
(2019) 08 JH CK 0129

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 152 Of 2001

Mathura Hembram

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Citation : (2019) 08 JH CK 0129

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

Bench : Division Bench

Advocate : Abhishek Kumar Chaturvedi, Shashank Sourav, Ram Prakash Singh

Final Decision : Allowed

Judgement

Shree Chandrashekhar, J

1. A First Information Report vide Muffasil P.S. Case No. 25 of 1998 was lodged on 09.03.1998 against Manjura Hembrom and other three unknown persons, on the basis of a written report submitted by Mansingh Purty to the police. In course of investigation complicity of the accused persons, namely, Mathura Hembrom, Shankar Samad and Shankar Soy were found. Accordingly, a charge-sheet was filed against four persons, namely, Manjura Hembrom, Mathura Hembrom, Shankar Soy and Shankar Samad. However, Manjura Hembrom and Shankar Samad have absconded and, therefore, charge under section 302/34 IPC was framed against Mathura Hembrom and Shankar Soy.

2. The appellant has been convicted and sentenced to R.I for life for the death of Roop Singh Birua, with the aid of section 34 IPC.

3. During the trial the prosecution has examined nine witnesses; the informant, namely, Mansingh Purty is P.W.6.

4. Dr. Arun Kumar-P.W.3 who has conducted autopsy on the dead body has observed;

- (i) An oval hole of 1 c.m diameter with abrasion collour anterior to left ear.
- (ii) One lacerated wound 3"x ½" bone deep over right temporal region.
- (iii) An oval wound of 1 c.m diameter with abrasion collour below right nipple direction backward towards left.

5. The doctor has found one brass bullet from posterior chest wall of Roop Singh Birua. According to the doctor, injuries caused to Roop Singh Birua were sufficient to cause his death.

6. Mr. Abhishek Kumar Chaturvedi, the learned counsel for the appellant, submits that conviction of the appellant with the aid of section 34 IPC without establishing participation of the appellant in the incident is unsustainable. The learned counsel for the appellant has referred to the decision in "Ghanshyam and Ors. Vs. State of Uttar Pradesh" reported in (1982) 2 SCC 400, "Virendra Singh Vs. State of Madhya Pradesh" reported in (2010) 8 SCC 407 and "Rajkishore Purohit Vs. State of Madhya Pradesh and Others" reported in (2017) 9 SCC 483, to fortify his contention.

7. Admittedly, Mansingh Purty is the only witness who has been projected as eye-witness. In his written report, he has stated that on 07.03.1998 he had gone to his sister's village where a sports competition was organised. He says that along with Roop Singh Birua he had also gone to watch the sports competition. His sister and aunt had already left at about 5:00 p.m. He says that he has seen Manjura Hembrom and three other persons standing by the side of the road. Manjura Hembrom called Roop Singh Birua and when he went near him Manjura Hembrom shot him in his chest with his pistol. On seeing this, the informant ran away and informed his family members. When they came back they saw Roop Singh Birua dead. In his fardbeyan, he has stated that he has no knowledge whether there was any dispute between Manjura Hembrom and Roop Singh Birua. He has claimed that Manjura Hembrom along with three other accused persons have killed Roop Singh Birua. In the court, the informant has made a specific allegation against Manjura Hembrom of firing a pistol shot on Roop Singh Birua. In his examination-in-chief, he has stated that he has seen two persons- Manjura Hembrom and Shankar Soy assaulting Roop Singh Birua. This statement of the informant in his examination-in-chief that he has seen two persons assaulting Roop Singh Birua (ge nks vkneh dks ekjrs ns[ks FksA) would not lead to an inference that both have fired shot. This would be apparent from the evidence of the informant in the court in which he says that he has seen Manjura Hembrom firing shot from his pistol.

8. It is, thus, apparent that when the informant was examined in the court he has not made any allegation against the appellant. He has not even named the appellant as a person present at the place of occurrence. In fact, no allegation was levelled by him in his fardbeyan against the appellant. With reference to the Test Identification Parade, the informant has stated that he has identified Mathura Hembrom and Shankar Soy in Chaibasa Jail. In his cross-examination,

the informant has reiterated that he has made allegation of firing on Roop Singh Birua by Manjura Hembrom and he has not named Mathura Hembrom and Shankar Soy in his written report. In the above facts, we are of the opinion that identification of the appellant by the informant in Chaibasa Jail is of no consequence and since in his examination-in-chief he has not made any allegation against the appellant, complicity of the appellant in the incident is not established from his evidence.

9. It is a settled proposition in law that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In "Lallu Manjhi Vs. State of Jharkhand" reported in (2003) 2 SCC 401 the Hon'ble Supreme Court has observed as under:

10. "The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely,

(i) wholly reliable, (ii) wholly unreliable, and

(iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. [See: Vadivelu Thevar v. State of Madras (AIR 1957 SC 614 : 1957 Cri LJ 1000)]."

10. Mr. Ram Prakash Singh, the learned APP, however, referring to evidence of Ramai Tiu-P.W.4 submits that this witness has named the appellant as one of the persons who encircled Roop Singh Birua when he was killed. The learned APP submits that may be P.W.4 has been declared hostile, but this part of his evidence would remain binding on the defence.

11. We have perused the evidence of P.W.4 when he was examined in the court. We find that this witness has been declared hostile at the instance of the prosecution. In the cross examination by the defence he stated that he is not the eye witness of the occurrence and through Mansingh he came to know about the occurrence. Therefore, evidence of P.W.4 is of no avail to the prosecution.

12. In view of the aforesaid state of evidence, we are of the opinion that the prosecution has failed to prove the charge under section 302/34 IPC against the appellant. The appellant is acquitted of the charge framed against him in Sessions Trial No. 81 of 1999.

13. Accordingly, the judgment of conviction under section 302/34 IPC and the order of sentence of R.I for life, both dated 05.03.2001 passed by the learned Sessions Judge, Singhbhum West at Chaibasa in Sessions Trial No. 81 of 1999

are set-aside.

14. The appellant who is on bail is discharged of liability of the bail-bonds furnished by him.

15. In the result, Criminal Appeal (DB) No. 152 of 2001 is allowed.

16. The Court appreciates the assistance rendered by Mr. Abhishek Kumar Chaturvedi, the learned counsel and Mr. Ram Prakash Singh, the learned APP.

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