
(2015) 04 JH CK 0003

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) Nos. 621, 846 of 2012 and 735 of 2013

Mantu Yadav and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 149, 302, 307, 34

Citation : (2015) 2 AJR 763 : (2015) 3 JLJR 178

Hon'ble Judges : Rakesh Ranjan Prasad, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Yogesh Modi, Amicus Curiae, for the Appellant; H.K. Shikarwar, APP, Advocates for the Respondent

Judgement

1. All these Appeals are directed against the judgment of conviction and order of sentence dated 30-4-2012 passed by the then Additional Sessions Judge-I, Godda in S.T. No. 47 of 1998 whereby and whereunder the court having found all the 11 appellants guilty for committing murder of Shiv Narayan Yadav and attempting to commit murder of the informant in furtherance of their common object convicted them for the offence punishable u/ss. 302/149 and 307/149 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the offence punishable u/ss. 302/149 and also to undergo RI for 10 years for the offence punishable u/ss. 307/149 of the Indian penal code. Further the appellants Sanjay Yadav and Pappu Yadav on being found guilty for the offence punishable u/s. 27 of the Arms Act were sentenced to undergo RI for 5 years. All the sentences were ordered to run concurrently. Case of the prosecution is that on 16-8-1997 at about 8.30 a.m. the informant Mahesh Yadav (P.W. 8) left home for coming to a field along with Shiv Nayaran Yadav alias Shiv Nandan Yadav (deceased). As soon as they reached near the house of Anadi Yadav, they saw all the appellants armed with lathi, farsa, bhala and country made pistol standing there. The appellant Sanjay Yadav fired shot from his country made pistol

causing injury to the informant. Further, the appellant Pappu Yadav on being instigated by Sanjay Yadav fired shot upon Shiv Narayan Yadav who upon receiving gun shot injury died there at the spot.

2. Meanwhile, when R.V. Nanhe, officer In-charge of Mahagama Police Station received information that some occurrence has taken place at the Village Dhumdih on account of land dispute, he after making station diary entry proceeded to place of occurrence. On reaching the place of occurrence, the I.O. P.W. 11 recorded the fardbeyan of the informant Mahesh Yadav P.W. 8 upon which a formal FIR (Ext. 6) was lodged. The I.O. when did find the dead body of the Shiv Narayan Yadav lying on the field, held inquest on the dead body and prepared an inquest report (Ext. 5). Thereupon dead body was sent for post mortem examination, which was conducted by Dr. Dilip Kumar Choudhary, P.W. 9, who on holding autopsy found the following injuries:

One fire arm wound was found on the lateral aspect of the left thigh 6" below the anterior superior iliac spine, rounded in shape. The edges of the wound was inverted and blackening of the margin was present this being the wound of entrance and 3/4" in diameter.

One another wound slightly bigger in size being the wound of exit was found on the lateral aspect of the right thigh 7" below the right anterior superior spine. The diameter of the wound was 1" and the margin was ragged and everted and fat was protruding from it.

3. According to the doctor, the injury was grievous in nature and caused by fire arm weapon. The doctor issued post-mortem examination report (Ext. 3) with an opinion that death was caused due to the aforesaid injuries inflicted by fire arm leading to shock and hemorrhage which lead to cardio respiratory failure and death.

4. The informant Mahesh Yadav (P.W. 8) was also examined by Dr. Satyanarayan Mishra (P.W. 10). Upon examining him the doctor did find the following injuries on his person:

- i. Two lacerated wound 1/8" in diameter on the right hypochondrium.
- ii. Six circular lacerated wounds of the same diameter as above on the back and left chest wall.
- iii. One similar wound on the skin of the left leg.
- iv. One similar wound on the front of the right thigh.
- v. One similar wound on the left anterior chest wall in the 10th-11th space.
- vi. One similar wound on the right arm inner aspect.
- vii. Blackening of right palm.

All the above wounds had charred margin. The doctor issued injury report (Ext.

4) with an opinion that all the injuries are simple caused by fire arm.

