

(2012) 03 JH CK 0177

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1263 of 2005

Jahir Abbas, Md. Altaf Hussain and Salma Bibi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 4 JLJR 8

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : Shree Niwas Roy and Arwind Kumar, for the Appellant; Amaresh Kumar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the impugned judgment of conviction and sentence passed on 25th August, 2005 and 27th August 2005, respectively by the 1st Additional Sessions Judge, Jamtara in Sessions Case No. 476 of 2001/03 of 2003, convicting the appellants for committing the offence under Sections 302/34 of the Indian Penal Code and sentencing them to undergo R.I. for life and to pay fine of Rs. 25,000/- each payable to the wife of the deceased and in default thereof to undergo R.I. for one year. The prosecution case, in short, is that PW-9 Akhtar Hussain lodged fardbeyan on 14/07/2001 at 11 p.m., before police that at about 8.30 p.m., he alongwith his father Md. Anwar Ali (deceased) were returning after closing his shop. The deceased was about 25-30 yards ahead of the informant. As soon as the deceased reached near the house, the appellants suddenly appeared and apprehended the deceased and said that he should be killed. Appellant no. 1 Jahir Abbas assaulted the deceased on his head with Tangi in his hand due to which, the deceased fell injured then appellant no. 2 Md. Altaf Hussain also assaulted the deceased with Tangi and told that the deceased should be done to death. The occurrence took place within a short span of time, which was witnessed by the informant. The informant shouted then the

appellants fled away. The neighbouring persons assembled. The deceased was taken to the hospital where he was declared dead. It is alleged that due to some dispute between the ladies about seven days prior to the occurrence, the alleged occurrence took place.

2. The prosecution examined 12 witnesses. PWs- 1, 4 and 5 have seen the appellants fleeing away from the place of occurrence and they saw the deceased lying with injuries. PWs.- 6, 7 and 8 saw the deceased lying dead with the injuries. PW- 10 is the doctor, who conducted Post Mortem of the dead body of the deceased and found three incised wounds on the head of the deceased, caused by sharp cutting weapon, which were the cause of death. PWs.- 11 and 12 are the police personnels, who proved and produced the material exhibit Tangi. PW-9 (the informant), PWs- 2 and 3 are the eyewitnesses.

The defence examined DW-1 to show that there was enmity between the parties.

3. Learned counsel for the appellants assailed the impugned judgment on various grounds and submitted that the appellants have been falsely implicated due to enmity. It is further submitted that the name of Pws-2 and 3 was not disclosed as eyewitnesses in the FIR. There is no allegation against appellant no. 3 Salma Bibi in the FIR and the story that she exhorted appellant nos. 1 and 2 to kill the deceased, was developed during trial. It is also submitted that there is no allegation against appellant no. 2 that he assaulted the deceased on his head and no second Tangi, with which appellant no. 2 is alleged to have assaulted, has been recovered. Moreover, appellant no. 1 confessed that he is the only person, who committed the crime and not his brother appellant no. 2 and, therefore, appellant no. 2 at least deserves benefit of doubts.

4. On the other hand, Mr. Amaresh Kumar, learned APP appearing for the State supported the impugned judgment. He submitted that the prosecution has proved its case beyond all reasonable doubts. The ocular evidence is consistent with the medical evidence. The informant was not expected to disclose the name of all other eyewitnesses in the FIR. The prosecution witnesses are intact. PW-9 the informant, an eyewitness, has fully supported the prosecution case. PW-2 has also supported the prosecution case as an eyewitness. He also said that the appellants are his relatives. PW-3 is also an eyewitness, who has supported the prosecution case fully. PWs- 2 and 3 also said that the deceased before he breathed his last told that appellant nos. 1 and 2 have killed him. PWs- 1, 4 and 5 have seen the appellants fleeing away from the place of occurrence.

5. As already noticed that the doctor found three incised injuries on the head of the deceased, caused by sharp cutting weapon, which were the cause of death. There is nothing in the cross-examination of the witnesses to disbelieve them. There is nothing to indicate chances of false implication.

6. The submissions advanced on behalf of the appellants that the alleged occurrence might have taken place due to provocation as the mother of the appellant no. 2 was called "Witch" by the informant parties, cannot be accepted.

There is nothing to show that the alleged occurrence took place during sudden quarrel and fight between the parties. The witnesses are consistent that appellant nos. 1 and 2 were hiding themselves near the house of the deceased and were waiting for him to return home after closing the shop. They were hiding with sharp cutting weapon in their hands. As soon as the deceased, followed by the informant, reached there appellant nos. 1 and 2 assaulted the deceased repeatedly on his head by sharp cutting weapon.

7. Thus, after hearing the parties at length and carefully going through the records, in our opinion, the prosecution has been able to prove its case against appellant nos. 1 and 2 namely Jahir Abbas and Md. Altaf Hussain beyond all reasonable doubts.

However, so far as appellant no. 3 Salma Bibi is concerned, we are inclined to give her benefit of doubts. Her name was not disclosed in the FIR. However, in the evidence it was said that she was exhorting appellant nos. 1 and 2 to kill the deceased. Except that, there is nothing against her. In the result, the appeal, preferred on behalf of appellant no. 1 and 2 namely, Jahir Abbas and Md. Altaf Hussain is dismissed and the appeal preferred on behalf of appellant no. 3 Salma Bibi is allowed. The judgment of conviction and order of sentence, passed against her is set aside. Appellant no. 3 Salma Bibi is on bail and, therefore, she is discharged from the liabilities of her bail bonds.