

(2016) 03 JH CK 0003

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 961 of 2012

Jogindra Swansi and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Arms Act, 1959 — Section 27

Contract Labour (Regulation and Abolition) Act, 1970 — Section 17

Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 302, Section 307, Section 34

Citation : (2016) 03 JH CK 0003

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

Bench : Division Bench

Advocate : Jitendra S. Singh, Advocate, for the Appellant; Krishna Shankar, APP, for the Respondent

Final Decision : Allowed

Judgement

1. Heard the parties.

2. This criminal appeal has been directed against the judgment of conviction and sentence dated 02.03.2012 passed by the Sessions Judge, Gumla in Sessions Trial No. 172 of 2002/08 of 2003 arising out of Kamdara P.S. Case No. 37/2000 corresponding to G.R. No. 885/2000 whereby the appellants have been held guilty for the offence punishable under Section 302, 307, 148 of the Indian Penal Code and sentenced to undergo R.I. for life and to pay fine of Rs. 1,000/- each under Section 302/149 of the IPC; R.I. for life under Section 307 IPC and R.I. for two years under Section 148 of the Indian Penal Code and to pay fine of Rs. 1,000/- each. In case of non-payment of fine amount, the appellants have been sentenced to undergo S.I. For six months each. All the sentences were directed to run concurrently.

3. The facts reveal from the fardbayan of Vishambhar Lohra recorded on 19.12.2000 at 7:00 hrs. at Kamdara Hospital is that on 18.12.2000, at about

4:30 p.m., the informant with his younger brother Jaydeo @ Ranthu Lohra had gone to install shop for selling herbal medicines in the village market. In the mean time 6 - 7 miscreants armed with pistol reached to the place. Out of them, Udu Swansi (appellant No. 1), Puna Sahu, Tejua Munda and Roshan Topno @ Bobby Munda (appellant No. 2) were identified. The informant apprehending danger, ran from the place but he was followed by the miscreants.

Puna Sahu opened fire causing injury to the informant on his left thigh whereas bullet fired by Udu Swansi caused injury to informant on his temporal region. The companion accused also opened fire but somehow the informant escaped and hide himself within forest. Thereafter he reached to his village and took shelter in the house of Ramdhani Singh (P.W.-6). It is disclosed that Jaydeo @ Ranthu Lohra, younger brother of the informant was killed by the miscreants on 19.12.2000. The informant was removed to hospital for his treatment where his statement was recorded by the Police.

On the basis of fardbayan of Vishambhar Lohra, Kamdara (Gumla) P.S. Case No. 37/2000, dated 19.12.2000, under Sections 147, 148, 149, 302, 307/34 of the Indian Penal Code was registered.

In course of investigation, the dead body of Jaydeo @ Ranthu Lohra was recovered from a place 400 yards away north from the marked. A pamphlet written by the miscreants, who were members of MCC extremist organisation, was found near the dead body. The pamphlet was containing slogan "Police Dalal Murdabad, MCC Zindabad".

The inquest report was prepared, incriminating articles were seized, witnesses were examined and after concluding investigation, chargesheet was submitted and accordingly, cognizance was taken. The appellants namely Jogindra Swansi @ Udu Swansi and Roshan Topno @ Bobby Munda were put on trial. Charges under Sections 302, 307, 147, 148 and 149 of the Indian Penal Code and Section 27 Arms Act and Section 17 C.L.A. Act were framed to which the appellants pleaded not guilty and claimed to be tried.

The prosecution in order to substantiate charges examined altogether thirteen witnesses and proved documents whereas no witness has been examined by the appellants in their defence.

The learned Sessions Judge, Gumla at the conclusion of trial, placing reliance on the evidence and documents available on record, held the appellants guilty and inflicted sentence as indicated above. One of the co-accused Mukut Munda stood acquitted from the charges framed against him.

4. The appellants have assailed the impugned Judgment and sentence mainly on the ground that prosecution has miserably failed to bring home the charges framed against them. No witness has come forward to say that he had seen the appellants committing murder of Jaydeo @ Ranthu Lohra. Bhola Lohra (P.W.-8) happens to be relative of the informant and he has supported the prosecution

case to the extent that the miscreants opened fire causing injury to Vishambhar Lohra and Vishambhar Lohra fell down after receiving injury. In para-5 he says that Jaydeo @ Ranthu Lohra was killed by the miscreants in the market itself and after that there was hue and cry in the market. He did not claim to identify any of the accused including appellants who were facing trial. The evidence of P.W.-8 is of no use when he failed to identify the miscreants.

