
(2018) 05 JH CK 0084

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) NO. 1138 OF 2016??(With I.A. No. 1390 of 2018)

Mukund Munda And Other

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302

Arms Act, 1959 — Section 27

Code of Criminal Procedure, 1973 — Section 161, 313

Citation : (2018) 05 JH CK 0084

Hon'ble Judges : ANANDA SEN, J;KAILASH PRASAD DEO, J

Bench : Division Bench

Advocate : A.K. Kashyap, Anurag Kashyap, Vijay Kumar Sinha, Amit Kumar Sinha, Sanjay Kumar Pandey

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the appellants and learned counsel for the State.

2. These criminal appeals are directed against the Judgment of conviction dated 26th August, 2016 and Order of sentence dated 29th August, 2016

passed by learned Additional Judicial Commissioner XIII, Ranchi in Session Trial No.486 of 2011/Session Trial No.517 of 2011/T.R. No.11 of 2015,

whereby the appellants were found guilty and is convicted for the offence punishable under Sections 302/34 of the Indian Penal Code; appellant Sohrai

Munda was also found guilty and convicted for offence punishable under Section 27 of the Arms Act; and the appellants were sentenced to undergo

rigorous imprisonment for life with a fine of Rs.5,000/- each and in default of payment of such fine to undergo simple imprisonment for six months for

the offence under Sections 302/34 of the Indian Penal Code; and appellant

Sohrai Munda was further sentenced to undergo rigorous imprisonment for 5 (five) years and to pay a fine of Rs.5000/- (Rupees Five Thousand) and in default of payment of fine further to undergo simple imprisonment for six months for the offence under Section 27 of the Arms Act. Both the sentences were ordered to run concurrently.

3. The prosecution case is based on the fardbeyan of Sita Devi (P.W.6), who is the wife of the deceased. She states that she alongwith her husband

Bandhu Ahir (deceased) was going on cycle for her treatment at Rampur on 26.11.2010 at about 01.00 p.m. When they reached at Balicut Tungri

Road, all of a sudden one person armed with pistol came on the road, upon which she told her husband to leave the cycle and flee. When the

informant's husband was trying to flee, three persons came from the bush and caught her husband on chase. Four persons caught her husband

and took him to a road-side ground and fired upon him. Informant heard three sounds of firing. Thereafter all the four persons fled away towards

south direction. Thereafter when the informant reached near her husband, she found him dead. Informant has disclosed in her fardbeyan that the

person, who came with pistol was of good physique, aged about 30 years, looked like an Adivasi and all other three persons were aged about 25-30

years, who were wearing jackets and full pant. She has further stated that two persons were armed with pistol. In her fardbeyan she stated that she

believes that because of land dispute, the abovementioned appellants caught the deceased and killed him with the help of some unknown persons.

4. On the basis of the aforesaid fardbeyan, Namkum Police Station Case No.162 of 2010 was registered against the appellants and four unknown

persons. After investigation, police has submitted chargesheet No.85/2011 on 04.04.2011 for offences under Sections 302/34, 120B of the Indian

Penal Code and Section 27 of the Arms Act against the appellants, mentioning that one accused Mansa Munda has died during the investigation.

Cognizance was taken for the offences by the Chief Judicial Magistrate on 07.04.2011 and subsequently case was committed to the Court of Session

on 21.07.2011. Charge was framed on 13.02.2012. Charges were read over and explained to the appellants, which they denied and claimed to be

tried.

5. Prosecution, in order to bring home the charges, has examined as many as 7

witnesses â?" P.W.1 Dr. Samrina Kamal, P.W.2 Ranjeet Lakra,

P.W.3 Dayanand Rai, P.W.4 Gopal Ahir, P.W.5 Birsa Ahir, P.W.6 Sita Devi (informant) and P.W. 7 Satyendra Kumar Singh (Investigating Officer).

In addition to the above prosecution witnesses, prosecution also exhibited the following documents:Â

(i) Exhibit 1 â?" Postmortem Report

(ii) Exhibit 2 â?" Fardbeyan & registration of FIR

(iii) Exhibit 3 â?" Memo of arrest

6. P.W.2 Ranjeet Lakra and P.W.3 Dayanand Rai were declared hostile.Â

7. P.W.4 is Gopal Ahir. He has stated that her aunt was accompanying her husband, i.e., the deceased, when his uncle (deceased) was murdered.

He stated that Sohrai Munda, Bhadura Munda, Domba Munda, Budan Munda and Hridan Munda, all committed the said murder by using fire arm. He

stated that three shots were fired, resulting in his death. He identified all the accused persons in Court. He stated that he was also a signatory to the

fardbeyan. In cross-examination, he admits that at the time of occurrence, he was in the market and he had not seen the occurrence. He stated that

this occurrence had taken place because of land dispute, which was pending for 14 years.

