
(2012) 09 JH CK 0097

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 953 of 2003

Chango Bodra and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2012) 09 JH CK 0097

Hon'ble Judges : Prashant Kumar, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : Rajesh Kumar, for the Appellant; D.K. Chakraborty, Assistant Public Prosecutor, for the Respondent

Judgement

D.N. Patel, J.—The present appeal has been preferred by the original accused-appellants against the judgment and order of conviction and sentence dated 21st June, 2003 and 23rd June, 2003 respectively, passed by learned Additional Sessions Judge (F.T.C.-II), Chaibasa, in Sessions Trial No. 80 of 2002, arising out of Band Gaon P.S. Case No. 36 of 2001, whereby and whereunder, all the appellants have been convicted for the offence under Sections 148/302/149 of the Indian Penal Code and also u/s 3/4/5 of the Prevention of Witch (Daain) Practices Act and each of them have been sentenced to undergo rigorous imprisonment for three years for the offence u/s 148 of the Indian Penal Code, rigorous imprisonment for life for the offence u/s 302/149 of the Indian Penal Code and rigorous imprisonment of a period of three months for the offence u/s 3/4/5 of the Prevention of Witch (Daain) Practices Act. However, all the sentences have been ordered to run concurrently. If the case of the prosecution is unfolded, the facts are as under:

P.W. 2- Ram Munda is the informant and on the basis of his statement, a case was registered at Band gaon Police Station within the district of West Singhbhum. As per his statement, the occurrence has taken place on 27th

October, 2001 at about 11.00 p.m. and the First Information Report was lodged on 28th October, 2001 at 15.30 hours. It is alleged by the prosecution that the wife of Matru Bodra @ Mutari Bodra (original accused no. 4-appellant no. 4) had expired last month from the date of incident and Matru Bodra @ Mutari Bodra was under belief that because of the wife of the informant, who is "Daain", his wife has expired. It is the case of the prosecution that on 27th October, 2001 at about 7.00 p.m. the appellants-accused persons, armed with deadly weapons, came at the house of the informant and accused Dango Bodra opened fire from his country made pistol, with an intention to kill the informant, whereupon, he sustained injury on his right chin and blood started oozing out. The informant immediately went inside his house and closed the door, so as to save his life. Then all the assailants-accused got themselves hidden at a nearby place and again at 11.00 p.m., they came at the house of the informant, broke open the door and started searching the informant and his wife. In the meantime, mother of the informant (deceased) came at the door to rescue the informant and his wife, whereupon, the assailants started assaulting his mother, namely, Lipi Mundarin, by means of Tangi (axe). Having received the injuries, mother of the informant fell down in the Angan (courtyard) in front of the door. The injuries inflicted upon the mother of the informant (Lipi Mundarin) resulted into her death. Thereafter, all the accused persons fled away. The incident has taken place at about 11.00 p.m. At night. The informant, thereafter, went to his in-laws' house and on the next day he informed the incident at about 15.30 hours to Band gaon Police Station. Pursuant thereto, First Information Report was lodged.

2. After registering the First Information Report, investigation was carried out and after completion of investigation, charge sheet was submitted by the police on 12th January, 2002 for the offence under Sections 147/148/302/149/307 of the Indian Penal Code, Section 27 of the Arms Act and Section 3/4/5 of the Prevention of Witch (Daain) Practices Act against all the appellant-accused persons.

3. Thereafter, the case was committed to the court of sessions, where it was numbered as Sessions Trial No. 80 of 2002 and the trial commenced. The trial court i.e. Additional Sessions Judge (FTC-II), Chaibasa, after appreciating the evidences on record, convicted all the appellants-accused persons mainly for the offence punishable u/s 302 of the Indian Penal Code read with Section 149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life.

4. Learned Counsel appearing for the appellants vehemently submitted that the prosecution case is totally a concocted case and the offences have not been proved beyond the reasonable doubts, as there are major omissions and contradictions, which have not been properly appreciated by the learned trial court and hence, the impugned judgment and order of conviction and sentence, passed by the trial court, deserves to be quashed and set aside.

5. Learned Counsel for the appellants has further submitted that in his cross-

examination, P.W. 2, namely, Ram Munda, who is the informant in this case, has stated that he has never seen the whole incident rather upon information, he came to know about the assault. Moreover, there was no light at the place of occurrence. As per the case of the prosecution, the whole incident has taken place in the courtyard i.e. outside the house. It is further submitted that the so called eye witness, who is P.W. 2 and who is claiming himself to be an injured witness, has stated in his cross-examination that he was in the house and upon information gathered from other persons, he came to know about the assault and moreover, no injury certificate has ever been presented by the prosecution relating to the injury, caused to P.W. 2. Thus, P.W. 2 is not a reliable witness and his so called injury is also not proved.

