
(2016) 01 JH CK 0033

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 1324 of 2007

Dhaneshwar Manjhi and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 120B, Section 149, Section 302, Section 34

Citation : (2016) 1 AIRJharR 770 : (2016) 2 ECrC 42 : (2016) 2 JBCJ 627 :
(2016) 2 JLJR 190

Hon'ble Judges : Dhruv Narayan Upadhyay and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Surendra Prasad Sinha, Advocate, for the Appellant; Mukesh Kumar, A.P.P., for the Respondent

Final Decision : Disposed Off

Judgement

1. This appeal has been directed against the judgment of conviction and order of sentence dated 9th August, 2007 and 10th August, 2007, respectively, passed by learned additional Sessions Judge, F.T.C. No. 1, Palamu in connection with Sessions Trial No. 250 of 2004, arising out of Lesliganj P.S. Case No. 64 of 2003 dated 19th September, 2003, corresponding to G.R. No. 1244 of 2003, whereby the appellants have been held guilty for the offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and also to pay fine of Rs. 5,000/-, each, and in default of making payment of fine further imprisonment of three months.

2. The prosecution case, in brief, is that on 18th September, 2003, at about 8:00 p.m., while the deceased-Hridyanand Manjhi was sitting on a cot in front of his house, both the appellants appeared and Dhaneshwar Manjhi opened fire from his pistol, as a result Hridyanand Manjhi sustained injury and fell down. Sumitra Devi (informant), who happens to be wife of the deceased rushed behind the appellants and she could notice some more accused, who were hiding near the

house, joined the appellants. Fardbeyan of Sumitra was recorded on 19th September, 2003 at about 15:30 hrs. and Lesliganj P.S. Case No. 64 of 2003 dated 19th September, 2003, corresponding to G.R. No. 1244 of 2003, under Sections 302 and 120B of the Indian Penal Code and Section 27 of the Arms Act was registered. The informant has named as many as nine accused, including the appellants.

The police after due investigation submitted charge sheet against all the accused and they were put on trial after commitment of the case.

3. The appellants were charged for the offence punishable under Section 302 of the Indian Penal Code on 10th February, 2005, whereas remaining seven accused stood charged for the offence punishable under Section 302/149 of the Indian Penal Code.

The prosecution, in order to substantiate the charges, examined altogether six witnesses and proved documents, like Fardbeyan, formal first information report, inquest report etc.

Learned Additional Sessions Judge at the conclusion of trial, relying on the evidence and documents available on record, acquitted remaining seven accused persons, holding that the prosecution has failed to substantiate charge under Section 302/149 of the Indian Penal Code, but held the appellants guilty for the offence punishable under Section 302 of the Indian Penal Code and hence this appeal.

4. The appellants have assailed the impugned judgment on the ground that conviction of the appellants is based on solitary testimony of the informant-Sumitra Devi. There are vital contradictions in her statements and no reliance should have been placed. Learned counsel for the appellants has referred the statement of Ram Kunwar-P.W.4, who happens to be mother of the deceased, and submitted that the informant is not an eye-witness. According to Para-11 of the evidence of P.W.4, the informant was indulged in cooking inside the house and, therefore, she had no occasion to see the occurrence. P.W.4 has stated that after hearing gun sound, they all came out of the house. In Para-13, she has stated that she had not seen the assault. Had it been so Sumitra Devi also could not have seen the occurrence and, therefore, the judgment of conviction, based on the evidence of the informant-Sumitra Devi, is liable to be set aside.

5. P.W.1-Babulal Manjhi and P.W.4-Ram Kunwar are hearsay witnesses and they have deposed the fact, what was communicated to them by the informant. Last but not the least it was argued that no witness has whispered any overt act committed by the appellant-Indesh save and except he had been accompanying the appellant-Dhaneshwar Manjhi. Admittedly, appellant-Indesh did not take part in the assault. According to the statement of the informant, only one shot was fired by the appellant-Dhaneshwar Manjhi. No charge under Section 302/34 of the Indian Penal Code has been framed. In the circumstances, the conviction and sentence recorded against the appellants is illegal, highly erroneous and liable to

be set aside.

