

(2016) 04 JH CK 0034

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 622 of 2006 with Sessions Case No. 0011 of 2004, G.R. Case No. 126 of 2003, Manika P.S. Case No. 10 of 2003.

Deonandan Singh, S/o Indal Singh R/o Village Madan Dih,
P.S. Manika, District Latehar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2016) 2 AIRJharR 471 : (2016) 3 ECrC 112 : (2016) 3 JBCJ 213 :
(2016) 2 JLJR 665

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

Bench : Division Bench

Advocate : A.K. Kashyap, Sr. Advocate, Anurag Kashyap, Supriya Dayal,
Advocates, for the Appellant; Pankaj Kumar, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

1. This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 16th February, 2006 and 17th February, 2006 respectively, passed by Additional Sessions Judge, F.T.C., Latehar in connection with Sessions Case No. 0011 of 2004 corresponding to G.R. Case No. 126 of 2003, arising out of Manika P.S. Case No. 10 of 2003, whereby the appellant has been held guilty for the offence punishable under section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 20,000/- and in default of making payment of fine further simple imprisonment for one year.

2. The fact emerges from the fard-beyan of Nirmala Kumari, recorded on 10.4.2003 at 14:00 hrs. is that on 9.4.2003 when the informant returned home from market she found her uncle Deonandan Singh (appellant) present in the house. It is disclosed that appellant Deonandan Singh was working as Assistant Engineer in Telecommunication Department, Ranchi. All the family members

including the informant slept in the house after having their meal. At about 3 a.m. in the morning the informant woke up after hearing some knocking and groaning sound of her mother. When she turned towards bed of her mother, she found that her uncle Deonandan Singh (appellant) has been inflicting blows upon her mother by means of tangi causing injuries to her. The informant intervened and snatched away the axe from the hands of Deognandan Singh (appellant) and raised alarm but, till then the appellant fled away from the place of occurrence. The informant followed the appellant to some distance but, could not succeed to apprehend him. On the basis of fard-beyan of informant Nirmala Kumari PW-6 Manika P.S. Case No. 10 of 2003 U/s 302 I.P.C. was registered against the appellant Deonandan Singh.

The Police after due investigation submitted charge sheet and accordingly cognizance of the offence was taken and the case was committed to the Court of Sessions and registered as Sessions Case No. 0011 of 2004.

3. The appellant stood charged for the offence punishable under section 302 Indian Penal Code to which he pleaded not guilty and claimed to be tried.

To substantiate the charge the prosecution has examined altogether eight witnesses and proved documents like fard-beyan, inquest report, post-mortem report, seizure list etc. The learned Additional Sessions Judge placing reliance on the evidence and documents available, held the appellant guilty for the offence punishable under section 302 IPC and sentenced him as indicated above.

4. Learned counsel for the appellant has assailed the impugned judgment mainly on the ground that conviction has been recorded only on the solitary testimony of informant Nirmala Kumari PW-6. No other witness except Doctor PW-7 who had conducted post-mortem examination on the dead body of deceased Harsmani Devi and Investigating Officer PW-8, have supported the prosecution case. PW-1 to PW-5 who are the villagers have turned hostile and they have not supported the prosecution case. The evidence of informant creates so many doubts and also constitutes questions to be answered by the prosecution. The informant has not assigned any motive behind the occurrence. It is no where indicated that the appellant was having enmity with his sister-in-law (bhabhi). The evidence on record further suggests that the appellant was not regularly residing in the village rather, he was residing at Ranchi and he had not visited the village for about three years prior to the date of occurrence. The informant had not made it clear as to with what purpose or intention the appellant had reached to the house of informant. When she returned from the market she met with the appellant, but, she did not disclose substance of conversation if it had taken place between them. It also appears from the record that dinner was served to all the family members and after having meal they slept in the houses on their respective beds. It is said that appellant had also occupied a bed besides the bed of brother of the informant. All the circumstances brought on record by the prosecution suggests that the atmosphere was very cordial between the appellant and other family members who were present in the house at that point