6. It is further submitted by the Learned Counsel for the appellants that P.W. 3, who is wife of P.W. 2, namely, Birsi Bodra, has stated in her deposition that she was also in the house and outside the house there was no light. She has further stated that there are several big trees outside the house. Learned Counsel for the appellants has stated that there is also allegation of firing by one of the appellants, but, there is no fire arm injury upon anyone i.e. neither to P.W. 2 nor upon the deceased. In her cross-examination, this witness (P.W. 3) has also stated that about the incident, the villagers had informed her. Therefore, P.W. 3 is also not an eye witness and, thus, she is not a reliable witness.

7. It is further submitted by the Learned Counsel for the appellants that P.W. 6, namely, Shiv Shankar Bodra, was aged about nine years as on the date on which he gave his statement and was still younger on the date of incident. He is a child witness and grand-son of the deceased. This child witness is a partisan witness. This child witness has stated in his cross-examination that the incident has taken place at the evening hours i.e. before sunset. This witness has stated that the whole incident has taken place in the house whereas other witnesses are saying that the incident has taken place out of the house and at about 11.00 p.m. i.e. during night hours. Thus, this witness is also not a reliable witness.

8. Learned Counsel for the appellants has also submitted that P.W. 7, namely, Lipi Mundarin, is the minor daughter of the informant (P.W. 2). As per the deposition of this witness, from her house the road is 20" away. She has stated that there was light and, therefore, she has seen the whole incident. This witness is changing the time of murder. Moreover, this witness has stated that earlier the incident had taken place at 2 o'clock. This time is also not tallying with the time given by the informant. Thus, different prosecution versions are coming through the prosecution witnesses.

9. It is also submitted by the Learned Counsel for the appellants that P.W. 2 has stated that the whole incident has taken place in the house and two injuries were caused by Dango Bodra, who is original accused no. 5/appellant no. 5. Initially he caused injuries by sharp cutting instrument and, thereafter, by the same accused fire arm injury has also been caused upon the informant. Thus, there are lot of omissions and contradictions in the depositions of the prosecution

witnesses. In fact, they are not the eye witnesses of the incident. It has also been submitted by the Learned Counsel for the appellants that the witnesses have deposed that the incident has taken place during night hours. The dead body of the mother of the informant was lying on road and they were sleeping in the house till next day morning and have informed the police at about 15.30 hours on the next day at the police station. This Behaviour of the prosecution is not a natural one and hence also, they are unreliable and untrustworthy witnesses. Learned Counsel for the appellants submits that in view of the aforesaid, the impugned judgment and order of conviction and sentence deserves to be quashed and set aside.

10. Learned A.P.P. appearing on behalf of the State vehemently submitted that the prosecution has examined as many as ten prosecution witnesses, out of whom there are four eye witnesses, who are P.Ws. 2, 3, 6 and 7. They have narrated about the incident, in detail. Initially, assault was caused and firearm was used. Injury was sustained by P.W. 2, who is informant, by the firearm. Thereafter, the accused persons went inside the house and all of them at about 11.00 p.m. Broke open the house of P.W. 2 and they were searching the wife of P.W. 2. It is further submitted by the learned A.P.P. that all the appellants, thereafter, came at the house of the informant and broke open the door and were searching wife of the informant (P.W. 2), who is P.W. 3, because she was "Daain", as per the assailants. Meanwhile, mother of the informant (P.W. 2) came out to save the family members and assault was caused upon her, as a result of which she expired. Thus, there is no contradiction in the statements of the prosecution witnesses. Moreover, the medical evidence is also tallying with the depositions, given by the prosecution witnesses and hence, no error has been committed by the learned trial court in convicting the appellants/accused persons and, hence, this Criminal Appeal deserves to be dismissed.

11. Having heard Learned Counsel for both the sides and looking to the evidences on record, it appears that the incident has taken place on 27th October, 2001. Initially at 7.00 p.m. assault was caused by fire arm upon the informant, who sustained firearm injury and, thereafter, the victim (informant) went inside the house and the assailants, who were hiding nearby the house of the informant, came at the house of the informant and started searching the wife of the informant (P.W. 2), because she was a "Daain", as per the accused. When mother of the informant intervened, she was assaulted and was done to death.

12. Looking to the First Information Report, it appears that it was lodged on 28th October, 2001 at about 15.30 hours by the informant (P.W. 2), who is Ram Munda son of the deceased. The First Information Report has been marked as Ext. 2. As per First Information Report, original accused no. 5, namely, Dango Bodra, has caused injury upon the deceased, which has resulted into her death.

13. Looking to the deposition, given by P.W. 2, it appears that he has stated that the whole incident has taken place on 27.10.2001 during the evening hours and he has also stated that all the accused persons came at the house of the

informant and caused injuries upon his mother as also upon him. He has not narrated two different incident; one which took place at evening hours and another, which has taken place at about 11.00 p.m. Looking to his cross-examination, he has stated that he has not seen the incident rather he was informed about the incident from others.

