

(2011) 07 JH CK 0091

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 167 of 2000

Pairu Oraon @ Pandu Oraon@ Daud Oraon

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 313

Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 07 JH CK 0091

Hon'ble Judges : Prakash Tatia, Acting C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : K. Mehtha and A. Srivastava, for the Appellant; Mukesh Kumar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Tatia, A.C.J.

1. This Criminal Appeal No. 167 of 2000(DB) has been preferred against the judgment of conviction and order of sentence dated 4th February, 2000 passed by 3rd Additional Judicial Commissioner, Ranchi in Sessions Trial No. 200 of 1995 (Transfer No. 122 of 1997), by which the Appellant Pairu Oraon @ Pandu Oraon @ Daud Oraon was convicted for committing the offence punishable u/s 302 Indian Penal Code as well as u/s 27 of the Arms Act. In another connected appeal i.e. Criminal Appeal(DB) No. 144 of 2001, Lallu Tamba @ Munda, who has been tried with the Appellant- Pairu Oraon @ Pandu Oraon @ Daud Oraon, was also convicted for the same offence and both the Appellants have been sentenced to undergo rigorous imprisonment for life u/s 302 of the Indian Penal Code and have been awarded three years rigorous imprisonment u/s 27 of the Arms Act and both sentences were made to run concurrently.

2. The brief facts of the case are that Durga Munda(PW-9), the informant, gave Fardbayan to Sub Inspector Sudarshan Prasad, Officer-in-charge, Hatia Police

Station on 6.7.1994 at 10.30 a.m. at village Katratoli, PS-Hatia (Ext.4). Durga Munda stated that in the preceding night of 5th July, 1994 at 7.30 p.m. when he was preparing for evening meal inside his house and his daughter-in-law Caundari Mundain was doing household work with him, he heard two gun shots fire which came from the eastern side of the village and hearing those gun shots fire he came outside the house and noticed that his son Paras Nath Munda, who was injured in his abdomen, was coming towards the house, who disclosed that in the eastern side of the village near Devisthan in a Khalihan Pairu Oraon has opened fire on him and Lallu Tamba has opened fire on Bhuwal Oraon and one Mansukh was also with them. After telling so, the informant's son Paras Nath Munda fell down and the informant tried to get him in sense by touching the body of Paras Nath Munda but the body was quite. In this situation, he shouted for help on which co-villagers Vijay Tirky, Ram Munda, Daud Linda came in the house of the informant and they disclosed that at the time of occurrence they were along with Paras Nath Munda and were going to the well situated at the eastern side of the village in order to wash their feet. They told that three persons named above armed with pistol came and had a talk with Paras Nath Munda and then Bhuwal Oraon was coming from the local market and Lallu Tamba on noticing Bhuwal Oraon opened fire from his pistol which hit Bhuwal. Paras Nath Munda tried to save but Pairu Oraon opened fire upon Paras Nath from his pistol, which hit Paras Nath in the abdomen. They also told that Mansukh was also armed with pistol. However, after causing injuries, referred above, all accused persons ran away towards east. In the Fardbeyan, it was disclosed that in the preceding year, in the month of July, Lallu Tamba and Bhuwal Oraon had some fighting with the accused persons and at that time matter was sorted out but because of this enmity, these two persons have been killed by the accused.

On the basis of the said Fardbeyan, Hatia PS Case No. 123 of 1994 dated 6th July, 1994 u/s 302 Indian Penal Code and Section 27 of the Arms Act was registered against the Appellants-accused persons and a formal FIR was drawn, which is Ext. 6.

3. The police after preparing the inquest reports, took up investigation of the case, sent the dead bodies for Post-Mortem examination and after recording the statement of the witnesses, submitted charge sheet and ultimately the case was committed to the court of Sessions by the Judicial Magistrate, 1st class, Ranchi. The Charges were framed, read over and explained to the accused persons and the Appellants were charged u/s 302 IPc and the Appellants and 3rd accused Mansukh Oraon pleaded not guilty and sought for trial.

4. The prosecution produced eleven witnesses, namely, PW-1, Fanindra Munda, PW-2 Nago Munda, PW-3, Mahabir Munda, PW-4, Caundri Mundain, PW-5, Dr. Niranjana Minz, PW-6, Sukro Orain, PW-7, Bijay Munda, PW-8, Ram Munda, PW-9, Durga Munda, PW-10, Rama Oraon and PW-11, Sudarshan Prasad. The prosecution also produced the relevant documentary evidence, including,

Fardbeyan, FIR, Inquest report, seizure lists and post mortem report. The statement of accused were recorded u/s 313 Code of Criminal Procedure. and all the accused denied even occurrence of the incident and alleged that they have been falsely implicated due to the enmity between the parties.

