

(2023) 05 JH CK 0032

In the Jharkhand High Court

Case No : Criminal Appeal (D.B) No. 457 Of 2010

Kali Charan Mahato @ Kalia

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-05-2023

Acts Referred:

Arms Act, 1959 — Section 27

Indian Penal Code, 1860 — Section 34, 302, 307

Citation : (2023) 05 JH CK 0032

Hon'ble Judges : Rongon Mukhopadhyay, J; Rajesh Kumar, J

Bench : Division Bench

Advocate : Arwind Kumar, Nehala Sharmin

Final Decision : Allowed

Judgement

1. Heard Mr. Arwind Kumar, learned counsel for the appellant and Mrs. Nehala Sharmin, learned Spl. P.P. for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 20.04.2010 passed by Sri Rama Shankar Shukla, learned Addl. Sessions Judge, Fast Track Court VI, Dhanbad in S.T. Case No. 343/2008, whereby and whereunder the appellant has been convicted for the offences punishable u/s 302 of the IPC and Section 27 of the Arms Act and has been sentenced to undergo imprisonment for life along with a fine of Rs. 5,000/- for the offence punishable u/s 302 of the IPC and in default in payment of fine to undergo R.I. for 01 year and R.I. for 03 years for the offence punishable u/s 27 of the Arms Act. Both the sentences were directed to run concurrently.

3. The fardbeyan of Amit Kumar @ Banti was recorded on 04.03.2008 at 11:00 P.M. wherein it has been stated that he was watching T.V. at his house at about 10:00 P.M. when his friend Prem Kumar Singh called him on his mobile and informed him that there has been some firing at Vinod Nagar Crossing. He immediately rushed to the said spot and in front of the house of B.B. Das,

Advocate he found Rupesh Kumar Sinha squirming in the driver seat of an Indica car. The friend of the informant Bittu @ Vinay Kumar Singh took the injured to the hospital and on the way Rupesh Kumar Sinha had disclosed that three persons riding on a motorcycle had fired at him and he could recognize one of the persons as Kalia Mahato. The injured Rupesh Kumar Sinha was taken to Jalan Hospital for treatment.

Based on the aforesaid allegations Dhanbad P.S. Case No. 148/2008 was instituted for the offence punishable u/s 307/34 of the I.P.C and u/s 27 of the Arms Act against Kalia Mahato and two unknown persons. In course of treatment Rupesh Kumar Sinha died and Section 302 of the IPC was added. On completion of investigation charge-sheet was submitted against the accused Kali Charan Mahato consequent to which cognizance was taken and the case was committed to the Court of Sessions where it was registered as S.T. Case No. 343/2008. Charge was framed against the accused for the offences u/s 302/34 of the I.P.C. and Section 27 of the Arms Act which was read over and explained to the accused in Hindi to which he pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as fifteen witnesses in support of its case.

5. P.W.1 (Amit Kumar Banti) is the informant who has stated that the incident is of 03.03.2008 and it was around 9:30 P.M. when he was in his house. He had gone towards the more (crossing) where he found a crowd having gathered. On reaching nearer, he found Rupesh Sinha sitting on the driving seat of the vehicle in an injured condition. After a consultation the injured was placed in the seat adjacent to the driver seat and he was taken to A.K. Sahay, Nursing Home and thereafter to Jalan Hospital. He has stated that he had a conversation with Rupesh who disclosed that three persons had come on a motorcycle and fired at him and he has named Kalia Mahato as one of the assailants. This witness has proved his signature in the fardbeyan.

In cross-examination, he has deposed that the house of B.B. Das, Advocate is at a distance of 300 meters from his house. When he had reached to the place of occurrence there were 20-25 persons of the locality present. Naval Kishor Jha, B.B. Das, Kishore Yadav and others were present. They did not take any efforts to take the injured to the Hospital. The injured was in the driver's seat and he was conscious. He had taken the injured to the Hospital. It took about 15-20 minutes to reach the Hospital. He was with Rupesh Sinha for about 1½ -2 hours and thereafter he had left.

6. P.W.2 (Vrindawan Das) and P.W.3 (Nawal Kishore Jha) did not support the case of the prosecution and were declared hostile.