6. Learned A.P.P. appearing for the State has vehemently opposed the argument and submitted that Sumitra Devi (Sumitra Kunwar)-P.W.5 is the informant and she has fully supported the case as made out in her Fardbeyan. Minor contradictions, in describing the place of occurrence, location and position of the witness at the relevant point of time, are not sufficient to discard the testimony of the informant. Her statement is consistent that Dhaneshwar Manjhi along with Indesh reached to the place while the deceased was sitting on a cot in front of his house. Her statement is also consistent that Dhaneshwar Manjhi opened fire, causing injury to the deceased-Hridyanand Manjhi, as a result he fell down and died. The conviction can be recorded on the solitary testimony, if it is otherwise reliable, convincing and inspiring confidence.

7. We have gone through the impugned judgment, deposition of witnesses, documents proved and marked exhibits and Lower Court Record. Babulal Manjhi-P.W.1 happens to be brother of the deceased and he was informed about the incident by the informant-Sumitra. After receiving such information, he rushed to the house of his brother and found Hridyanand Manjhi lying on the ground having injury on his person. This witness was also informed about involvement of other accused persons, who have been charge sheeted. This witness has reproduced the information which he had received from the informant. P.W.2-Basant Shukla and P.W.3-Raj Kishore Shukla are formal witnesses.

Admittedly, the conviction of the appellants has been recorded on the statement of informant-Sumitra Devi. The submissions made by learned A.P.P. finds support that statement of Sumitra is consistent on the point that Dhaneshwar Manjhi caused injury to the deceased by using fire arm. The defence counsel has not succeeded to take out any material contradiction from the mouth of the informant. She was cross-examined in detail, but she stood to the test of her cross-examination, barring minor contradictions regarding availability of torch, location of dhaba and her house. The place of occurrence is not in dispute i.e. the house of the deceased. Nothing material has been taken from the mouth of the informant to disbelieve her presence at the place of occurrence at the time of assault.

8. It is reveals that the charge under Section 302/34 of the Indian Penal Code has not been framed against the appellants, rather charge simpliciter under Section 302 of the Indian Penal Code has been framed. From the evidence available on record, it is evident that the appellant-Indesh Manjhi did not take part in the assault. He has been made accused only on the ground that he was accompanying the assailant-Dhaneshwar Manjhi at the time of incident. Needless to mention, charge under Section 302/149 of the Indian Penal Code has not been framed against Dhaneshwar and Indesh, rather charge under Section 302/149 of the Indian Penal Code was framed against rest seven accused, who have been acquitted by the Trial Court. Even stretching the evidence available on record, we could not hold the Appellant No. 2-Indesh Manjhi guilty for the offence

punishable under Section 302 of the Indian Penal Code.

In the result, we are of the opinion that Appellant No. 2-Indesh Manjhi deserves acquittal and charge framed against him has not been substantiated by the prosecution. Accordingly, We record the order of acquittal in favour of Appellant No. 2-Indesh Manjhi and judgment of conviction and order of sentence passed against him by the learned Additional Sessions Judge, F.T.C. No. 1, Palamu in connection with Sessions Trial No. 250 of 2004 stands set aside. Since Indesh Manjhi is on bail, he is discharged from the liability of bail bond and set at liberty.

9. So far as Appellant No. 1-Dhaneshwar Manjhi is concerned, there is direct allegation that he opened fire, causing injury to Hirdayanand Manjhi, as a result he died and the evidence on this point is consistent and reliable. The appeal, as against Appellant No. 1-Dhaneshwar Manjhi fails and the judgment of conviction and order of sentence recorded by learned Additional Sessions Judge, F.T.C. No. 1, Palamu in connection with Sessions Trial No. 250 of 2004 is hereby upheld.