5. The learned trial court, after considering the evidence in detail of all the witnesses, including the eye witness, the witness before whom the deceased Paras Nath Munda disclosed the names of the assailants, the post mortem report and the recovery, held that both the Appellants were guilty for causing death of two persons, one each, and that Lallu Tamba murdered Bhuwal Oraon and Pairu Oraon murdered Paras Nath Munda and, therefore, convicted the above two accused, as referred above, u/s 302 Indian Penal Code and u/s 27 of the Arms Act, as referred above. However, the third accused, Mansukh Munda was acquitted.

6. Learned Counsel for the Appellants vehemently submitted that there are several discrepancies in the statement, even of the informant, who is father of one of the deceased. He, in his Fardbeyan, stated that immediately after reaching to the house in seriously injured condition Parasnath Munda fell down and died, then the evidence of the other witnesses stating that in their presence names of the accused were disclosed by Paras Nath Munda stands falsified and Appellants have been implicated in the crime because of the old enmity and fact of enmity is already admitted in the Fardbeyan itself. It is also submitted that there are contradiction in the statement of the informant, if examined with the statement given by his daughter-in-law. It is also submitted that reaching of the other witnesses on the spot cannot be believed as the place of incident was away from the house and witnesses could not have reached on hearing the shouting made by the informant. Learned Counsel for the Appellant submitted that no proper investigation was conducted, which is clear from the statement of PW-11, Sudarshan Prasad, Sub Inspector of Police, who clearly admitted that he did not get the recovered pistol examined from the Forensic expert and he also admitted that he did not record the distance between the place of incidence from the house of informant nor he has disclosed that in which direction house of the informant, Durga Munda was there, without which it cannot be proved that the victim Paras Nath Munda reached to the house of Durga Munda. However, Learned Counsel for the Appellants did not dispute that the victims Paras Nath Munda and Bhuwal Oraon died unnatural death and they suffered injuries by fire arm and those injuries were ante mortem. But, the contention of the Appellants is that they were not even present on the site much less to commit any offence and they have been falsely implicated because of the enmity, by the family members of the victims, who themselves had no knowledge as to who killed the victims and in view of the unnatural death of these two persons, because of enmity the family members of victims, have involved the others.

7. We have considered the submission of the Learned Counsel for the Appellants and learned Public prosecutor, who seriously opposed the appeals and supported

the judgment with the plea that the case is fully proved beyond doubt by direct evidence as well as dying declaration made by the victim before the witnesses and assuming for sake of argument the deceased had some enmity with the Appellants, even then it is unbelievable that the father of one of the deceased will spare the culprit and will involve two persons in the crime. It is also submitted that there were no enmity with the other witnesses and all the witnesses fully proved the commission of the crime by these two Appellants, which is corroborated by the medical evidence and evidence of the Investigating Officer, supported by the recovery may from the Appellants.

8. The complainant/informant is the father of one of the victim and he, in his Fardbeyan, on the next following morning, in a case where his son died because of gun shot injury, named the accused in the Fardbeyan and disclosed the persons who came on the spot immediately after hearing the shouting of the complainant. His daughter-in-law was with him and she gave her statement as PW-4, Caundri Mundain, who corroborated the statement of the complainant, Durga Munda. PW-9. Durga Munda, stated on oath that on 5th July, 1994 his son Paras Nath Munda, who came from the market went to well to wash his hands and legs. Vijay Munda, Daud Linda and Rama Munda were also there and they were standing near Devi Mandap. His son could not reach to the well for washing hands and legs and during this period Bhuwal also came from the market. Then he stated that he heard the sound of fire and hearing those sound of fire, he came out from his house and found that his son was coming running with injury in his abdomen. His son died within 10-15 minutes. In cross-examination, he admitted that he did not give the name of Manuskh Oraon. However, Mansukh Oraon has been acquitted by the trial court and that shows the correctness in the statement made by the informant, Durga Munda. PW-9, in cross-examination, has further stated that he gave the Fardbeyan and put his signature on the paper and his statement(Fardbeyan) was recorded in the village and he also admitted that he himself did not saw the incident. Nothing came in the cross-examination, so as to cast any doubt upon the credibility of the statement of Durga Munda and he specifically denied the suggestion that his son did not said anything before he died. The informant's statement was corroborated by PW-4, Caundari Mundain, who is daughter-in-law of the informant, Durga Munda, and she stated that in the evening when she was processing the rice(BHAT-PASA) and at that time Paras Nath Munda came injured and told that he has been injured by accused Pandu and he was injured in his abdomen. However, she also stated that Paras Nath Munda stated that Mansukh was also with the assailants. PW-4 Caundari Mundain is the wife of the deceased Paras Nath Munda and she stated that Paras Nath died after half an hour.

