
(2004) 04 JH CK 0097

In the Jharkhand High Court

Case No : Criminal Appeal No. 239 of 2000 (R)

Prem Kumar @ Prem Kishore Prasad

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 13-04-2004

Acts Referred:

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

Citation : (2004) 3 JCR 335

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : V.P. Singh, A.K. Sinha, Sat Prakash and Laxmi Murmu, for the Appellant; K.K. Singh, APP, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—Petitioner has challenged the order of conviction and sentence dated 16.5.2000 and sentence dated 17.5.2000 passed by Shri Jai Nandan Sharma, learned 1st Additional Sessions Judge, Chatra in Sessions Trial No. 263 of 1998 convicting him u/s 302, IPC and Section 27 of the Arms Act and sentencing him to undergo imprisonment for life and RI for two years respectively.

2. Informant Bhola Prasad Jaiswal, a friend of deceased Rakesh @ Anjani Prasad, on 1.1.1998 at 8.30 p.m. proceeded for their respective homes. On their way, Rakesh @ Anjani Prasad informed that his younger daughter and son liked to take sweets, hence on his request they went to a nearby chowk. On their way, he saw appellant Prem along with one unknown boy at Kishori Chowk. Thereafter, as it was New-Year Day hence Rakesh requested to take wine. They went to the wine shop of Chando Ram (PW 9). They purchased two pouches countrymade wine and took it. Thereafter they proceeded ahead and reached Pirpati mohalla, Anda Gali near the house of Riyasat Hussain and Jabbar Khan at 9.30 p.m. All of a sudden, two boys went there. One of them fired on the parietal region of

Rakesh by touching. On being Injured, Rakesh fell down. Accidentally, the torch which was in the hand of the informant got flashed. At the flash of torch-light, he identified this appellant Prem Kumar. Prem Kumar also pointed pistol at the informant and threatened to shoot him if he does not flee away. He could not identify the other who had covered himself with chadar. Informant out of fear fled and went to the house of Madan Babu. After sometimes, when he became normal, informed that Rakesh was shot at Anda Gali by Prem. Thereafter informant along with Ajay Kumar (PW 7), Madan Mohan Lal, Dhiraj Kumar Jaiswal (PW 2), Ranjit Kumar Verma, Bablu Kumar (PW 14) and Santosh Kumar went to Anda Gali and found Rakesh dead. They were nervous. In the meantime, the nearby persons asked them is to who were they suspecting the informant and his associates to have caused murder of a person. When the informant heard, he and his associate out of nervousness fled away. While fleeing away, his hawai chappal remained at the spot. After sometimes, informant was going to the police station to inform about the alleged occurrence, then he met police force at Kishori Chowk where his statement was recorded on which he signed (Ext. 6) in presence of Md. Mustaque Alam and Deepak Kumar Verma who also signed on it, Ext. 6/2 and 6/1 respectively.

3. After investigation the IO submitted charge-sheet against the sole appellant-accused under Sections 302, IPC and 27 of the Arms Act. The appellant denied the charges framed against him. Although he has not examined any defence witness, but the trend of the cross-examination is that he is innocent and has falsely been implicated by the informant only to save his own skin in collusion with the IO Bindeshwari Prasad Mishra.

4. The prosecution in order to substantiate charges has examined 14 witnesses, out of them PW 1 Moti Bhagat is hostile witness, PW 2 Dhiraj Kumar Jaiswal and PW 3 Nissar Ahmad are tendered witnesses. PW 4 Chitra Pradhan is the wife of the deceased Rakesh Prasad @ Anjani Kumar and PW 5 Preeti Kumari is the daughter of the deceased. PW 6 Babuni Sao is another tendered witness. PW 7 Ajay Kumar Gupta is the hearsay witness who was informed by the informant PW 12 Bhola Prasad Jaiswal that Rakesh was shot dead but did not name the assailant. He is also a hostile witness. PW 8 Dr. Narendra Kumar conducted autopsy on the dead body of Rakesh Prasad @ Anjani Kumar. PW 9 Chando Ram, wine shopkeeper, has deposed that informant purchased two pouches of wine each containing 200 ml at Rs. 16/-. PW 10 Mukhtar Alam is the independent natural witness whose house is near the P/O who came out of his house on hearing the sound of firing and saw the dead body. PW 11 Uma Shankar Prasad Singh is a formal witness who has signed on the inquest report (Ext. 4) and seizure-list (Ext. 5). PW 12 Bhola Prasad Jaiswal is the informant and PW 13 Bindeshwari Prasad Mishra is the IO of this case, whereas PW 14 Bablu Kumar was also declared hostile by the prosecution.

5. The learned 1st Additional Sessions Judge, Chattri relying the evidence of PW 4 Chitra Pradhan, wife of the deceased, and PW 5 Preeti Kumari, daughter of the

deceased, who corroborated the evidence of the informant PW 12 Bhola Prasad Jaiswal and the injury as deposed by PW 12 informant was found by PW 8, Dr. Narendra Kumar who conducted autopsy on the dead body, considering their evidence reliable, convicted the appellant and sentenced him u/s 302, IPC and 27 Arms Act.

