
(2016) 04 JH CK 0201

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 1097 of 2003; (Against the judgment of conviction and order of sentence dated 28.07.2003 and 29.07.2003 respectively passed by Md. Mustaque Ahmad, Xth Addl. Sessions Judge, Dhanbad in connection with Sessions Trial No. 262 of 1987 corr

Jagdish Mehtar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 ECrC 64

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

Bench : Division Bench

Advocate : M/s S.K. Srivastava and M.B. Lal, Advocates, for the Appellant; Mr. Milan Kumar Dey, Sr. Advocate, M/s Arun Kumar and Sheo Kumar Singh, Advocates and M/s Mahesh Tewari, Pankaj Kr. Dubey and Bhaskar Trivedi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

D.N. Upadhyay, J.—These criminal appeals have been directed against the judgment of conviction and order of sentence dated 28.07.2003 and 29.07.2003 respectively passed by the Xth Addl. Sessions Judge, Dhanbad in connection with Sessions Trial No.262 of 1987 corresponding to G.R. Case No.2049 of 1987 arising out of Chirkunda P.S. Case No. 124 of 1987 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.

2. The facts reveal from fardbeyan of Jhantu Mandal recorded on 03.08.1987 at 14.15 hours at Barakar Police Station are that on 02.08.1987 at about 8.30 p.m. the informant accompanied by Mantu Mandal (deceased) and Ajay proceeded for Gopal Hotel. They reached Gopal Hotel at 9.00 p.m. The informant noticed presence of 5-6 young boys near the hotel. Addressing one out of them, Mantu

told what is the matter. Thereafter Mantu started talking with them and told the informant to go back home and he would be coming after a while. Name of one of the boy was disclosed as Jagdish. On the following morning there was rumour in the locality that dead body of a person is lying near Barakar river bank. The informant went to the place and identified dead body of Mantu Mandal. He had noticed injuries on his head, neck and abdomen. It is also disclosed that two boys had been to the house of Mantu Mandal and they had told mother of Mantu Mandal to send him to Gopal Hotel.

On the basis of fardbeyan of Jhantu Mandal, Chirkunda P.S. Case No.124 of 1987 under Section 302 of the Indian Penal Code against unknown was registered. During investigation complicity of the appellants came in light, they were apprehended and after collecting evidence, charge-sheet was submitted under Section 302/201 of the Indian Penal Code. Accordingly, cognizance was taken and case was committed to the court of sessions and registered as Sessions Trial No.262 of 1987.

Charges under Section 302/34 & 201/34 of the Indian Penal Code against all the three appellants were framed to which they pleaded not guilty and claimed to be tried. To substantiate the charges, prosecution has examined altogether six witnesses including Sanjhiya Devi, mother of the deceased PW-1 and Dr. Vinod Kumar PW-5 who conducted post mortem examination on the dead body of Mantu Mandal.

Appellant Dilip Singh got himself examined as DW-1. The trial Judge, placing reliance on the documents and evidences available, held the appellants guilty for the offence punishable under Section 302/34 of the Indian Penal Code and inflicted sentence, as indicated above.

3. The appellants have assailed the impugned judgment on the ground that informant has not been examined. The scribe of fardbeyan did not come forward and therefore, fardbeyan has not been proved. It is further contended that F.I.R. was registered on 03.08.1987 but it was received in court on 07.08.1987 i.e. four days after registration of the F.I.R. Since Investigating Officer has not been examined, delay in sending the F.I.R. remained unexplained. It is submitted that fardbeyan of Jhantu Mandal is ante-dated and after thought because of the fact that PW-3 Anand Ravidas has stated in his deposition that he was apprehended by Barakar police on the following morning i.e. on 03.08.1987 at about 9.00 a.m. and he was handed over to Chirkunda Police. In his examination-in-chief and also in his cross-examination he has stated that his statement regarding occurrence was recorded by police to which he had signed. Anand Ravidas PW-3 has projected himself as an eye witness and he has given vivid detail of occurrence in his deposition in court. Had it been so, the statement given by him before the police on 03.08.1987 at about 9-10 a.m. was required to be considered as F.I.R. Again, due to non-examination of the I.O. this question remained unanswered as to what happened to that statement which was given by PW-3 before the police. Learned counsel has further argued that PW-3 is not a reliable witness and no