Learned counsel has further stated that the informant Vishambhar Lohra has been examined as P.W.-4 but he is not a reliable witness. He has stated that on 18.12.2000 at about 4:30 p.m., he along with his brother Jaydeo @ Ranthu Lohra had gone to place stall in the market for selling herbal medicines. In the mean time, the appellants with their associates appeared at the scene of occurrence and they were armed with pistol. He was asked to surrender. Apprehending danger, he ran from the place but chased by the miscreants. Puna Sahu fired shot which caused injury to him on his left thigh whereas bullet released by Jogindra Swansi @ Udu Swansi caused injury on his left temporal region. Somehow he had succeeded to flee from the place and hide himself in his village Murum Kela. He took shelter in the house of Ramdhani Singh whereafter Ramdhani Singh went to inform Police as well as parent of the informant. On the following morning at about 8:00 a.m., the police arrived at the place and he was taken to Kamdara Hospital where his statement was recorded.

Admittedly, Ranthu Lohra was not murdered in presence of the informant. According to fardbayan his statement was recorded at 7:30 a.m. on 19.12.2000, as per the deposition of informant para-48, his statement was recorded by the Police between 10:30 to 11:00 a.m.. Therefore, it is not clear as to when fardbayan of informant was recorded. He has said that he took shelter in the house of Ramdhani Singh after the occurrence and Ramdhani Singh went to Police Station to give information. If this version of the informant is correct, then the information lodged by Ramdhani Singh has been suppressed by the prosecution. Furthermore, Ramdhani Singh (P.W.-6) has turned hostile and he did not support version of the informant in any manner. The learned Trial Judge has held the appellant guilty under Section 302, 149, 148 and 307 of the Indian Penal Code. So far conviction of the appellant under Section 302 and 149 of the Indian Penal Code is concerned, no witness has come forward to support the prosecution case that these appellants killed Ranthu Lohra. According to prosecution case, the appellants and their associates armed with pistol appeared in the market where more than 400 people were present but nobody has supported the prosecution case.

The learned Trial Judge at the conclusion, did not hold any of the appellant guilty for the offence punishable under Sections 302/149 of the Indian Penal Code rather the finding of the trial court is that the appellants are guilty for the offence punishable under Sections 302, 307 and 148 of the Indian Penal Code. If this is the finding, the trial Judge at the time of passing sentence has committed gross error by taking assistance of Section 149 of the Indian Penal Code. The convict

held guilty for the offence punishable u/s. 302 of the Indian Penal Code can not be inflicted sentence u/s. 302 read with Section 149 of the Indian Penal Code. Furthermore, no injury report has been proved by the doctor who had examined the informant. P.W.-13 happens to be Advocate Clerk and he has proved Page-173 of the injury register which could not be relied upon for holding the appellants guilty for the offence punishable under Section 307 of the Indian Penal Code.

By pointing out above facts and findings, it is submitted that finding of the trial court for the offence punishable under Section 302 and 307 of the Indian Penal Code are liable to be set aside and if case of the prosecution fails on the above point, Section 148 of the Indian Penal Code would not come in picture. The appellants have wrongly been detained in jail for a period of about 13 years. The Judgment of conviction and sentence is liable to be set aside and the appellants are entitled to be acquitted from all the charges.

5. Learned APP has opposed the arguments and submitted that the material witnesses examined have supported the prosecution case. Mahangu Lohra (P.W.-1) is father of the informant. He has corroborated this fact that Ramdhani Singh informed that Vishambhar Lohra (informant) in injured condition has come to his house and he has sustained gun shot injury. Receiving such information he went to Kamdara Police Station and informed the occurrence and said that his younger son is also missing. At the time of fardbayan, he was also present in the hospital. Jamuna Devi (P.W.-2) and Malti Devi (P.W.-3) are the mother and wife respectively of the informant. They have also supported the prosecution case which they could learn from the informant. Dr. Anil Kumar Agrawal had conducted postmortem examination on the dead body of Jaydeo @ Ranthu Lohra. P.Ws.-7 and 9 are the Investigating Officer and they have supported the prosecution case. P.Ws.-10 and 11 are the witnesses to inquest and they have admitted that they had seen dead body of Jaydeo @ Ranthu Lohra and inquest report was prepared in their presence. The prosecution has proved its case beyond shadow of reasonable doubt. The appeal is devoid of merit and the same is liable to be dismissed.