14. Moreover, the dead body was recovered on 28th October, 2001 at about 4.00 p.m. As per P.W. 2 murder of his mother has taken place on 27th October, 2001 at about 11.00 p.m. For the whole night and up to 4.00 p.m. of next day, dead body was taken care by this P.W. 2. Looking to the cross-examination of this witness, it appears to this Court that he is not a trustworthy witness. Further, he has narrated that he sustained injury by firearm, which was caused by the appellant, but, looking to the deposition, given by P.W. 4, who is Dr. Sudhir Kumar, there is no firearm injury, sustained by the informant (P.W. 2). Thus, he is not a trustworthy witness.

15. We have also perused the deposition of P.W. 3, Birsi Bodra, wife of P.W. 2. Looking to her deposition, she has stated that the assailants came at her house and assaulted her mother-in-law. She has not narrated that initially the assailants came and assaulted her husband and again they came and assaulted her mother-in-law. Her narration about the whole incident is altogether different. Moreover, this witness has stated that only two injuries were caused to the deceased, but, looking to the medical evidence, given by P.W. 1, Dr. Upendra Prasad, this narration is not tallying with the deposition, given by P.W. 3. In her cross-examination this witness (P.W. 3) has stated that she was in the house; there was no light and there are big trees around the house. She has also narrated that she was informed by the villagers about the incident. Thus, there was no light at the place of occurrence. Moreover, she was in the house and was informed by the villagers and, therefore, she is not an eye witness to the occurrence. Further, looking to her narration about the whole incident, it appears that she is not a reliable and trustworthy witness.

16. Similarly looking to the deposition, given by P.W. 6, who is son of the informant, it appears that when he was examined, he was 9 years of age. P.W. 7 is the daughter of the informant, who was also minor. Both these child witnesses have given altogether different narration of the incident. As per P.W. 6 the incident has taken place during the evening hours and before sunset whereas as per the deposition, given by P.W. 2 and P.W. 3, the incident of murder has taken place at about 11.00 p.m., during night hours. Similarly, P.W. 7 has also narrated that the incident has taken place during the evening hours. Thus, different versions have been given by different prosecution witnesses. P.W. 7 has stated during her cross-examination that there was no light at the place of occurrence. This witness (P.W. 7) has stated that accused Sukhram Kandir (appellant no. 7) was having pistol in his hand whereas the informant says that accused Dango Bodra (appellant no. 5) was having pistol in his hand. Thus, there are lot of discrepancies in the depositions of the prosecution witnesses.

17. Thus, looking to overall evidence of the prosecution witnesses, it appears that they are not reliable witnesses, specially P.Ws. 2, 3, 6 and 7 and their depositions are not inspiring confidence. Moreover, there is no injury upon P.W. 2, who is claiming himself to be an eye witness, by firearm. Thus, the narration of whole incident is not tallying with the deposition of other witnesses on record. These aspects of the matter have not been properly appreciated by the learned trial court. Moreover, the strange Behaviour of these witnesses is also being strengthened in view of the fact that the dead body of the mother of the informant was lying on road since 11.00 p.m. On 27th October, 2001 and the information was given to the police station on 28th October, 2001 at about 15.30 hours and as per the inquest report, the dead body was recovered from the outside of the house of the informant at about 4.00 p.m. Thus, overall looking to the evidence on record, it appears that the so called eye witnesses of the prosecution are, in fact, not the eye witnesses and there are major contractions in their depositions. In view of the aforesaid facts, the prosecution has failed to prove, beyond the reasonable doubt, the charges levelled against the appellants-accused persons and, as such, we hereby quash and set aside the judgment and order of conviction and sentence dated 21st June, 2003 and 23rd June, 2003 respectively, passed by learned Additional Sessions Judge (F.T.C.-II), Chaibasa, in Sessions Trial No. 80 of 2002, arising out of Band Gaon P.S. Case No. 36 of 2001, whereby, all the appellants have been convicted for the offence under Sections 148/302/149 of the Indian Penal Code and also u/s 3/4/5 of the Prevention of Witch (Daain) Practices Act and each of them have been sentenced to undergo rigorous imprisonment for three years for the offence u/s 148 of the Indian Penal Code, rigorous imprisonment for life for the offence u/s 302/149 of the Indian Penal Code and rigorous imprisonment of a period of three months for the offence u/s 3/4/5 of the Prevention of Witch (Daain) Practices Act. Consequent thereof, all the appellants (except appellant no. 5, namely, Dango Bodra), who have already been released on bail vide order dated 15th September, 2003, passed by this Court, are discharged from the liabilities of their respective bail bonds. So far as appellant no. 5, namely, Dango Bodra (original accused no. 5) is concerned, he is directed to be released forthwith from the judicial custody, if not required in any other case.