

(2022) 10 JH CK 0015

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 127 Of 1994 (R)

Kishori Singh Yadav And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120(B), 302
Arms Act, 1959 — Section 27
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 134

Citation : (2022) 10 JH CK 0015

Hon'ble Judges : Rongon Mukhopadhyay, J; Ambuj Nath, J

Bench : Division Bench

Advocate : Nilesh Kumar, Bhola Nath Ojha

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J

1. Heard Mr. Nilesh Kumar, learned counsel for the appellant and Mr. B. N. Ojha, learned A.P.P. for the State.

2. Initially this appeal was filed on behalf of two appellants, but has stood abated so far as the appellant no. 1 – Kishori Singh Yadav is concerned on account of his death on 12.04.2019 and therefore this appeal is now restricted to the appellant no. 2 (hereinafter referred to as the appellant).

3. This appeal is directed against the judgment of conviction dated 21.07.1994 and order of sentence dated 25.07.1994 passed by Sri Braj Bihari Sinha, learned Second Additional Judicial Commissioner, Ranchi in S. T. No. 125 of 1993/7 of 1993 whereby and whereunder the appellant has been convicted for the offences under Section 302 of Indian Penal Code and Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for life for the offence under Section 302 I.P.C. and rigorous imprisonment for 3 years for the offence under

Section 27 Arms Act. Both the sentences are to run concurrently.

4. The fard beyan of Raj Ballabh Singh was recorded on 17.11.1992 in which it has been stated that in the evening, he was going to the clinic of Dr. S. Prasad for getting medicines. In front of him, Ram Pravesh Singh Yadav was going on a bicycle to supply milk to his customers. It has been alleged that as soon as they reached near the house of Bhagwan Singh in Sukhdeonagar, Kishori Singh Yadav and Ramesh Singh Yadav (appellant) along with two unknown persons suddenly came and on the order of Kishori Singh Yadav, Ramesh Singh Yadav fired at Ram Pravesh Singh Yadav at the back as a result of which, he fell down. At this, the accused persons started firing and pelting bricks on him. When the informant raised alarm and people gathered, the accused persons fled away. The reason for the occurrence was previous enmity.

5. Based on the aforesaid allegations, Kotwali (S) P. S. Case No. 739 of 1992 was instituted for the offences punishable under Sections 302 and 120 (B) of Indian Penal Code and Section 27 of the Arms Act. On completion of investigation, charge-sheet was submitted and after cognizance was taken, the case was committed to the court of Sessions where it was registered as S.T. No. 125 of 1993. Charges were framed against the accused persons for the offences under Sections 302/120(B) I.P.C. and Section 27 of Arms Act which were read over and explained to the accused persons in Hindi to which they pleaded not guilty and claimed to be tried.

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

P.W. 1 – Raj Ballabh Singh Yadav is the informant who has deposed that on 16.11.1992 at about 7:00 P.M., he was going to the clinic of Dr. S. Prasad. Ram Pravesh Singh Yadav was going in front of him. When they reached near the house of Bhagwan Singh, he saw that on the orders of Kishori Singh Yadav, Ramesh Singh Yadav had fired at Ram Pravesh Singh Yadav and the bullet has hit his back. Ram Pravesh Singh Yadav fell down at which Kishori Singh Yadav, Ramesh and two unknown persons assaulted Ram Pravesh Singh Yadav with stones and bricks. He has further deposed that Ramesh had once again fired at Ram Pravesh Singh Yadav which resulted in his death. This witness has raised an alarm at which people had assembled and the accused persons consequently had fled away. He has further stated that Ram Pravesh Singh Yadav was murdered because of a land dispute. He has identified his signature in the fard beyan which has been marked as Exhibit 1.