8. P.W.5 is Birsa Ahir, who is the brother of the deceased. He stated that when he was returning from the market, he got information that Bandhu

Ahir has been murdered. He got information that Sohrai Munda, Bhadura Munda, Mukund Munda, Budan Munda, Hridan Munda and Domba Munda,

all have committed murder by using fire-arm. He stated that the occurrence had taken place because of land dispute. He admits that he had put his

LTI on the fardbeyan. He also stated that he had not seen the occurrence. He stated that the wife of the deceased had informed her about the

incident.Â 9. P.W.1 is Dr. Samrina Kamal. She is the doctor, who had conducted the postmortem upon the deceased. She found the following

injuries: Lacerated wound 2 c.m. x 1 c.m. soft tissue right occipital region of head fire arm injury

I. Wound of entrance Â½ c.m. in diameter on the right cheek lower part. 2 c.m. above right mandibular angle projectile passes through soft tissue and

makes an exit wound 1 Â½ x Â½ c.m. of front of right upper lip medial side.

II. Wound of entrance $\hat{A} \frac{1}{2}$ c.m. in diameter on right temporal region of head projectile passes soft tissue grading right temporal bone.

III. Wound of entrance $\hat{A} \frac{1}{2}$ c.m. in diameter on right occipital region of head 8 c.m. right to mastoid process. Projectile passes through right occipital bone Dura matter and a bullet is found in left occipital lobe of brain.

IV. Wound of entrance $\hat{A} \frac{1}{2}$ c.m. diameter in right thumb projectile passes through soft tissue and make an exit wound $\hat{A} \frac{1}{2}$ com front of right palm.

Opinion: The above noted injury are antemortem lacerated wound caused by hard and blunt substance and rest by firearm. Death is due to above

noted firearm injury. Time since death is 6 to 24 hours. Lacerated wound may be caused by fall on hard surface.

Postmortem report was marked as Exhibit 1.

10. P.W.7 is the Investigating Officer. He stated that he was Officer-inCharge of Namkom Police Station. On 26.11.2010, upon receiving information

that a person has been murdered, he rushed to the place of occurrence and recorded the fardbeyan of the informant at the place of occurrence. He

exhibited the fardbeyan, which was marked as Exhibit 2. He stated that the formal FIR was drawn up by Munshi Deepak Tiwari. He stated that he

prepared the inquest report and thereafter sent the dead body for postmortem. Thereafter he arrested Sohrai Munda. Arrest memo is

Exhibit 3. He stated that blood was found in the entire place of occurrence. He stated that he submitted chargesheet, after investigation, against the

named accused persons. He stated that during investigation he came to know that the deceased was an aggressive type of person and he was

cultivating the fields since last one year and before that it was the accused, who were cultivating the said fields. He stated that he had not gone

through the documents. He describes the place of occurrence and stated that he had recorded the statement under Section 161 of the Code of

Criminal Procedure at that point. Nothing more was stated by him.

11. The main witness in this case is P.W.6, the informant, who was accompanying the deceased. She is the wife of the deceased. She stated that she

was ill and her husband was taking her for treatment. When they reached the place of occurrence, Sohrai Munda, Bhadura Munda, Domba Munda,

Mukund Munda, Budan Munda, surrounded them. All of them by using pistol shot at the deceased. She heard three shots of gun fire. She stated that

after the assault, her husband died. She stated that her brother-in-law and nephew were returning from the market and she narrated the story before

them. Police came and got her statement recorded. She stated that because of the land dispute, her husband has been killed by the aforesaid persons.

She admits that P.W.4 and P.W.5 were not at the place of occurrence. She stated that other commuters did not see them. She stated that a small

pistol was used by them, which was used by Sohrai and no one else were possessing any pistol. She stated that she was not in her senses as a result

of which, she had not stated the name of Sohrai earlier. She admits that once or twice, her husband had also been sent to Jail. She stated that land

dispute was going on for last 7 (seven) years. She stated that they started to flee on seeing the accused persons, but, they were caught and dragged

and thereafter the husband was killed. She stated that there were three shots fired upon her husband.

12. After closure of the prosecution evidence, accused-appellants were examined under Section 313 of the Code of Criminal Procedure.

13. The defence, after closure of the prosecution evidence, has also examined one defence witness, D.W.1 Manu Kujur, who admitted that there was

a land dispute between the parties and Sohrai Munda was the owner of the land. He stated that Sohrai Munda and others were cultivating the fields

earlier and they were possessing the said land. She stated that the deceased had gone to Jail because of some cases of dacoity. He stated that he

does not know who has killed the deceased and he has not seen the occurrence. He stated that there was some dispute between the deceased and his

brother also. He denied that the appellants have committed murder of the deceased.