7. P.W.4 (Mukesh Kumar Sinha) has stated that the incident is of 04.03.2008 at 9:30 P.M. He was in the house of his uncle A.K. Sahay when he received a telephonic information that Rupesh Kumar Sinha has been shot at near Vinod Nagar crossing. He reached Vinod Nagar crossing where people who had

assembled had disclosed that Rupesh Kumar Sinha has been taken to Jalan Hospital. In Jalan Hospital Rupesh Sinha had disclosed that while he was going home in his Indica car three persons came on a motorcycle and Kali Charan Mahato @ Kalia had shot at him. He had not disclosed the name of the other two assailants. He has stated that Rupesh Sinha had earlier disclosed that Mahendra Yadav had threatened him to do away with his life as he had objected to the act of Mahendra Yadav and his associates in forcibly occupying the market complex of Amrendra Sahay.

In cross-examination, he has deposed that he had gone to Jalan Hospital alone. He does not know as to whether the Doctor had recorded the statement of Rupesh Sinha or not. When Rupesh Sinha had given his statement several persons were present. At that time he was just besides the seat where Rupesh Sinha was kept. He has stated that Rupesh Sinha was his cousin.

8. P.W.5 (Ashish Kumar Gorai) has stated that on the date of the incident he was in his house when 3-4 boys came and disclosed that Rupesh Sinha has been shot at near Vinod Nagar crossing. He had seen Rupesh in an injured condition at Jalan Hospital. He also had a conversation with Rupesh Sinha who disclosed that Kali Charan Mahato had shot at him.

In cross-examination, he has deposed that when he reached the Hospital Rupesh was being taken inside. Rupesh was not unconscious. The Doctor had not recorded the statement of Rupesh. He has further deposed that Rupesh had disclosed to everyone present that Kali Charan Mahato had shot at him. The persons who were near to Rupesh had heard but he does not know who else were present near Rupesh. He has also stated that blood was coming out from his stomach.

9. P.W.6 (Himanshu Kumar) did not support the case of the prosecution and was declared hostile.

10. P.W.7 (Ravi Bhushan Srivastava) has stated that on 04.03.2008 at about 9:30 P.M. he was returning home from the market when he heard the sound of firing. He reached the house of Binod Bihari Mahato and some persons who had assembled disclosed that Rupesh Kumar Sinha has been shot at. When he reached the place of occurrence, he found Rupesh Sinha lying in the driver's seat of the Indica car drenched in blood. The persons who had assembled had stated that three persons had come on a motorcycle and shot at Rupesh Sinha. They had also identified the person who had fired as Kali Charan Mahato @ Kalia. Rupesh Sinha was referred to Bokaro from Jalan Hospital where he died on 05.03.2008. He has identified his signature and the signature of Haldhar Prasad Lala in the fardbeyan given by the father of Rupesh Kumar Sinha at Bokaro Sector-IV P.S. which has been marked as Exhibit-1 and 1/1.

In cross-examination, he has deposed that he had conversed with Rupesh Sinha at the place of occurrence. When he had reached the place of occurrence 15-20 persons of the locality had already assembled. Nawal Jha, Das Saheb Advocate,

Banti Singh and others were present. He had not seen Rupesh Sinha in an unconscious state. He has stated that Rupesh Sinha was shot at on the right side of chest.

11. P.W.8 (Sunil Verma) has stated that on the date of the incident he was in his house. A boy came running and disclosed that Rupesh Sinha has been shot at and when he went he saw that Rupesh Sinha was been taken in a car to Jalan Hospital. In Jalan Hospital Rupesh had disclosed in front of this witness and others that three persons had overtaken him on a motorcycle and Kali Charan Mahato @ Kalia had shot at him. He has further stated that from Jalan Hospital Rupesh Sinha was referred to Bokaro where he expired at 3:00 A.M.

In cross-examination, he has deposed that when he had gone to Jalan Hospital the treatment of Rupesh had already started.

12. P.W.9 (Laki Ram Mahto) is a witness to the seizure of a motorcycle from the house of the accused Kali Charan Mahato. He has identified his signature in the seizure list which has been marked as Exhibit-3.

13. P.W.10 (Subhash Kumar Mahato) has proved his signature in the seizure list of the motorcycle seized from the house of Kali Charan Mahato which has been marked as Exhibit-3/1.