9. Learned Counsel for the Appellants tried to show that PW-4 Caundari Mundain did not support PW-9, Durga Munda. She did not state that they were preparing the food for evening but she stated that they were preparing the rice " BHAT-PASA" and she also stated that the victim Paras Nath died after half and our, which is contrary to the Fardbeyan as therein, it is stated that Paras Nath died

immediately in no time and Ors. also corroborated the statement of the informant, Durga Munda, PW-9. But, we found no contradiction as it is not the prosecution case that all were cooking meal and question was whether the informant and PW-4, Caundari Mundain, were together in house or not and they came from outside and saw the victim and whether victim told them about the assailants. In cross examination, Caundari Mundain stated that she does not know how many persons of the village came to her house and in cross-examination she also stated that from their house, Devi Mandap, the place of occurrence, is only 300 yards and injured came alone.

10. Learned Counsel for the Appellants drew our attention to the facts stated by PW-4, Caundari Mundain, in cross examination that immediately after reaching the house, the victim Paras Nath fell down unconscious and she repeated that he went unconscious instantly and thereafter he died.

We do not find that the statement given by this witness in cross examination is in contradiction to her statement given in examination-in-chief, looking to the place from where the witness belonging, which is a very small village and the lady was barely of the age of 25 years and was a member of Scheduled Tribe, in her cross-examination, she clearly stated that her husband told that he was injured by the Appellant and that statement was corroborated by PW-9, father of the victim and father-in-law of PW-4. There is no other contradiction in the statement of PW-4.

11. PW-7 is the eye witness, whose name has been mentioned in the Fardbeyan and he stated that he was there at the time of assault with the victim and saw the killing of Paras Nath and Bhuwal and named both the accused. In cross-examination, he, though, stated that there is two well in his village and one well from his village situates about half kilometer. But, that is not very much material, nor it was material that at that time there were some dark, due to the evening, and no detail cross-examination has been done by the defence from this witness.

PW-8 also stated that he along with the victims and Bijay Munda were present near the well and there the accused persons came and they talked with Paras Nath and during this period there was some quarrel and the Appellant, Pandu, killed Paras Nath by firing upon him and Paras Nath ran towards his house and ultimately he died. He admitted that Paras Nath was his brother in relation and they were living near Devasthan where the incident occurred and in cross-examination, nothing was found, so as to cast any doubt about the credibility of this witness and the Learned Counsel for the Appellant tried to assail the credibility of this witness on the basis of the fact stated that this witness stated that they came from the market at 2.30 P.M. whereas the complainant has not said so. But, it is clear from the statement of this witness, in context of that statement, that all three reached near well at 7.30 P.M. Therefore, it is also not a contradiction, so as to cast any doubt about the credibility of this witness.

PW-1, Fanindra Munda, is neighbor of the victim, Paras Nath and he stated that he also after heiring the sound of fire of gun shot came out from his house and

found Bhuwal lying on the road and his wife was trying to lift him to take him at his house. Bhuwal had injury on his chest of bullet. He also stated that Paras Nath in his presence stated how the incident occurred and named these two accused. He is a witness to the "Panchnama" and also identified both the Appellants in dock. He also gave the distance between the house of Durga Munda and Devi Mandap, which according to this witness, is 100 yards. He was cross examined at length but nothing came out from his mouth, casting any doubt about the credibility of this witness.

Same is the position with another witness, PW-2(Nago Munda), who also heard the gun shot sound and saw Paras Nath coming injured and this witness also reached near Paras Nath, who told that how incident occurred and two Appellants have fired upon both the victim.

PW-3 is Mahabir Munda, who corroborated the statement of PW-1 and PW-2.

12. In view of the above statements of the witnesses, fully supported by the statement of Dr. Niranjana Minz (PW-5), the prosecution fully established the facts that in the incident, these two Appellants killed the victims by use of fire arms with intention to kill and they died because of the injury caused by these two Appellants, which have been proved by the statement of PW-5 as well as from the post mortem report.

13. In view of the above reasons, the learned trial court was fully justified in convicting these Appellants and sentencing them correctly. We do not find any merit in these appeals, which are, accordingly, dismissed.

Jaya Roy, J.

14. I Agree