
(2002) 04 JH CK 0058

In the Jharkhand High Court

Case No : Criminal Appeal No's. 40 and 60 of 1996 (R)

Manoj Karmali and Umesh Oraon

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2002) 50 BLJR 1091

Hon'ble Judges : Vikramaditya Prasad, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : Ashok Kr. Sinha, for the Appellant; Malti Chaurasia, APP, for the Respondent

Final Decision : Dismissed

Judgement

Lakshman Uraon, J.—Appellants in both the Criminal Appeals have preferred these appeals against the common Judgment and order of conviction and sentence dated 26.2.3996 and 28.2.1996 respectively, passed by Shri Bharat Prasad Sharma, learned Judicial Commissioner, Ranchi. in Sessions Trial No. 714 of 1994. convicting both the appellants u/s 302/34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for life and further convicting appellant Manoj Karmali [Cr. Appeal No. 40 of 1996 (R)] u/s 27 of the Arms Act and sentencing him to undergo rigorous imprisonment for three years with a fine of Rs. 200/- and in default where of to further undergo rigorous imprisonment for one month. However, both the sentences, awarded against Manoj Karmali, were ordered to run concurrently.

2. The prosecution case, as per the fardbeyan of the informant Dilu Rajwar (PW 1), father of the deceased Manoj Kumar, is that on 9.6.1994 at about 9.00 p.m., appellants Manoj Karmali and Umesh Oraon came to his home along with his son Manoj Kumar (deceased). They took their meals together at about 10.00 p.m. they were going to sleep, taking Manoj Kumar (deceased) with them, in a nearby

double storeyed Mines Quarter. The informant was also out of his home as it was summer season. He saw that in front of the quarter of Sohrai Lohar and Parmeshwar Das, his son and the appellants were making noise and had entered into altercation. The informant went nearer to them and saw that Manoj Kumar Karmali fired with his country made pistol on the chest of Manoj Kumar (his son), Appellant Umesh Oraon had caught hold of Manoj Kumar. Manoj Kumar on being injured fell down. The informant raised hulla and then both the appellants fled away towards north-east of the place of occurrence. The informant went near his son and with the help of neighbourers, he (Manoj Kumar) was taken to the Hospital. His son also informed that both the appellants had fired at him with an intention to kill him. His son became unconscious and subsequently died.

3. Both the appellants were charged u/s 302/34 of the Indian Penal Code for intentionally causing the murder of Manoj Kumar. Appellant Manoj Karmali was further charged u/s 27 of the Arms Act for possessing country made pistol and for using the same to cause the murder of Manoj Kumar. Both the appellants denied the charges, framed against them. In course of their examination also, there is total denial about the allegations, levelled against them and they have taken the plea that they have falsely been implicated in this case.

4. The prosecution in this case has examined altogether five witnesses, in order to prove the charges against the appellants, PW 1 (Dilu Rajwar) is the father of the deceased and the informant in this case whereas PW 2 (Radha Devi) is the mother of the deceased and PW 3 (Mira Devi) is the sister of the deceased. PW 4 is Dr. Tulsi Mahto. who has conducted the post-mortem examination on the dead body of Manoj Kumar and PW 5 (Shankar Dayal Singh) is the investigating Officer of this case. After considering the evidence, oral and documentary, the learned Court below found both the charges proved against these appellants and accordingly, convicted and sentenced them to undergo rigorous imprisonment, as stated above.

5. The point for consideration before me is as to whether the conviction and sentences passed against both the appellants by the learned Court below, can be sustained.

6. It was 10.00 p.m. in the night of 9.4.1994 and it was summer season and hence these appellants along with the son of the informant Manoj Kumar had gone to his home, took their meals together and after taking meal, they took Manoj Kumar along with them to sleep at night. Manoj Kumar was not willing to go there but he was virtually forced to go, resulting in Hulla-Gulla and scuffle and in the meantime, the informant (PW 1), who is the only eye witness in this case, saw that appellant Umesh Oraon had caught hold of his son and then appellant Manoj Karmali fired with a country made pistol on the chest of Manoj Kumar, the son of the informant. (PW 1). On hearing the sound of gun firing, the mother and sister of the deceased, namely, PW 2 (Radha Devi) and PW 3 (Mira Devi), came out of their house and saw injured Manoj Kumar, who narrated that both the appellants had assaulted him by catching hold of him by fire arms. PW 1