14. P.W.11 (Dr. Vikash Kumar) was posted as a Medical Officer in Sub Divisional Hospital Chas, Bokaro and on 05.03.2008 he had conducted autopsy on the dead body of Rupesh Kumar Sinha and had found the following:

(A) (i) Oval shape lacerated wound $\frac{1}{2}$ " x $\frac{1}{4}$ " into chest cavity deep over posteriously right side of renal area and right loin area (this is wound of entry)

(ii) Lacerated wound over left renal area and loin area size 2" x 1" with averted margin on the probing the injury no. 1 & 2 were found on the same line wound of exit.

(iii) Fracture of ribs right side 10, 11 and 12th ribs.

(iv) Fracture of thoracic vertebra 12 no.

(B) On dissection:-

(i) Scalp, no body injury, Heart, both chambers were empty lung, right lung ruptured and left congested.

(ii) Liver ruptured, Kidney congested, stomach empty.

The cause of death was opined to be hemorrhage and shock due to fire arm injury. He has proved the postmortem report which has been marked as Exhibit-3.

15. P.W.12 (Vijay Kumar Singh) has stated that the incident is of 03.04.2008 at 9:30 P.M. He was in his house when Banti had informed over mobile that an

incident of firing has occurred near the crossing. When he went to the said place he found Rupesh Sinha in the driver's seat in an injured condition. He had driven the car and taken him to the Jalan Hospital where Rupesh Sinha was admitted.

In cross examination, he has deposed that the Police had recorded his statement after 1-2 days from the date of incident. Apart from this witness a Lawyer, one Jha Ji and several other persons were present. On the way to the Hospital Banti and Jha Ji had also accompanied him in the car. When he reached the place of occurrence Rupesh Sinha was in a conscious state though he was not conversing. When Rupesh Sinha was being taken to the Hospital he had not heard any conversation.

16. P.W.13 (Haldhar Pd. Lala) is the father of the deceased Rupesh Kumar Sinha. He has stated that the incident is of 04.03.2008 at 9:30 P.M. He was in his house. Somebody came and informed that Rupesh has been shot at. He reached the place of occurrence and saw some persons taking his son to the Hospital. He also went with them. Initially his son was taken to Dr. A.K. Sahay and when he declined he was taken to Jalan Hospital. On the way his son disclosed that three persons on a motorcycle had come, stopped him near the house of B.B. Das Advocate and shot at him. He has identified Kali Charan Mahato @ Kalia as one of the assailants. His son has disclosed that fact before the Police. He had also disclosed that earlier Mahendra Yadav had extended threats to him. He has stated that his son was referred from Jalan Hospital to BGH and in course of treatment he died on 05.03.2008. He had given his statement to the Police. He had identified his signature in his statement which has been marked as Exhibit-1/1. He has proved his fardbeyan which has been marked as Exhibit-4. He has proved his signature in the inquest report which has been marked as Exhibit-5.

In cross-examination, he has deposed that he had first seen Rupesh near Sahay Nursing Home. His son was taken to the Hospital by one Bittu and his friend. The treatment continued at Jalan Hospital for one hour. His son had recorded his statement before the Police. He had not given any information to Dhanbad Police in spite of knowing about the involvement of Kalia in the shooting.

17. P.W.14 (Amrendra Kumar Sahay) has stated that he was in his house on 04.03.2008 at 9:30 P.M. when he received an information about a shot out at Vinod Nagar crossing. When he reached the place of occurrence he found several persons having assembled. Rupesh Kumar Sinha was found in the driver seat drenched in blood. He had disclosed that he was going home when he was intercepted by three persons on a motorcycle and he was shot at. He has identified Kali Charan Mahato @ Kalia as one of the persons who had shot at him. Rupesh had also disclosed that he was shot at the instance of Mahendra Yadav. He has stated that Rupesh was taken to Jalan Hospital with the help of the locals from where he was referred to Bokaro General Hospital and he died on 05.03.2008 in course of treatment. He has identified the signature of Vrindawan Das, Nawal Kishore Jha and the informant Amit Kumar which have been marked

as Exhibits- 6, 6/1 and 6/2.

