
(2012) 03 JH CK 0056

In the Jharkhand High Court

Case No : Criminal Appeal D.B. No. 245 of 2010

Munna Rai @ Satrughan Rai

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2012) 3 JCR 160 : (2012) 2 JLJR 470

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

Bench : Division Bench

Advocate : B.P. Tetarbe in Cr. Appeal DB No. 245/2010, Mr. Chandrajeet Mukherjee in Cr. Appeal OB No. 178/2010 and Mr. S.N. Prasad in Cr. Appeal DB No. 196/2010, for the Appellant; Vijay Shankar Prasad, Advocate for the Informant for the State : APP, for the Respondent

Judgement

1. These appeals arise out of the judgment of conviction and order of sentence dated 04.02.2010 and 05.02.2010 respectively, "passed by Additional Judicial Commissioner, F.T.C., Ranchi, in Sessions Trial No. 168 of 2001, convicting the appellants u/s 302/34/120B of the Indian Penal Code and 27 of the Arms Act and sentencing them to undergo R.I. for 3 years and a fine of Rs. 2,000/-each and in default thereof, S.I. for 2 months u/s 27 of the Arms Act, life imprisonment and fine of Rs. 5,000/- each and in default thereof, S.I. for 3 years u/s 302/34/120B of the Indian Penal Code. 60% of the fine was to be paid to P.W-4-father of the deceased. The sentences were to run concurrently. The prosecution case in short is that the informant-Arun Kumar -P.W-5, who happens to be an advocate of Civil Court, Ranchi, lodged a fardbeyan on 12.05.2000 at 7.45 P.M. to the following effect. There was some dispute between his younger brother-Rajesh Kumar (deceased) and one Nirmal Kumar due to taking away money from the pocket of the deceased. Nirmal Kumar told about this to the appellant-Munna Rai @ Satrughan Rai and one Rana Singh (declared juvenile). Thereafter, the informant asked the deceased not to demand rest of the amount i.e. Rs. 600/-. On

12.05.2000, the deceased was roaming with appellant-Dilip Kumar Chourasia @ Bablu and Bhola (absconding accused). Appellant-Sanjeev Kumar @ Guddu told Rajesh to clear the amount of V.C.P. by coming to his home in the evening. Thereafter, Sanjeev Kumar went away. At about 6 P.M., appellant-Dilip Kumar Chourasia @ Bablu and Bhola came to the house of the informant and took away the deceased. After about one hour, Bablu and Bhola came running and informed that one Rana Singh (declared juvenile) and Munna Rai (claimed to be juvenile) have killed Rajesh Kumar by fire arm injury and have fled away. The informant rushed to the place of occurrence along with Bhola and Bablu and found his brother-Rajesh dead with bleeding injuries. There were fire arm injuries on his head and chest. The details of the occurrence was given to him by Bhola and Bablu to the effect that when they reached near the house of appellant-Sanjeev Kumar @ Guddu at about 6.45 P.M. Guddu was not at home. While they were returning, appellant-Munna Rai caught Rajesh Kumar from behind and Rana Singh caused fire arm injury on his head, due to which Rajesh fell on the ground. Thereafter, Munna Rai took out his pistol and fired at the chest of the deceased and then they fled away. This occurrence was witnessed by the neighbouring persons. It was alleged that after hatching conspiracy, appellants have killed-Rajesh Kumar due to the said dispute.

2. Prosecution examined 10 witnesses. P.Ws. 1, 2 and 3 have been declared hostile. P.Ws.-4, 5 and 6 are hearsay witnesses. P.W-7 is the investigating officer. P.W-8 is the doctor, who conducted postmortem. P.W-9-Renu Kumari is said to be an eye witness. P.W-10 is the seizure list witness.

3. It is submitted on behalf of the appellants that there is no dispute that Rajesh Kumar was killed by causing fire arm injuries on his head and chest but the prosecution has projected P.W-9 as the only eye witness but she cannot be relied as an eye witness.

4. On the other hand, counsel for the State assisted by the counsel for the informant supported the impugned judgement.

5. Thus the main question is whether P.W-9-Renu Kumari, the only eye witness projected by the prosecution, is to be believed an eye witness or not. If she is believed, the conviction is to be upheld. On the other hand, if she is disbelieved, then benefit of doubt is to be given to the appellants.