(Dilu Rajwar) also informed them and the other villagers that these appellants are the only persons, who caused death of his son Manoj Kumar, PW 2 (Radha Devi), who is mother of the deceased, and PW 3 (Mira Devi), who is sister of the deceased, have fully supported the presence of both the appellants in their house, as they had taken their meals together with Manoj Kumar. After taking meal, they went to sleep. However, PW 1 (father of the deceased Manoj Kumar) also came out. of the house, as it was summer season, and saw the alleged occurrence. He also raised India. On being injured Manoj Kumar also rushed towards his home but he fell down. He was in sense and named these appellants to be the assailants. PW 4 (Dr. Tulsi Mahto) has conducted the post-mortem examination on the dead body of Manoj Kumar on 10.6.1994 at 1.30 p.m. and found fire arm injury having wound of rupture 2 Cm. x 1-1/2 Cm. On the right chest front, The wound was surrounded and tatooing over an area of 37 Cm. x 32 Cm. The internal organs were intact. The stomach contained undigested food materials. The death was due to ante-mortem fire arm injury, caused by fire arm. which was sufficient to cause death in ordinary course. The death was due to hemorrhage and shock of that injury, caused since 6 to 24 hours from the time of post-mortem examination. The doctor prepared the post-mortem examination report in his pen and signature (Ext. 1), PW 5 (Shankar Dayal Singh) on 10.6.1994 at about 2,00 a.m. recorded the fardbeyan of the informant at the Hospital in his pen and signature (Ext. 2) on which the informant gave his LT1. He also proved the formal First Information Report (Ext. 3) in the pen of Niranjana Tiwari. Thana Munshi, signed by this witness. He went to the village and found the place of occurrence to be in front of the quarters of Sohrai Lohar (Mines Quarter). There is also quarter of Mohan Caunjhu and Sukhdeo Caunjhu. He found blood in abundance at a distance of 5 yards from the quarters of Sohrai Lohar. He seized blood stained soil and prepared seizure list, on which the witnesses signed and gave their LTIs. also. It was written by ASI, Bikram Yadav and signed by this witness. He also prepared inquest report of the dead body of deceased Manoj Kumar. He has also recorded the statement of Sohrai Lohar. but he has not been examined by the prosecution in this case,

7. The assailant is Manoj Karmali. who fired with country made pistol on the chest of Manoj Kumar, resulting in his fall and death in the hospital. Appellant Umesh Oraon had caught hold of Manoj Kumar. It was appellant Umesh Oraon who had entered into the house of Manoj Kumar, took supper with him and asked him to go out of his home to take rest at night in a nearby Mines Quarter. Manoj Kumar was hesitating. At that time "Manoj Karmali was standing out of the house of Manoj Kumar. Soon thereafter, all the three proceeded towards the Mines Quarter but in front of the quarter of Sohrai Lohar, when Umesh Oraon caught hold of Manoj Kumar, then appellant Manoj Karmali fired with country made pistol on the vital part of the body i.e. chest of Manoj Kumar. Manoj Kumar on being injured fell down. He woke up and tried to rush towards his home. He could not see his father on the way but he fell down at the door. He had raised hulla. His father (PW 1) has also raised hulla. His father (PW 1) is the eye-

witness, who has supported the case of the prosecution, as narrated by him in the Jadbeyan, supported by his wife (Radha Devi PW 2) and daughter (Mira Devi - PW 3), who also came out of the house on hearing the sound of firing. They were also informed by Manoj Kumar that these appellants had assaulted him. They were also informed by PW 1 (Dilu Rajwar) that these appellants are the assailants. The Investigating Officer found the objective findings on the place of occurrence. He seized the blood stained soil. The doctor (PW 4) also found fire arm injury on the chest. He also found tatooing around the injury, which shows that the assailants had fired at a very close range, resulting in charring of the skin. This also proves that appellant Umesh Oraon had caught hold of Manoj Kumar and then at a point blank distance, Manoj Karmali (appellant) fired with country made pistol on the chest i.e. the vital part of the body, which shows the intention to cause murder of Manoj Kumar, Manoj Kumar after being injured rushed towards his home but he fell down on the way. At that time he was quite conscious. He named the appellants to his mother and sister and the father also. On the other hand. Dilu Rajwar. father of the deceased, is the only eye witness, who had supported the story of assault, causing murder of his son by these appellants.

8. In view of the above considered facts, I find that there is no any infirmity in the evidence of the prosecution witnesses, although they are interested and the only eye witness is the father (PW 1). The enmity has not been alleged and hence the enmity was not proved by the prosecution. In a murder case u/s 302 of the Indian Penal Code, proof of motive is not so required. The prosecution has not produced the seized blood stained soil and has not examined the nearby witnesses. It does not mean that the prosecution has failed to prove the charges levelled against the appellants. I have stated that it was at about 10.00 p.m.. although it was summer season and the people are not supposed to go in deep sleep at that time, The non-examination of the nearby witnesses shows that the Investigating Officer was not vigilant in investigating the case. Although he recorded the statement of Shorai Lohar but he was not made a charge-sheet witness. Even though these are the lacunas but they have not discredited the prosecution case. which has been substantially proved against these appellants for the charges levelled against them u/s 302/34 of the Indian Penal Code and Section 27 of the Arms Act. 1959, as against Manoj Karmali. 1, therefore, find no material or cogent reason to differ with the findings of the learned Court below in convicting and sentencing both the appellants, as they had jointly gone to the house of the informant, took their meal jointly with Manoj Kumar (deceased), thereafter, they came out of the house and in a preplanned way, both these appellants took part in causing the murder of Manoj Kumar. while appellant Umesh Oraon had caught hold of Manoj Kumar, appellant Marioj Karmali fired with country made pistol on the vital part of his body. The evidence shows that both the appellants, namely, Manoj Karmali [Cr. Appeal No. 40 of 1996(R)] and Umesh Oraon [Cr. Appeal No. 60 of 1996(R)] had their intention to commit murder of Manoj Kumar and in furtherance of their common intention, they

committed the murder of Manoj Kumar.

9. In the result, I find no merit in both these Criminal Appeals, which are hereby dismissed.