In cross-examination, he has deposed that he had reached the place of occurrence after 10 minutes. He does not know as to whether the Police or the Doctor had recorded the statement of the injured or not. He also does not know as to whether the treating Doctor had issued any injury report or not.

18. P.W.15 (Parikhan Das) was posted as a Sub-Inspector in Dhanbad P.S. and he was handed over the investigation of Dhanbad P.S. Case No. 148/2008. He has proved the fardbeyan which has been marked as Exhibit-8 and the formal FIR which has been marked as Exhibit-9. He had recorded the statement of the informant and had also inspected the place of occurrence. The place of occurrence is an alley in front of the house of Vrindawan Das, Advocate. He had recorded the statement of the witnesses. On the next day he had conducted raid in the house of Kalia from where he had recovered a black colour Hero Honda motorcycle. He has proved the seizure list which has been marked as Exhibit-10. He had recovered an empty cartridge from inside the car and the seizure list has already been marked as Exhibit-7. He came to know on contact with Bokaro that the injured had died. He received the fardbeyan of Haldhar Prasad Lal on 6th of May. He had also obtained the inquest report and the postmortem report. The brain mapping and Polygraphy test of the accused was conducted at Bangalore. In his statement Vrindawan Das had stated that at the time of being taken to the Hospital Rupesh Sinha had disclosed that three persons riding on a motorcycle had shot at him and he had identified Kalia. The witness Himanshu Kumar had stated about Kalia calling him over telephone and stating that he had shot at Rupesh Kumar Sinha. He had taken out the print outs of the phone calls of Himanshu and Kalicharan. The photocopies of the print outs have been marked as Exhibit-11 with objection. He has stated that there was a conversation between phone nos. 9334760353 and 9955321159.

In cross-examination, he has deposed that the call print outs does not depict the name of the user of the phones. The motorcycle was recovered from the courtyard of the house of Kalia. He has stated that he had not sent the empty cartridge and pillets for chemical examination. He had not recorded the statement of the injured. He had not obtained the injury report from Jalan Hospital. The injured was referred to Bokaro in view of the seriousness of the injuries. He had not recorded the statement of any of the Doctors who had treated injured at Jalan Hospital. None of his superior authorities had stated about Rupesh Sinha giving his statement at Jalan Hospital. The witness Ravi Bhushan Srivastava had not stated that when he reached near the house of Binod Bihari Mahato he had heard the sound of firing. The witness Haldhar Lala had not stated that Rupesh Sinha had given his statement before the Inspector and Dy.S.P. None of the witnesses had stated before him that they had seen Kalia on the date of occurrence.

19. The statement of the accused was recorded u/s 313 Cr.P.C. in which he has simply denied the accusation of murder against him.

20. Mr. Arwind Kumar, learned counsel for the appellant has submitted that admittedly there are no eye-witnesses to the occurrence. It has been submitted that the conviction of the appellant is primarily based upon the purported dying declaration but the same suffers from serious infirmities. The evidence of P.W.1 is contradicted by P.W.12 who had stated that though Rupesh Sinha was in a conscious state while he was taken to the Hospital but he had not heard him conversing with anyone. Mr. Arwind Kumar has further submitted that it would be an absurd proposition of Rupesh Sinha disclosing about the incident in a conscious state of mind considering the serious injuries suffered by him. This would further find support from the fact that the Nursing Home of Dr. A.K. Sahay had refused admission while Jalan Hospital had referred the injured to Bokaro General Hospital where he ultimately succumbed to his injuries.

21. Mrs. Nehala Sharmin, learned Spl. P.P. has submitted that there is a consistent evidence of several of the witnesses to the effect that Rupesh Sinha had disclosed about the appellant being one of the assailants who had shot at him. P.W.1 has stated about such fact while the injured was being taken to the Hospital while P.W.4, P.W.5 and P.W.8 has stated about such disclosure made by Rupesh Sinha at Jalan Hospital. She has submitted that P.W.13 and P.W.14 have also stated about hearing Rupesh Sinha disclosing the name of the appellant as the person who had shot at him.

