
(2016) 04 JH CK 0132

In the Jharkhand High Court

Case No : Cr. (Jail) Appeal No. 1046 of 2007 (D.B.) (Against the judgment of conviction and order of sentence 27th June, 2006 and 30.06.2006 respectively passed by the Sessions Judge, Dumka (S.P.) in connection with S.C.No. 115 of 2005)

Gopilal Marandi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Citation : (2016) 3 ECrC 448 : (2016) 4 JLJR 99

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

Bench : Division Bench

Advocate : Mr. Yogesh Modi, Advocate, for the Appellant; A.P.P, for the Respondent

Final Decision : Allowed

Judgement

D.N. Upadhyay, J.—This Cr. Appeal has been directed against the judgment of conviction and order of sentence dated 27.06.2006 & 30.06.2006 respectively passed by the Sessions Judge, Dumka (S.P.) in connection with S.C.No.115/2005, corresponding to G.R.No.106/2005, arising out of Masalia P.S. Case No. 09/2005 whereby the appellants have been held guilty for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced to undergo R.I. for life.

The appellants were charged for the offence punishable under Sections 302/34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.

To substantiate the charge the prosecution has examined altogether 10 witnesses and proved documents like inquest report, seizure list and postmortem report etc. The learned Sessions Judge placing reliance on the evidence and document available on record, held the appellants guilty and inflicted sentence as indicated above.

2. Learned Counsel appearing for the appellants has assailed the impugned judgment on the ground that informant has turned hostile and he has not supported the prosecution case. Nilendu Soren (P.W.3) and Gunadhar Kisku (P.W.8) have projected themselves as eye-witness but they are not reliable witness and no conviction can be recorded on the testimony of aforesaid two eye-witnesses. Nilendu Soren says that on "Hulla" when he came out of the house, he had seen all the appellants causing assault to deceased-Sushil Marandi and hands and legs of Sushil were tied with a rope. He requested them not to assault, keep Sushil tied up if he has committed anything wrong and that would be decided in the morning but he was threatened by the appellants, therefore, he returned back to his house. This conduct of P.W.3 is not acceptable. He did not name any other witnesses, who were present at the time of occurrence. He did not raise alarm to attract other villagers. He did not inform anybody else to save life of Sushil Marandi. He did not inform the police even in the morning. Furthermore he has stated that the appellants had been causing assault to the deceased by means of lathi. He did not say that any of the appellant was armed with any sharp cutting weapon. According to doctor incised wound on leg of the deceased was found, therefore, ocular version of P.W.3 does not find support from the evidence of Dr. Sitaram Sah (P.W.5). In the same manner evidence of P.W.8 is not reliable and believable. To some extent he has repeated the version of P.W.3 but again he says that he was not examined by police during investigation rather statement of his sister was taken by the police. He did not bother to see dead body. This witness has also not stated that any of the appellant was armed with any sharp cutting weapon and, therefore, ocular version given by this witness, does not find support from postmortem report. Balika Hembrom (P.W.1), Sukaml Tudu (P.W.2), Shivdhan Hembrom (P.W.4) Mausio Kisku (P.W.7) are all hearsay witnesses. Biju Marandi (P.W.6) has also turned hostile. Most important aspect of the prosecution case is that I.O. who conducted investigation has not been examined. It is submitted that F.I.R., seizure list, inquest report have not properly been proved because P.W.10 has admitted that he never worked with S.I. Sidheshwar Kerai and, therefore, he had no occasion to identify writings of S.I. Sidheshwar Kerai. P.W.10, who has submitted charge-sheet and proved the contents made in the case diary is also a formal witness. Due to non-examination of the I.O., place of occurrence has not been proved. The learned Sessions Judge has wrongly held the appellants guilty for the murder of Sushil Marandi.

3. Learned A.P.P. has opposed the argument and submitted that P.W. 3 and P.W. 8 are eye-witnesses and they had seen the occurrence and they have supported the prosecution case. They have stood to the test of their cross-examination. It is submitted that nothing has been asked to P.W. 8 to disbelieve his statement recorded under examination-in-chief.

4. Having heard both sides and after perusing the evidence and documents available on record, we find that conviction and sentence recorded by the learned Sessions Judge under Section 302/34 of the Indian Penal Code against the

appellants could not be upheld on the basis of evidence of P.W.3 and P.W.8. The statement given by them did not appear to be complete. They had not witnessed the entire episode which occurred during night. They say that on "Hulla" they came out of their houses and saw the appellants causing assault to the deceased by means of lathi. When they were threatened, they returned back to their respective house. The informant in his fardbayan has stated that on "Hulla" when he went to the place of occurrence, he had seen the appellants causing assault to Sushil Marandi near the house of Mihir Baski. He had also seen that hands and legs of Sushil were tied with rope. He did not say that anybody else was present at the place of occurrence at that point of time. If the contention made by the informant in the fardbayan is correct then P.W.3 and P.W.8 were not present at the scene of occurrence. As per evidence of P.W.3 he had not seen either the informant or P.W.8 at the place of occurrence. Likewise P.W.8 did not say that informant was present at the place of occurrence. Since the informant has turned hostile, story brought on record in the shape of fardbayan could not be relied upon. Story narrated by P.W.3 and P.W.8 regarding assault caused to deceased does not find support from postmortem report. Shideshwar Kerai, S.I. of police who had recorded fardbayan, prepared seizure list and inquest report and further recorded statements of witnesses has not been examined. Fardbayan, inquest report and seizure list have formally been proved by P.W.10 but he himself admits that he had not worked with S.I. Sidheshwar at any point of time. The conduct of P.W.3 and P.W.8 does not appear to be genuine and acceptable, particularly, conduct of P.W.8. when he says that he did not bother to collect information whether Sushil Marandi is alive or dead. He had not gone to see the deceased at the spot on the following morning. He has admitted that his statement was not recorded by the police.

5. Considering all these aspects of the matter, we feel inclined to give benefit of doubt to the appellants and we are not inclined to uphold the judgment of conviction recorded by the Trial Judge on the evidence and documents available on record. In the result the appeal stands allowed. The impugned judgment recorded by the Sessions Judge, Dumka (S.P.) in connection with S.C.No.115/2005, corresponding to G.R.No.106/2005, arising out of Masalia P.S. Case No. 09/2005 is hereby set aside.

6. The appellants, who are lodged in jail, are directed to be released forthwith, if not wanted in any other case and for that the Convicting/Successor Court shall issue appropriate direction, if needed.