6. We have carefully examined the case record, perused the evidence and documents and gone through the impugned Judgment of conviction and sentence. The prosecution case mainly hinges on the statement of informant (P.W.-4). He is the only person who had identified and named four accused persons including appellants in the fardbayan. He did not identify remaining associates of the appellants. Apprehending danger he ran from the place of occurrence but chased by the appellants and their associates, shot fired by Puna Sahu and Udu Swansi caused injury to him but somehow he had succeeded to escape. On the following morning he could learn that his brother Jaydeo @ Ranthu Lohra was killed. Thus, it is clear that the informant had not seen as to how his brother Jaydeo @ Ranthu Lohra was murdered and by whom. Except the informant, Bhola Lohra (P.W.-8) who is relative of informant, has supported the

prosecution case on the point of injuries caused to informant. He has further said that Jaydeo @ Ranthu Lohra was caught by the miscreants and he was killed in the market. He did not name any of the accused or even claimed to identify any of them.

Amar Nath Surin (P.W.-9) is a Police Officer and he has recorded fardbayan of informant and proceeded with investigation. According to the statement given by this witness in para-9, first place of occurrence where the informant had sustained injury is Redwa Bazar Road whereas second place of occurrence is Delo Toli, 400 yards north from Redwa Bazar Tanr where Ranthu Lohra was killed. Therefore, statement of P.W.-8 does not find support from the statement of the Investigating Officer (P.W.-9). It appears that the informant is also not a reliable witness, as per the endorsement made on the fardbayan it was recorded at 7:30 a.m. on 19.12.2000 but the informant himself says that his statement was recorded between 10:30 and 11:00 a.m.. He has stated that apprehending danger he had started running from the place of occurrence but he was chased and two of the miscreants caused injury to him by using fire arm. In para-26 of his deposition he says that

"10 Kadam Jab Bhaga Tab Kanpatti Par Goli Samne Se Lagi. 1/2 Kms. Par Jab Tha Tab Dusri Goli Humko Samne Se 10 Kadam Ki Duri Se Lagi"

If the informant was chased by the appellant, shot could not have been fired from front. Therefore, the informant himself has contradicted the manner of occurrence.

The latches appearing on the part of prosecution could not be waived. No doctor has been examined to prove any injury report to show that informant was examined by him and he had sustained gun shot injury. The injury register has formally been proved by the Advocate Clerk, therefore it cannot be relied upon.

7. In the circumstances the prosecution has failed to prove that informant had sustained gun shot injury on his person and, therefore, conviction under Section 307 of the Indian Penal Code has wrongly been recorded by trial judge. The appellants have been held guilty under section 302, 307 and 148 of the Indian Penal Code. No help of Section 149 of the Indian Penal Code was taken while holding them guilty for the offence of murder of Jaydeo @ Ranthu Lohra. Needless to mention that prosecution has failed to bring it on record as to who had committed murder of Jaydeo @ Ranthu Lohra. The learned Sessions Judge at the time of awarding sentence has taken help of Section 149 of the Indian Penal Code and inflicted sentence under Section 302/149 of the Indian Penal Code and, thereby, the Trial Judge has erred in awarding sentence with the aid of Section 149 of the Indian Penal Code. It is already observed that prosecution has failed to bring on record as to who murdered Jaydeo @ Ranthu Lohra and, therefore, conviction and sentence recorded under Section 302/149 of the Indian Penal Code could not be sustained even on facts. Finding of the Trial Judge is also silent on the point of rioting with deadly weapon. Charge under Section 27 of the

Arms Act has not been proved, injury caused to the informant by fire arm has also not been proved. Therefore, conviction and sentence recorded under Section 148 of the Indian Penal Code is also not maintainable.

8. Considering all these aspects of the matter, we feel inclined to allow this appeal and accordingly, the judgment of conviction and sentence dated 02.03.2012 passed by the Sessions Judge, Gumla in Sessions Trial No. 172 of 2002/08 of 2003 is hereby set aside. The appellants, named above, who are in custody, are directed to be released forthwith, if not wanted in any other case and for that the convicting court/successor court shall issue directions, if needed.

In the result this appeal stands allowed.