In our opinion, it is not possible to believe on P.W-9 as an eye witness. P.W-6-Sanjay Kumar Sharma, who happens to be the own brother of the deceased, categorically said in paragraph 18 of his evidence that initially information about the occurrence was given by Bhola and Bablu and then by P.W-9 after 2-3 days of the occurrence, when she came to the house of the informant. In paragraph 19, he said that Renu Kumari came to the house of this witness along with others when Rajesh Kumar was cremated on third day. In paragraph 20, this witness dearily said that Renu Kumari told before all the family members that all the accused persons jointly killed the deceased by fire arm injuries. In paragraph 21,

this witness further said that he does not remember whether such information received from Renu Kumari was disclosed before the police or not. Then he said that after they learnt from Renu Kumari, they disclosed about it before the police but he does not remember after how many days. He further specifically said that after fardbeyan was recorded, Renu Kumari disclosed about the occurrence 2-3 days from the date of occurrence. But such statement is not given by P.W-4-Govind Prasad Sharma, P.W-5-Arun Kumar-the informant, who happens to be father and brother respectively of the deceased. The I.O.-P.W-7-Ishwar Choudhary in his evidence inter alia said that on or about 18.07.2000. (i.e. after more than 2 months of the alleged occurrence), during investigation it was learnt confidentially, that one lady namely Renu Kumari is an eye witness to the occurrence. Then he says that he has not disclosed from whom he got such information.

P.W-9-Renu Kumari, inter alia said that she saw that 5-6 boys including Sanjeev Kumar, Dilip Kumar, Bhola Jaiswal, Nirmal Kumar Rana, Abhay Pandey were having altercation and they were abusing and assaulting one boy and they were saying to kill him. In the meantime, Abhay Pandey fired and then Rana Singh also fired on the head of that boy and then he fell down. Munna Rai also fired on the chest of the deceased. Then all the three persons fled away. When people assembled at the place of occurrence, Abhay Pandey threatened the people of dire consequences if anybody disclosed about the occurrence. Thereafter, this witness went to the market from different route. She also said that police did not enquire from her about the occurrence but such enquiry was made after about 1 and 1/2-2 months by the police. She did not say about the occurrence to anybody because she was given threatening. She admitted in paragraph 51 that she went to the house of the informant-P.W-5 and his brother-P.W-6 for seeing the dead body with other women on the next day of the occurrence.

Thus P.W-9 specifically said that she disclosed about the occurrence and named the accused persons before P.W-6, as noticed above. She did not say as to what was the reason due to which she overcame the alleged fear of threat. It is very surprising that if she disclosed about the occurrence specifically naming the accused persons before P.W-6, why the informant party did not take any action to get her examined at the earliest opportunity. The statement of P.W-9 was taken by the police after about two months of her disclosure before P.W-6. The I.O. did not say that he learnt from P.W-6 that P.W-9 disclosed about the occurrence before him, rather he said that from confidential information, he learnt that P.W-9 was an eye witness. The version of P.W-9 about the threat and fear is doubtful as P.W-6 said that P.W-9 told him about the occurrence committed by the accused persons within a couple of days of the alleged occurrence.

6. After carefully going through the records and hearing the parties at length, in our opinion, the appellants deserve benefit of doubt.

7. In the result, the judgment of conviction and order of sentence dated

04.02.2010 and 05.02.2010 respectively, passed by Additional Judicial Commissioner, F.T.C., Ranchi, in Sessions Trial No. 168 of 2001, against the appellants, are set aside. Appellant-Munna Rai @ Satrughan Rai (in Cr. Appeal D.B. No. 245 of 2010) and appellant Dilip Kumar Chourasia @ Dilip Kumar @ Bablu Kumar Chourasiau (in Cr. Appeal (DB) No. 196/2010) who are in custody, are directed to be released forthwith, if not wanted in any other case.

Appellant-Sanjeev Kumar @ Guddu (In Cr. Appeal (DB) No. 178/2010), who is on bail, is discharged from his bail bonds. Since the appellants have been acquitted, no further order need be passed on the plea of juvenility raised on behalf of the appellant-Munna Rai @ Satrughan Rai.