5. Meanwhile, the I.O. Recorded the statement of the witnesses. On completion of investigation, when the charge-sheet was submitted against the appellants, the court took cognizance of the offence. When the case was committed to the Court of sessions, the appellants were put on trial during which prosecution examined 11 witnesses. Of them P.W. 1, Babulal Yadav, P.W. 2 Kailash Yadav, P.W. 3 Jitendra Yadav, P.W. 4 Arvind Kumar Yadav, P.W. 5 Sanjay Yadav and P.W. 8 Mahesh Kumar Yadav, are the eye-witnesses who more or less have testified that while the informant was going to his field along with the deceased Shiv Narayan Yadav and reached near the house of Anadi Yadav they found the appellants present over there. Of them the appellant Sanjay Yadav fired shot causing injury to the informant and then according to some of the witnesses appellant Pappu Yadav at the instance of appellant Sanjay Yadav fired shot upon the deceased causing injury resulting into his death at the spot. P.Ws. 6 and 7 are the hearsay witnesses.

6. After the case of the prosecution was closed, the incriminating evidence/material appearing against the appellant were put to the appellant u/s. 313 of the Cr.P.C. to which they denied and took a plea that they are innocent. In support of their case they examined five witnesses. All of them more or less have testified that on the day of occurrence they never heard that appellant killed Shivnarayan Yadav.

7. Thereupon, having regard to the facts and circumstances of the case and the testimonies of the witnesses, the court did find all the witnesses trustworthy whose testimonies getting corroboration from the medical evidence and also from the objective finding of the I.O. and thereby the Court did find that all the appellants by sharing common object killed the deceased and also made an attempt on the life of the informant and thereby they were convicted and sentenced, as aforesaid, vide impugned judgment, which is under challenge.

8. Mr. Yogesh Modi appointed as Amicus Curie submits that testimony of the informant itself is not worm reliable as he has testified that as soon as he was fired at he fell unconscious and in that event he could not have seen the appellant Pappu Yadav firing upon the deceased. Still he has deposed that the appellant Pappu Yadav shot dead the deceased. Further, it was submitted that all other witnesses are interested witnesses as they themselves have stated that they belong to one party whereas the informant and the deceased were members of other group and thereby their testimonies are not worth reliable. Further, it was submitted that the case appears to be concocted for the reasons that according to testimonies of P.Ws. 8 and 9, Mahesh Yadav (P.W. 8) had given fardbeyan in the hospital whereas as per the I.O. P.W. 11 the fardbeyan of the P.W. 8 had been recorded at the place of occurrence and, therefore, the prosecution should not have treated the fardbeyan as First Information Report and that the prosecution has not brought the fardbeyan said to have been recorded at hospital, on the record and thereby adverse inference be drawn

against the prosecution.

9. As against this, the learned counsel appearing for the State submitted that eye witnesses-examined on behalf of the prosecution may be the persons of the same group but the testimonies of the eye witnesses cannot be discarded when they had occasioned to see the occurrence and that all the witnesses are consistent on the point that when the informant P.W. 8 was going to his field along with the deceased Shiv Narayan Yadav and reached near the house of Anadi Yadav the appellant Sanjay Yadav fired shot at the informant causing injury and thereafter the appellant Pappu Yadav fired shot hitting Shiv Narayan Yadav causing injury resulting into his instantaneous death and that there has been no reason to discard the testimonies of the eye-witnesses whose testimonies get corroboration from the medical evidence and thereby the trial court has rightly convicted the appellants. Under the circumstances, judgment of conviction and order of sentence never wants to be interfered with.

10. Having heard counsel appearing for the parties and on perusal of the record, we do find that according to the testimonies of the eye-witnesses 1, 2, 3, 4, 5 and 8, the informant in course of coming to field when reached near the house of Anadi Yadav along with the deceased Shiv Narayan Yadav, the appellant Sanjay Yadav fired shot at the informant causing injury to him. According to some of the eye-witnesses Pappu Yadav at the instance of Sanjay Yadav fired shot upon Shiv Narayan Yadav causing injury resulting into his death. The testimonies of the witnesses to the effect that deceased was shot at find support from the medical evidence as the Doctor P.W. 10 did find gun shot injuries on the person of the deceased as a result of which he died. Further the doctor also found injuries on the person of P.W. 8 Mahesh Yeada, being caused by the fire arms.

