
(2012) 05 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 590 of 2004

Mumtaz Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 02-05-2012

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34, 450

Citation : (2012) 05 JH CK 0072

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : B.K. Mishra, Cr. appl 590/04 and Mr. Lukesh Kumar, Cr. appl 322/04, for the Appellant; Nikki Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia and Mr. Justice D.N. Upadhyay

1. Both these appeals arise out of the judgement of conviction dated 23.12.2003 and order of sentence dated 24.12.2003 passed by the learned 4th Additional Judicial Commissioner-cum-Special Judge No.-II, CBI (A.H.D.), Ranchi in Sessions Trial No. 322 of 2001 convicting the appellants under sections 450 and 302/34 IPC and further convicting the appellant-Mumtaz Ansari for the offence u/s 27 of the Arms Act and sentencing them to undergo R.I. for life for the offence u/s 302 IPC and R.I. for eight years for the offence u/s 450 IPC. The appellant-Mumtaz Ansari was also sentenced to under R.I. for five years for the offence u/s 27 of the Arms. However, all the sentences were to run concurrently. The prosecution case in short is that the informant-Samsuddin Ansari (PW-1) lodged fardbeyan on 03.06.1999 at about 7.00 AM to the effect that in the preceding night at about 8.00 PM appellants called the name of his son-Idarish Ansari (deceased) who was sleeping in the house, on which the informant came out in the "Aangan" with the lamp and saw the appellants. In the meantime, the wife of the deceased also came with the lamp. The informant told her that the appellants

are calling Idarish. When the appellants learnt that Idarish is inside the house, they rushed into the house and dragged him and tied his hands with the towel. When the informant asked the appellants as to what they are doing with Idarish, they threatened him. Thereafter, the appellant-Mumtaz Ansari fired at Idarish from point blank range on his ribs, as a result of which Idarish fell in Aangan with bleeding injuries. Thereafter, the appellants fled away. The informant raised hulla, on which the neighbours came. By that time, Idarish died. It was also alleged that a litigation was going on between the informant party and the appellants-Hasimuddin Ansari and Nezam Ansari over certain property for which they had given threatening to the informant party a couple of days back.

2. The prosecution examined eleven witnesses. PW-1-informant and PW-4-daughter of the deceased, have been projected as eyewitnesses.

PWs - 2 & 5 are hearsay witnesses.

PWs - 3 & 9 have been declared hostile.

PWs - 6, 7 and 8 are formal witnesses.

PW-10 is the doctor who conducted postmortem on the dead body of the deceased and he found that the cause of death was the gun short injury sustained by the deceased on his ribs.

PW-11 is the Investigating Officer of the case.

3. Counsel for the appellants assailed the impugned judgment on various grounds, whereas the counsel for the State supported the impugned judgment.

4. For the following reasons, we are inclined to give the benefit of doubt to the appellants.

5. The informant (PW-1) supported his version made by him in the fardbeyan, but he also said that his son Jaffar Ansari (PW-5) went to the police station in the night itself after about one and half hours of the occurrence, but he did not tell him as to who killed the deceased and how he was killed. He further said that Jaffar returned at about 1.00 PM in the night and told him that he has informed the police that somebody has killed his brother-Idarish.

6. PW-4-Kanija Khatoon, daughter of the deceased, inter-alia said that her uncle (PW-5) learnt about the entire occurrence before going to the police station.

7. PW-5-Zaffar Ansari inter-alia said that his father (PW-1) told him everything about the occurrence and he went to the police station at about 11.00 PM in the night along with few person and informed the police about the entire occurrence, but the police did not record his fardbeyan. PW-5 specifically said that his father (PW-1) told him about the entire occurrence and he accordingly informed the police about the entire occurrence. It is not understood as to why PW-1 said that he did not disclose to Zaffar (PW-5) as to who killed Idarish and how he was

killed before PW-5 went to the police station.

8. PW-11-Investigating Officer inter-alia said that a rumour spread to the police station that a murder has been committed and then after entering such information in the station diary, he went to the place of occurrence and recorded the fardbeyan of the informant. If the version of the I.O. is to be believed, then it will appear that the informant party did not disclose about the incident to the police in the night, though PWs - 1, 4 and 5 specifically said that police was informed in the night itself about the occurrence.

9. If PWs - 4 & 5 are to be believed, then it is not known why the earliest version of the informant party given by PW-5 before the police in the night was not recorded by the police.

10. The enmity and litigation between the parties is an admitted position. Thus, the chances of false implication can not be ruled out.

11. After carefully going through the records and hearing the parties at length, in our opinion, the prosecution has not been able to prove it's case against the appellants beyond all reasonable doubts and they deserve benefit of doubt. In the result, both these appeals are allowed. The judgment of conviction and order of sentence passed by the trial court against the appellants, is set aside. Appellants-Nezam Ansari and Hasimuddin Ansari are on bail, they are discharged from their respective bail bonds. Appellant-Mumtaz Ansari is in jail. He is directed to be released forthwith, if not wanted in any other case.