22. We have heard the learned counsel for the respective parties and have also perused the Lower Court Records.

The incident as projected by the prosecution is of Rupesh Kumar Sinha who was in his car having been intercepted by three persons riding on a motorcycle who had shot at him, critically injuring him and who succumbed to his injuries during treatment at Bokaro General Hospital. The appellant is named in the First Information Report by Amit Kumar @ Banti as his names seems to have transpired on the purported disclosure of Rupesh Kumar Sinha.

23. Before adverting to the oral evidence, we must have a glimpse of the postmortem report of Rupesh Kumar Sinha. The same reveals serious injuries suffered by him on his vital organs as there were fracture of ribs, fracture of thoracic vertebra, liver and right lung ruptured. There can be no doubt that a person suffering such multiple injuries would be in an extremely critical state and this finds support from the evidence of the father of the deceased who has been examined as P.W.13 and who had stated that Nursing Home of Dr. A.K. Sahay had declined admission and though his son was admitted in Jalan Hospital but subsequently he was referred to Bokaro General Hospital where he died the next day. So far as the oral evidence is concerned, P.W.1 is the informant who has stated about Rupesh Sinha disclosing the name of the appellant as one of the assailants while he was being taken to the Hospital. Apart from Rupesh Sinha and P.W.1, P.W.12 was also present who was driving the car and who has stated otherwise to the effect that though Rupesh Sinha was in a conscious state but he was not conversing. P.W.12 has also stated about the presence of P.W.3 in the car

though P.W.3 did not support the case of the prosecution and was declared hostile. The other set of witnesses have stated about Rupesh Sinha describing the incident and taking the name of the appellant as one of the assailants at Jalan Hospital. P.W.4, P.W.5 and P.W.8 claimed themselves to be privy to the disclosure made by Rupesh Sinha but none of these witnesses have taken the name of each other or have indicated their presence when such statement was being given. P.W.8 in his cross-examination has deposed that when he went to Jalan Hospital the treatment of Rupesh had already started which itself demolishes his evidence. Moreover it would be highly improbable that Rupesh Sinha could have reported his version of the incident considering the precarious medical condition he was in. The cloud of suspicion hanging over the evidence of P.W.4 and P.W.5 makes them unreliable and untrustworthy.

24. The evidence of P.W.13 also reveals that his son had not made such statement before him as he had first met his son near Sahay Nursing Home though he claims in his chief of hearing such disclosure on the way to Jalan Hospital. P.W.13 has not claimed himself to be in the car nor such fact has been established by the evidence of P.W.1 and P.W.12 and, therefore, his version appears to be tainted with doubt. P.W.14 also claims to have heard what has been stated by Rupesh Sinha but his cross-examination reveals that he had reached the place of occurrence after ten minutes of the occurrence and his presence at the time of such disclosure seems not to have been noted by any of the witnesses.

25. Another important feature is the absence of any statement from the treating Doctors. None of the Doctors have been examined and the evidence of P.W.15 further reveals that the statement of Rupesh Sinha was not recorded by him. P.W.15 has also deposed that none of his superior authorities had stated about Rupesh Sinha giving his statement at Jalan Hospital. In fact P.W.15 also states that he had not recorded the statement of any of the Doctors.

There has been no recovery of any incriminating article from the possession of the appellant and the prosecution has failed to connect the recovery of a motorcycle from the house of the appellant with the motorcycle used in the crime. P.W.15 has stated that none of the witnesses had disclosed before him that they had seen the appellant on the date of occurrence.

26. What would thus fall from the above is that the appellant has been convicted only on the basis of circumstantial evidence which though is weak in nature. The contradictions appearing in the evidence of the witnesses and the state in which Rupesh Sinha was when we consider the postmortem report would lead us to conclude that the prosecution has miserably failed to prove its case beyond all reasonable doubt. The learned trial court had unduly relied upon the testimony of the witnesses without deciphering inconsistencies appearing there in.

27. Thus on a consideration of the aforesaid facts and circumstances, we hereby set aside the judgment of conviction and order of sentence dated 20.04.2010

passed by Sri Rama Shankar Shukla, learned Addl. Sessions Judge, Fast Track Court VI, Dhanbad in S.T. Case No. 343/2008.

28. This appeal is allowed.

29. Since the appellant is in custody, he is directed to be released immediately and forthwith, if not, wanted in any other case.