14. We have heard learned counsel for the parties and have gone through the records of the case.

15. Learned counsel appearing on behalf of the appellants submit that the entire allegation is false. They submit that there are major discrepancies and

contradictions in the deposition of prosecution witnesses. They submit that P.W.6 claims to be the eye witness, but, if her fardbeyan is scrutinized

properly, it can safely be concluded that she is not the eye witness to the occurrence, rather, her statement creates doubt whether these appellants

have committed murder or not. They submit that admittedly there is land dispute and because of such land dispute, these appellants have falsely been

implicated. They admit that there is no procedural irregularity or illegality in the trial.

16. Learned A.P.P. appearing for the State submits that P.W.6 has identified the accused persons and she being the eye witness, her deposition

cannot be brushed aside. He further submits that medical evidence corroborates the evidence of P.W.6 and that being so, there remains no doubt than

to conclude that these appellants have committed the murder of the deceased.Â

17. After hearing the rival submissions made by the respective counsels for the appellants as well as the State and on going through the records, we

find that the entire case hinges upon the evidence of P.W.6, who claims to be the eye witness. Admittedly, no other witness claims to be the eye

witness. Other witnesses have stated that they have got the knowledge of the occurrence from P.W.6. On scrutiny of the evidence of P.W.6, who is

also author of the FIR, we find that in the fardbeyan, she has given description as to how her husband was murdered. She stated that while she was

going with her husband for her treatment, some persons came and caught hold and dragged her husband whereafter fired three shots committing his

murder. In the FIR, she has given description of the occurrence by saying that the person, who was armed with the pistol was of short height, round

face and aged about 30 years and was wearing a jacket and by appearance was like an Adivasi. She stated that there were three associates, who

were aged about 25-30 years and were wearing jacket and full pant. She stated that two persons were carrying pistol. This fact clearly suggests that

she has not taken the name of these appellants to be the assailants. Further, after reading the fardbeyan, we find that she has stated the name of these

appellants stating as there was some land dispute, these appellants got her husband murdered by entering into a conspiracy with the help of unknown

persons. This also clearly suggests that she has not taken the name of these appellants as the assailants. Surprisingly, while deposing before the Court

as P.W.6, she states that she has seen these appellants committing murder of the deceased. She stated that Sohrai Munda shot with pistol and no one

else was armed with fire arm. Her statement as P.W.6, suggests that she knew these appellants from before. If that be so, then, why she has

suppressed the name of the appellants as the assailants in the FIR is not known. It is natural that persons, who are known to the informant, their

names naturally should find place in the FIR as the assailants, if they are so, but, it is not the case here. Thus, we find that she has developed a story while deposing as witness and implicated these appellants to be the assailants, which, she did not do in the FIR. This creates a doubt as to whether this witness at all had seen the occurrence or at all these appellants were present at the place of occurrence. This doubt further deepens when she mentions in the FIR that by conspiracy these appellants with the help of unknown persons have committed the murder. In the entire FIR, there is not a single whisper that these appellants have committed murder. Thus, P.W.6, in our view, cannot be said to be a reliable witness and solely on her statement, the appellants could not have been convicted. If we discard the evidence of P.W.6, nothing remains in this case as no other person has taken the name of these appellants as the assailants as the other witnesses are either hearsay or have turned hostile. Thus, we find that the conviction of the appellants, on the basis of evidence of P.W.6, who is wholly unreliable, cannot be sustained.

18. In the result, we come to the conclusion that conviction of these appellants and sentence awarded by the Trial Court are absolutely bad. We set

aside the Judgment of Conviction dated 26.08.2016 and Order of Sentence dated 29.08.2016 passed by the learned Additional Judicial Commissioner

XIII, Ranchi in Session Trial No.486 of 2011/Session Trial No.517 of 2011/T.R. No.11 of 2015. The appellants, who are in custody, are directed to be

released and set at liberty forthwith, if their custody is not required in any other case.Â

19. These appeals, accordingly, stand allowed.

20. In view of the disposal of the appeals, the interlocutory applications being I.A. No. 1390 of 2018 in Cr. Appeal (DB) No.1138 of 2016, I.A.

No.1310 of 2018 in Cr. Appeal (DB) No.1121 of 2016 and I.A. No.1491 of 2018 in Cr. Appeal No.1130 of 2016 also stand disposed of.

21. Let the Lower Court Records be transmitted to the Court concerned forthwith along with a copy of this judgment.