
(2019) 09 JH CK 0011

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 783 Of 2014

Lalchand Singh @ Lalchan Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2019) 09 JH CK 0011

Hon'ble Judges : Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Surendra Prasad Sinha, Abhay Kumar Tiwari

Final Decision : Allowed

Judgement

Chandrashekhar, J

1. The sole appellant has faced the trial on the charge of committing murder of Jitan Singh.
2. In Sessions Trial Case No. 404 of 2006, the appellant has been convicted and sentenced to R.I for life and fine of Rs. 5000/- and in default of payment of fine to undergo further R.I for Two years, under section 302 IPC.
3. During the trial, the prosecution has examined eight witnesses; the doctor, who has conducted post-mortem examination is P.W. 7 and the investigating officer has examined himself as P.W.8.
4. The prosecution has projected Mitthu Singh, the informant, as an eye-witness to the occurrence.
5. On the basis of the fardbeyan of Mitthu Singh recorded at about 12.00 hrs. on 06.04.2006 at village-Banalat, Chainpur P.S Case No. 39 of 2006 has been registered under section 302 IPC against the appellant. In his fardbeyan, the informant has stated that in the previous evening his father was arranging jute for weaving Sutli (string) in his Bari. He heard cries of his father whereupon he

came out of his house and saw the appellant assaulting his father with Kulhari. On seeing him coming there the appellant fled away and on his raising hulla his maternal grandfather, namely, Laldhari Singh, maternal uncle, namely, Gosai Singh and others including Mahesh Singh came there. The informant has stated that these witnesses have seen the appellant fleeing away towards south of the village. He claims that last month there was a hot altercation between the appellant, namely, Lalchand Singh and his father.

6. In the court the informant has reiterated his statement which is recorded in his fardbeyan to the extent that he heard altercation outside his house. However, in his examination-in-chief he does not say that he has seen the appellant assaulting his father with Kulhari; he has simply said; "eSuas ns[kk fd ykypUn flag Vkaxh ls ekjdj Hkkx jgk FkkA", and in his cross-examination, the informant admits that he has stated before the police that when he came out of his house he has seen the appellant running away. He is the only eye-witness in this case.

7. Before proceeding further, we intend to record that on his own account the informant does not seem to be a witness who has seen the actual assault upon his father. The witness, namely, Laldhari Singh-P.W.1 is the father-in-law of Jitan Singh, the deceased. The other prosecution witnesses - P.W.3, P.W.4, P.W.5 and P.W.6 - are co-villagers. Except P.W.1, the other witnesses have deposed that on hearing hulla when they reached at the place of occurrence they were informed that Lalchand Singh has killed Jitan Singh. They have seen the dead-body of Jitan Singh, the blood spilled over the ground and a Kulhari lying near the dead-body. The investigating officer has deposed in the court that on receiving information he went to the house of the informant and recorded his fardbeyan. He has prepared the inquest report and the seizure list. He asserts that he has recorded statement of the witnesses.

8. Dr. Gyan Prakash Singh-P.W.7, who has conducted the post-mortem examination, has found the following injuries on Jitan Singh:

"(i) An incised wound on lower part of neck antero laterally (more on right side) 10 c.m X 5 c.m X 5 c.m cutting all major blood vessels and wind ripe esophagus.

(ii) Incised wound was found over lower part of back of neck 10 c.m X 5 c.m cutting cervical vertebrae."

9. According to the doctor, the injuries to Jitan Singh were caused by a sharp cutting weapon and those were ante-mortem in nature.

10. On such evidence, an accused can be held guilty for murder, particularly in a circumstance when the accused has been found running away from the place of occurrence with the crime weapon, immediately after the informant has heard altercation outside his house. No matter, whether the informant has actually seen the accused assaulting the deceased unless it is shown to the court that there may be a probability of any other person causing death, the above circumstances would draw an inference that it was the accused who has committed the murder.

But then, the evidences led in this case make the prosecution's case highly doubtful. Not only the informant, P.W.3 and P.W.4 both have stated in their cross-examination that their statement was not recorded by the police. The testimony of a witness for the first time in the court can be accepted, but when a large number of the witnesses including the sole eye-witness say that their statement was not recorded during the investigation, it would substantially erode the foundation of the prosecution's case. Another aspect of it would be that the defence of the accused person would be highly prejudiced in so far as an opportunity to cross-examine the witnesses with respect to their previous statement and eliciting contradiction from them are concerned.

11. The other two prosecution's witnesses, namely, Satya Narayan Singh-P.W.5 and Sheo Kumar Singh-P.W.6 are hearsay witnesses, who have admitted in the court that they have not seen the appellant assaulting Jitan Singh. In fact, P.W.4 has deposed in the court that the village was infested with extremists and they used to beat the villagers. He has also stated that the extremists have beaten the deceased and his son. While the informant claims that it was a moonlit night, P.W.4 says that it was a dark night. Above all, the delay in registration of the First Information Report has not been explained by the prosecution. P.W.1 has falsely deposed in the court is a fact which is apparent from his statement in paragraph no. 7 of his cross-examination wherein he has stated that the police has taken his statement on the day of the occurrence; the police has arrived at the place of occurrence next day.

12. In the aforesaid state of affairs, we hold that the prosecution has failed to establish the charge under section 302 IPC against the appellant and, accordingly, his conviction under section 302 IPC dated 08.09.2009 and the order of sentence dated 09.09.2009 of R.I for life and fine of Rs.5000/-and in default of payment of fine to undergo further R.I for Two years in Sessions Trial Case No. 404 of 2006 passed by the learned Additional Sessions Judge, Fast Track Court-II, Daltonganj, Palamau are set-aside.

13. The appellant is acquitted of the charge framed against him.

14. The appellant, namely, Lalchand Singh @ Lalchan Singh, who is in jail, shall be set free forthwith, if not wanted in connection to any other case.

15. Criminal Appeal (DB) No. 783 of 2014 is allowed.

16. Let a copy of the Judgment be transmitted to the court concerned through FAX.

17. Let the lower-court records be sent to the court concerned forthwith.