conviction can be recorded on the solitary testimony of such witness. He had no occasion to accompany the appellants and deceased at relevant point of time. It is disclosed that he had seen the deceased in company of appellants near Gopal Hotel while they were proceeding towards Barakar river bank. This witness has stated that deceased was not known to him from before rather he could learn about him on the date of occurrence itself. So far appellants are concerned, he was introduced with them only 3-4 months ago. Under such circumstances, the statement, he had accompanied them up to Barakar river bank, does not appear to be acceptable. Further statement of this witness that Jagdish opened bottle of liquor and when he was just going to consume it, he left the place to answer call of nature, is also not acceptable. He says, from the place where he sat for answering the call of nature, he had seen the occurrence. This witness has admitted in his deposition that after the occurrence he went home but did not disclose the incident to anyone. He did not inform either Barakar police or to Chirkunda police. In the morning as usual he went to attend his duty at about 6.00 a.m. but again did not disclose the incident to his master or companion worker. He further says that at about 9-10 a.m. he himself went to police station and narrated the occurrence. He did not disclose as to what compelled him at that point of time to go to police station to disclose the occurrence. At one point of time, he says that he was picked up by Barakar police, compelled to sit at police station then handed over to Chirkunda police and then his statement was recorded. Thus contradictory statements have been given by this witness which could not be relied upon.

Now, coming to the evidence of PW-1 it is submitted that she is mother of deceased. She has not witnessed the occurrence. She has stated that two boys had been to her house on 02.08.1987 in the evening at about 8.00 p.m. and they were asking the where about of Mantu Mandal. PW-1 was asked by them when Mantu Mandal comes home, he may be directed to go to Gopal Hotel where they would be waiting. If the evidence of PW-1 is admitted to be true, this would not be considered as evidence of last seen because Mantu Mandal did not leave home with the appellants within view of PW-1. Manoj Sao PW-2 is also not a reliable witness and he has tried to bring on record that he had seen the deceased going towards Barakar river bank in the company of appellants. This witness too, did not inform either the police or the informant or the family members of deceased. Due to non-examination of the I.O., the appellants got seriously prejudiced and that is fatal to the prosecution. In view of the arguments, it is contended that impugned judgment is liable to be set aside.

4. Learned A.P.Ps. have opposed the argument and submitted that PW-3 is an eye witness and he has described the occurrence and the overt act committed by each and every appellants. Only because he did not disclose the occurrence to anyone, his deposition cannot be discarded. Evidence of PW-1 is also relevant when she says that appellants Jagidsh Mehtar and Dilip Singh had been to her house to meet Mantu Mandal (deceased). They had requested PW-1 to send Mantu Mandal to Gopal Hotel where they would be waiting for him. Thereafter,

Mantu Mandal met with informant Jhantu Mandal and Ajay and all of them proceeded towards Gopal Hotel where presence of Jagdish was noticed by the informant. The informant left Mantu Mandal in the company of Jagdish and other accused at Gopal Hotel and returned back. Thereafter the deceased was seen going towards Barakar river bank in company of appellants find support from the evidence of PW-2 and PW-3. PW-3 is an eye witness who had seen the occurrence. All these circumstances and evidences complete the chain leading towards guilt of appellants who committed murder of Mantu Mandal and the trial judge has rightly held them guilty and therefore, impugned judgment need no interference.