of time. The informant has admitted that the appellant did not come with any axe and she has not made it clear as to from where the axe which was used for committing murder, was obtained by the appellant. The most surprising circumstance is that husband of the deceased who is none else but, elder brother of the appellant did not come forward to support the case of prosecution. The next surprising aspect of the prosecution case is that no villager has come forward to say that the appellant had been to the village on the date of occurrence. After the occurrence, how the appellant disappeared from the village is also a question to be answered. Since, the prosecution has not answered all these questions and failed to clear doubts appearing against the facts brought on record, the conviction and sentence recorded on solitary testimony of informant is not liable to be sustained. Last but not least, it is submitted that house of the informant was occupied by his brothers and sister. Although, all of them were minor but, it is expected that they could have explained something about the occurrence, had they been examined. Therefore, non-examination of other family members who were present in the house also creates doubt on the veracity of the evidence brought on record by the informant.

5. Learned A.P.P. has opposed the arguments and submitted that conviction can well be recorded on solitary testimony if it is wholly reliable, convincing and consistent. The place of occurrence is the house of informant and time of occurrence is about 3 a.m. and in such circumstance, chances of availability of independent witness except the family members is always remote and that is the reason no independent witness has come forward to support the version of the informant. The informant is an eye witness and she had seen the occurrence and supported the prosecution case. The blood stained axe was snatched by her and it was duly produced before the police. Nothing material has been elicited from her mouth. The testimony of informant stands intact and therefore, learned trial court has rightly held the appellant guilty for the offence alleged. The description of injuries given by informant find support from post-mortem report and evidence of doctor PW-7. The Investigating officer has supported the investigation done by him and proved fard-beyan, inquest report, seizure list etc.

6. After hearing both parties we have gone through the entire case record. Admittedly, the conviction has been recorded on the solitary testimony of the informant. We do agree with the submissions of the learned A.P.P. that the conviction can be recorded on solitary testimony if it is wholly reliable and convincing and on that perspective we have examined the evidence available on record. We find that informant has not come with fair hands and she had concealed many facts which were expected to be brought on record. The reason behind such observation is that the appellant was not regularly residing in the village and he had come to the house of informant after lapse of three years. No prior information against visit was given by the appellant to the informant. When the informant returned from market and saw the appellant present in the house, it was expected that she must have some talk with him about the purpose of his visit to the village. Informant has not explained anything on this aspect. What

conversation had taken place between the informant and the appellant during stay of appellant in the house, has also not been disclosed. The circumstances which the prosecution has brought on record suggests that arrival of appellant in the house of informant was considered as a normal visit and all sorts of facilities for his stay were provided. The informant has not assigned motive behind the occurrence. The husband of deceased has not been examined. No villager has supported the prosecution case. No family members present in the house at the relevant point of time has been examined. On the date of occurrence the appellant was present in the house, has not been substantiated by any other witness except the informant. How and from where axe used for committing murder was obtained by the appellant, has not been disclosed. One of the younger sister of the informant was sleeping with the deceased but, what happened to her has not been disclosed by the informant. The version of the informant does not appear to be convincing when she says that no body else woke up either at the time of occurrence or even after hulla raised by her. At one point of time she says that she snatched away the axe from the hands of the appellant but again says when she tried to intervene, the axe fell down from the hands of the appellant.

Considering all these aspects, we do not find that sole testimony of informant is reliable and justifiable against the conviction recorded. In the result, we feel inclined to give benefit of doubt to the appellant. Accordingly, the appellant is acquitted from the charge and the judgment of conviction and order of sentence dated 16th February, 2006 and 17th February, 2006 respectively, passed by the Additional Sessions Judge, F.T.C. Latehar in connection with Sessions Case No. 0011 of 2004 corresponding to G.R. Case No. 126 of 2003 arising out of Manika P.S. Case No. 10 of 2003 is hereby set-aside and the appellant is directed to be released forthwith from custody if, not wanted, in any other case and for that convicting/successor court shall issue appropriate direction, if necessary.

7. Appeal is allowed.