In cross-examination, he has deposed that on the date of occurrence, Ram Pravesh Singh Yadav was going in front of him on a bicycle. The route in which he was going was sparsely frequented by others. It was dark and there was load-shedding. He had seen a pistol in the hand of Ramesh, but he had not seen anything in the hand of Kishori Singh Yadav. The two unknown persons had revolvers in their possession. At the time of the occurrence, he was standing at a distance of 20 hands from the accused. When Ramesh Singh Yadav had fired at

Ram Pravesh Singh Yadav, this witness had raised an alarm and the accused persons had chased him at which he had managed to flee away. This witness had informed about the incident to Ramanuj Singh, Ramadhar Singh and Dwarika Roy.

He has further deposed that Nagendra Singh is his own brother, who had gone to jail on being accused of being involved in the murder of Ashok Yadav who was the nephew of Ram Pravesh Singh Yadav. It was Kishori Singh Yadav who had got Nagendra Singh falsely implicated.

P.W. 2 – Rajdeo Yadav has deposed that the incident is of November 1992. About 15 days prior to the incident, he had gone to visit Umesh Yadav in jail and during conversation Umesh Yadav had disclosed that within 15 days Ram Pravesh Singh Yadav would be murdered. He had also disclosed that he will not get solace till Ram Pravesh Singh Yadav is alive. He has stated that Ram Pravesh Singh Yadav was murdered after 15 days.

In cross-examination, he has deposed that he was in Ranchi jail in November 1992. He had not informed the police that Umesh Yadav wanted to commit the murder of Ram Pravesh Singh Yadav.

P.W. 3 – Dr. Niranjana Minz was posted as a Tutor in the Department of Forensic Medicine in RMCH and on 18.11.1992, he had conducted autopsy on the dead body of Ram Pravesh Singh Yadav and had found the following injuries:

"Fire Arm Injury: having wound of entrance $\frac{1}{2}$ cm. in diameter on the back of the abdomen right side, 1 cm. right to midline surrounded by blackening and tattooing 18 x 12 cm. area. The projectile entered into the abdominal cavity through the first lumbar vertebrae breaking it and then injured the spinal cord, perforated the stomach after injuring the descending aorta and makes an exit wound 1 cm. in diameter on the front part of the abdomen situated 4 cm. left to midline. There was presence of blood and blood clots in the abdominal cavity. The track of the wound was contused and lacerated."

As per his opinion, death was due to shock and haemorrhage. He has proved the Post Mortem report which has been marked as Exhibit 2.

In cross-examination he has deposed that he had not found any abrasion on the dead body. He also did not find any injuries on the dead body caused by bricks and stones.

P.W. 4 – Shankar Dayal Singh was posted as an Officer Incharge of Sukhdeonagar Police Station and on 16.11.1992 he had recorded the fard beyan of Raj Ballabh Singh. The fard beyan was marked as Exhibit 3. He has proved the formal FIR which has been marked as Exhibit 4. He had taken over the investigation and had recorded the re-statement of the informant. He had inspected the place of occurrence which is an alley in Sukhdeonagar which meets at Indrapuri main road. The dead body of Ram Pravesh Singh Yadav was found at a distance of 7 feet from the under constructed house of Bhagwan Singh. He has deposed that a large pool of blood was found at the said place. An old bicycle

was found lying near the dead body of Ram Pravesh Singh Yadav. A countrymade pistol loaded with 5 cartridges was also found near the dead body. He has proved the seizure list of pistol with cartridges and which has been marked as Exhibit 5. He has proved the inquest report which has been marked as Exhibit 6. He had recorded the statement of the witnesses, sent the blood stained earth for forensic examination and the pistol with cartridges to the Sergeant Major. He has proved the signature and hand-writing of the Sergeant Major in the report which has been marked as Exhibit 7. On completion of investigation, he had submitted charge-sheet against the accused under Section 302/120 (B) I.P.C. and Section 27 Arms Act.

In cross-examination, he has deposed that he had recorded the fard beyan of the informant at the place of occurrence though, he is unable to say as to whether the area was lighted or not. He had a torch with him. There was already a crowd when he had reached the place of occurrence. He had not gone to jail to verify the statement of the witness – Rajdeo Yadav. He had not collected any documentary proof regarding the land dispute between Ram Pravesh Singh Yadav and Kishori Singh Yadav. The informant Raj Ballabh Singh has stated that two unknown persons had also fired at Ram Pravesh Singh Yadav. The informant had also not stated that Ramesh Singh Yadav had also fired at the deceased.