5. After granting hearing to the parties, we have perused the impugned judgment and lower court record. The prosecution case is based on circumstantial evidence as well as on direct evidence. Therefore, we have to scrutinise whether the circumstantial evidence brought on record unerringly point towards guilt of appellants and the direct evidence available on record could be admitted to uphold the conviction recorded by trial court? The circumstantial evidences brought on record are the evidence of PW-1 when she says that Jagdish and Dilip had been to her house on 02.08.1987 in search of Mantu Mandal, they had instructed her to send Mantu Mandal to Gopal Hotel where they would be waiting. We do not find from the evidence of PW-1 that she had ever instructed Mantu Mandal to go to Gopal Hotel to meet those two boys. Therefore, link in the chain of circumstantial evidence is missing. The informant Jhantu Mandal has not been examined, therefore, the evidence that Mantu Mandal along with Jhantu Mandal had gone to Gopal Hotel stands unproved. The informant has disclosed name of Ajay who was also present with them at Gopal Hotel but said Ajay did not come forward to support contention of informant. Now the evidence of PW-2 and PW-3 remain to be discussed. We do agree with the statement of learned counsel for the appellant that these two witnesses are reliable witnesses and the evidence given by them is neither convincing nor inspiring confidence. PW-2 has said that he was requested by the appellants to assist them in committing murder of Mantu but he did not agree. According to statement of PW-2 on 02.08.1987 at the time of occurrence he was present at tea stall. Again he says that he had seen the appellants and Mantu Mandal near the place and they proceeded towards river bank. The place of assemblage of appellants and Mantu Mandal, according to PW-3 was Gopal Hotel but this witness did not say about location of his tea stall. It is not disclosed as to what was the distance of Gopal Hotel from the tea stall. This witness, even after knowing that the appellants were intending to commit murder of Mantu, did not disclose the fact to anyone.

6. We have carefully examined the evidence given by Anand Ravidas PW-3. It appears that he has given contradictory statement before the court. At one point of time he says that he was picked up by Barakar police on the following morning at about 9-10 a.m. In para 16 of his deposition he says that he was not apprehended by Chirkunda police rather he was picked up by Barakar police and

Barakar police, by making a phone call informed Chirkunda police and thereafter he was taken by Chirkunda police where he had given his statement at about 9-10 a.m. Again, in para 30 he says that he himself went to police station and given his statement at about 9-10 a.m. in the morning and also put signature on his statement. Since the fardbeyan has not properly been proved due to non-examination of the informant and the police officer who had recorded the fardbeyan, the contention made therein cannot be read in evidence but then, this fardbeyan was the basis of registration of F.I.R. It appears that the fardbeyan was recorded at 14.15 hours on 03.08.1987 whereas PW-3 says that he had given all the details about the occurrence to police at about 9-10 a.m. Had it been so, the statement given by PW-3 should have been treated as F.I.R. but that document is missing and the prosecution did not bring said statement of PW-3 on record. Under such circumstances, non-examination of I.O. is certainly fatal to the prosecution. The fardbeyan was received in court after four days of its registration. It was dispatched by Special Messenger on 03.08.1987 itself but it was acknowledged by learned C.J.M. on 07.08.1987. The delay in sending the F.I.R. to court, suppression of statement given by PW-3 before the police in the morning create doubt on the prosecution case and we find force in the argument advanced by the appellants.

7. Considering all these aspects of the matter and the discussions made above, we feel inclined to give benefit of doubt to the appellants. Accordingly, the judgment of conviction and order of sentence dated 28.07.2003 and 29.07.2003 respectively passed by the Xth Addl. Sessions Judge, Dhanbad in connection with Sessions Trial No.262 of 1987 corresponding to G.R. Case No.2049 of 1987 arising out of Chirkunda P.S. Case No. 124 of 1987 stands set aside.

Appellants Dilip Singh and Sanjib Saha @ Sanjeev Saha are on bail, they are discharged from the liabilities of their respective bail bonds and set at liberty.

Appellant Jagdish Mehtar who is lodged in jail, is directed to be released forthwith, if not wanted in any other case and for that appropriate direction may be issued, if necessary, by the convicting/successor Court.

8. In the result, these appeal stand allowed.