ahead whereas his father was walking behind. The injury to father of the informant was caused from back. The admitted evidence of PW3 is that they left the market after sun set. The informant was not having any source of light with him at the place of occurrence. He did not say that he had seen the assailant causing injury to his father Gopali Fariyat. He has tried to bring on record the oral dying declaration made by his father but the injuries caused and the circumstances brought on record do not suggest that deceased was in a position to speak a single word. The evidence of PW3 is wholly not

reliable and his testimony could not be given weight for holding the appellant guilty for the offence punishable under Section 302/34 of the Indian Penal Code.

4. Learned A.P.P. has opposed the argument and submitted that just before the occurrence the informant and deceased met with the appellant who is none else but son-in-law of deceased. He wanted to marry younger daughter of the deceased but the deceased and his family members were not ready to fulfil his wish. On the way, when the informant requested him to accompany, the appellant refused. Thereafter the informant with his father proceeded ahead and within no time, sound of firing was noticed by the informant. When he reached to his father, he found him lying on the ground having gun shot injury on his back. The informant had also seen the appellant fleeing from the place. The deceased had disclosed name of the assailant to the informant. All these facts are sufficient to hold the appellant guilty and the learned Addl. Sessions Judge has rightly convicted him for the offence punishable under Section 302/34 of the Indian Penal Code and Section 27 of the Arms Act which needs no interference.

5. After granting hearing to the parties, we have perused the case record, examined the evidence and documents available and also gone through the impugned judgment. Certainly, the conviction and sentence has been recorded on the basis of evidence of PW3 who is informant. Now we have to carefully scrutinised the evidence of PW3 whether it is wholly admissible and whether conviction can be recorded relying on the evidence of PW3 ? The motive assigned behind the murder is that the appellant wanted to marry younger daughter of the deceased for which the deceased and his family members were not agree. We do not find that the motive was so strong that it could lead to commit offence of murder. The admitted case of the prosecution is that Paro Devi, one of the daughter of the deceased, was married with the appellant but she died. The informant himself has admitted that his younger sister Lata was not born when Paro (wife of the appellant) died. So, the motive assigned by the prosecution does not appear to be acceptable. No previous incident in support of motive assigned, has been brought on record by the prosecution. Only after alleged occurrence, this motive was introduced. For the reasons indicated above, we feel no hesitation to observe that prosecution has not proved actual motive behind the murder.

Now again coming to the evidence of PW3, we find that he has stated that he was moving faster leaving his father 2530 feet behind. Admittedly, the incident took place after sun set and it was dark. The deceased died at the spot after receiving injury and the death, as we gather from the evidence of PW3, was instantaneous. It is also admitted position that PW3 had not seen the appellant causing injury to deceased by using fire arm. The circumstances in which the occurrence took place and the manner in which gun shot injury was caused to the deceased are sufficient to hold that the informant had no occasion to see the assailant because the injury to the deceased was caused from behind. Whatever may be the reason, but the fact remains that relation between the appellant and

family of the deceased was not cordial after death of wife of the appellant. Considering all these aspects of the matter, it would not be safe to rely on the sole testimony of PW3 and we feel inclined to give benefit of doubt to the appellant. Accordingly, the impugned judgment of conviction and sentence dated 26.09.2007 and 27.09.2007 respectively, passed by the 2nd Addl. Sessions Judge, Godda, in connection with Sessions Case No.08 of 2005/01 of 2007, corresponding to G.R. Case No.14 of 1999 arising out of Godda (M) P.S. Case No. 08 of 1999 is hereby set aside. The appellant who has been lodged in jail, is directed to be released forthwith from jail custody, if not wanted in any other case and for that appropriate direction may be issued, if necessary, by the convicting/successor Court.

6. In the result, this appeal stands allowed.