7. The statement of the accused was recorded under Section 313 Cr.P.C. in which he has denied of his involvement in the murder of Ram Pravesh Singh Yadav.

8. Mr. Nilesh Kumar, learned counsel for the appellant has submitted that there is no evidence of substance which would lead to the conviction of the appellant. He has submitted that the conviction is based upon the solitary eye-witness account of P.W. 1 whose deposition speaks of contradictions and also seems to be indicative of a grudge against Kishori Singh Yadav due to previous enmity.

9. Mr. Bhola Nath Ojha, learned A.P.P. for the State has contended that the evidence of P.W. 1 is reliable and trustworthy and is backed up by the post mortem report and therefore, the prosecution has been able to prove its case against the appellant beyond all reasonable doubts.

10. We have considered the rival submissions and have also perused the Lower Court Records.

11. The prosecution has examined only four witnesses and P.W. 1 is the informant as well as an eye-witness. He claims himself to have chanced upon seeing the occurrence while he was on the way to the clinic of Dr. S. Prasad and he was going just behind Ram Pravesh Singh Yadav. His evidence suggests multiple firing made at Ram Pravesh Singh Yadav and he was also assaulted with stones and bricks. Though, it was dark, the place was secluded and there was no electricity at that point of time, but the same seems not to have hampered the vision of P.W. 1, as apart from identifying the appellant and Kishori Singh Yadav, he also appears to have vividly seen as to who were armed and who were not.

A glance at the post mortem report would reveal that only one fire arm injury was found on the person of the deceased, the wound of entrance being at the back of the abdomen. The injuries sustained by the deceased was on account of a single projectile entering into his body.

This negates the assertion of P.W. 1 that multiple firings were made at the deceased. No mark of violence has been found on the body of the deceased to vindicate P.W. 1 that assault was also committed with bricks and stones.

12. The evidence of P.W. 1 demonstrates that he was not a chance witness by providence, but a chance witness by design. Why we say so is on account of the fact that apart from the innumerable deficiencies pouring out in his evidence, the implication of Kishori Singh Yadav and the appellant also seems to have been fueled by a grudge and previous enmity, as the brother of P.W. 1 was sent to jail for plotting the murder of the nephew of the deceased on a conspiracy hatched by Kishori Singh Yadav. We must indicate herein that the present appellant is son of Kishori Singh Yadav.

13. In the case of "Amar Singh Vs. State (NCT of Delhi)" reported in (2020) 19 SCC 165, it was held as follows:

"16. Thus, the finding of guilt of the two appellant-accused recorded by the two courts below is based on sole testimony of eyewitness PW 1. As a general rule the court can and may act on the testimony of single eyewitness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise [see Sunil Kumar v. State (NCT of Delhi)]."

14. A cautious approach has to be adopted by the court while considering the testimony of a solitary eye-witness. It must also be bolstered by some sort of corroborative evidence. Such evidence needs to be considered threadbare and only on being satisfied about its reliability and trustworthiness could the court base its conviction.

In the evidence of P.W. 1, the inadequacies and inconsistencies apart from several contradictions seems to be blatant and the angle of enmity as deposed by P.W. 1 further intensifies the vulnerability of the testimony of P.W. 1. Admittedly, there is no supportive evidence and the learned trial court was incorrect in relying solely upon the evidence of P.W. 1 in convicting the appellant.

15. Consequent to what has been discussed above, we hereby set aside the judgment of conviction dated 21.07.1994 and order of sentence dated 25.07.1994 passed by Sri Braj Bihari Sinha, learned Second Additional Judicial

Commissioner, Ranchi in S. T. No. 125 of 1993/7 of 1993 whereby and whereunder the appellant has been convicted for the offences under Section 302 of Indian Penal Code and Section 27 of the Arms Act and has been sentenced accordingly.

16. This appeal stands allowed.

17. Since the appellant is on bail, he is discharged from the liability of his bail bond.