Going further into the matter, we do find that the testimonies of the eye-witnesses as get support from the objective finding of I.O. who found blood at the place of occurrence. Thus, the prosecution has been able to prove its case beyond all reasonable doubts that the appellant Pappu Yadav shot the deceased dead and that the appellant Sanjay Yadav with a view to kill informant fired shot at him who received gun shot injuries.

Now, the question does arise as to whether all the appellants were sharing the common object.

In this regard, we will be referring the evidences of the witnesses P.Ws. 1, 2, 3, 4, 5 and 8 of them P.Ws. 1 and 4 have testified that the accused persons who were there near the house of the Anadi Yadav had surrounded the informant and the deceased but other witnesses such as P.Ws. 2, 3, 5 and even the P.W. 8, the informant have never come to testify that other accused persons too had surrounded the informant and the deceased. Further, we do find that P.W. 8 has testified that the appellants, who had assembled near the house of Anadi Yadav were armed with Tangi, Farsha, Bhala but this fact never seems to have been supported by P.Ws. 2, 3, 4 and 5.

11. At this stage it will be worthwhile to refer the testimony as has been elicited from P.W. 5 wherein he has testified that it was usual habit of the appellants to sit at the place of occurrence over the ridges of field. He has further testified that at the time of occurrence the other accused persons had never raised any alarm. Perhaps he meant to say that they did not prove either to Sanjay Yadav or Pappu Yadav.

12. In that event, we can safely say that appellants of Criminal Appeal (DB) No. 621 of 2012, were never sharing any common object either to kill the deceased or to make an attempt on the life of the informant and thereby they have wrongly been convicted for the offence punishable under Sections 302/149 and also u/s. 307/149 of IPC and hence the appellant of Cr. Appeal (DB) No. 621 of 2012 are acquitted of both the charges. Coming to the case of appellant Sanjay Yadav he too has been convicted for the offence punishable under Section 302 with the aid of 149 of the IPC as he as per the testimonies of the P.Ws. 4, 5 and 8 had instigated Pappu Yadav to shot fire at the deceased but P.Ws. 1, 2, 3 have never stated so. According to them, as soon as, the informant and the deceased reached near the house of the Anadi Yadav, Sanjay Yadav fired shot upon the informant whereas the Pappu Yadav fired shot upon the deceased. In that event, it would not be safe for us to hold him guilty for the offence punishable under Section 302 with the aid of 149 of the IPC.

Accordingly, Pappu Yadav is also acquitted of the charge under Section 302/149 of the IPC.

So far as, the appellant Pappu Yadav is concerned consistent evidence is there that he was responsible for causing death of the deceased. Hence, the appellant Pappu Yadav is convicted for the offence punishable under Section 302 of IPC instead of 302/149 of the IPC. However, the sentence imposed for killing the deceased and also for the offence punishable u/s. 27 of the Arms Act shall remain intact.

So far as the appellant Sanjay Yadav is concerned, we do find the witnesses are consistent that it was the appellant Sanjay Yadav who fired shot upon the informant causing injury and thereby he besides the offence u/s. 27 of the Arms Act is held guilty for the offence under section 307 instead of 307/34 of the IPC. However, he is sentenced to the period already undergone.

Thus all the appellants of Cr. Appeal (DB) No. 621 of 2012 are acquitted of both the charges u/s. 302/149 and u/s. 307/149 of IPC and thereby they are discharged from the liability of their bail bond and thereby Cr. Appeal (DB) No. 621 of 2012 is hereby allowed.

So far as appellant Sanjay Yadav is concerned he is found guilty for the offence punishable u/s. 307 instead of 307/149 of IPC beside the offence u/s. 27 of the Arms Act. He is sentenced for the period already undergone for both the offences. Accordingly, Cr. Appeal No. 846 of 2012 is dismissed with modification of the order of conviction and sentence. Accordingly, he is directed to be released

forthwith if not wanted in any other case.

So far as the appellant Pappu Yadav is concerned, he is convicted for the offence punishable u/s. 302 instead of 302/149 of IPC beside the offence u/s. 27 of the Arms Act. However, sentences passed against him for both the offence shall remain intact. Thus with modification in the order of conviction Cr. Appeal (DB) No. 735 of 2013 is dismissed.