6. Assailing the order of conviction and sentence passed by learned 1st Additional Sessions Judge, Chatra, the learned counsel for the appellant has given the sequence of the events by submitting that the family of and date when it was received in the police station rather it discloses that information was received on 2.1.1998 at 4.00 a.m. The police station is hardly at a distance of 1 km from Anda Gali but the FIR was received in the Court of CJM on 3.1.1998 i.e. after delay of one day. The delay was only because at the first instance the police was not disclosed the name of the assailant by the informant when the fard beyan was recorded at night but subsequently it was changed to have been recorded on 2.1.1998 at 1.15 a.m. after concocting the prosecution case naming this appellant as he had once been scolded by the deceased only because he had dropped a letter in his compound alleged to be the love letter addressed to his daughter PW 5 Preeti Kumari. At that moment this appellant had also threatened the deceased to see him. On these grounds, it was submitted that none of the independent witnesses have come up to support the prosecution case. The learned Court below has erroneously relied the evidence of PW 4 Chitra Pradhan and PW 5 Preeti Kumari who are not the eye-witnesses of the alleged murder of Rakesh Pradhan. They have also not seen as to who dropped the letter in their compound. PW 5 Preeti Kumari had not gone in between the lines of the letter. Out of fear, she burnt it without disclosing to her parents. At night only informant was with the deceased. The evidence of PW 12, when considered, is full of suspicion which points finger towards him and none else. After the alleged occurrence he did not inform the family of Rakesh Prasad, although he claims that they were in visiting terms and were friends. Surprisingly he remained silent for five days. Even he remained mum in informing the family members of Rakesh Prasad @ Anjani Kumar. The informant even did not inform the police and his family members but in a cold shivering night, he remained outside his house concealing himself under a cemented bench for about three hours. He along with others had gone to Anda Gali. When the nearby persons questioned as to who were they and alleged the informant and his associated to be the murderers, then out of fear, informant and others fled away leaving his hawai chappal at the spot. The learned counsel for the appellant has submitted that the conduct of the informant and the IO is doubtful. The genesis of the alleged occurrence is regarding writing of a letter by this appellant which was found dropped in the compound of the deceased. The letter was dropped in the month of May, 1997, whereas after 7 months on 1.1.1998, the alleged occurrence took place. It was submitted that the evidence of PW 4 and PW 5 do not inspire confidence regarding letter thrown or written by this appellant." The IO has completely suppressed the real truth and without obtaining approval of the supervising

higher officials, submitted charge-sheet. The informant has cunningly deposed that accidentally torch got flashed on the face of this appellant that facilitated him to identify this appellant. The informant has not stated in the fard beyan that he had a torch nor he had produced the torch the means of identification which had caused prejudice to the appellant due to non-production of torch, the material exhibit, and has relied a case reported in 1997 BBCJ 787 and 1982 Cr LJ 134 (SC). The learned counsel for the appellant has also assailed the order of conviction and sentence on the ground that the informant has very specifically stated that only once pistol was fired by touching the temporal region left side of the deceased, but PW 8 Dr. Narendra Kumar found one lacerated wound 5-1/2" x 1/2" x scalp deep over left side of head just back of left pina caused by hard blunt substance and; the second injury was wound of entry about 1-1/4" in diameter or most oval in shape just above and back of left pina. He did not find blackening on the surrounding area which was caused by firearm. The death was due to injury on scalp which damaged issues and comma within 18 hours from the time of post mortem examination on 2.1.1998 at 12.45 p.m. Ext. 1 is the post mortem report in the pen and signature of PW 8. It was submitted that as per evidence of PW 12 Bhola Prasad Jaiswal, he and the deceased Rakesh took wine and then proceeded ahead and reached Kishori Chowk and thereafter went to Anda Gali near the P/O. The doctor who conducted autopsy did not find any liquor consumed by the deceased which causes suspicion in the evidence of the informant itself as the ocular evidence of PW 12 is not corroborated by the medical evidence of PW 8. On these grounds, it was urged that the appellant deserves clean acquittal.

7. The learned APP in course of his argument has submitted that the alleged occurrence took place due to love affairs of this appellant with PW 5 Preeti Kumari, daughter of the deceased. Appellant had threatened the deceased when he had objected in their love affairs and on the alleged date of occurrence this appellant shot at Rakesh Prasad @ Anjani at a point blank distance near the house of Riyasat and Jabbar at Anda Gali resulting his death.

8. The evidence of PW 4, PW 5, PW 12 and PW 13 were considered and found convincing by the learned 1st Additional Sessions Judge, Chatra which were also found supported by medical evidence of PW 8 (doctor) and accordingly he convicted this appellant u/s 302, IPC and 27 Arms Act.

9. In this present case, there is no eye-witness except PW 12 Bhola Prasad Jaiswal who is informant of this case. The defence has suspected informant himself to be the real assailant. First, he discussed the genesis of the alleged occurrence as mentioned by the informant in his fardbeyan. He has deposed that Rakesh Prasad his friend, had informed the appellant was in love with Preeti Kumari and a letter was found dropped in his compound for which deceased had scolded this appellant. In return, this appellant had also threatened the deceased PW 4 Chitra Pradhan is the wife of the deceased and PW 5 Preeti Kumari is the daughter of the deceased. PW 4 has deposed that she was informed by Santosh

regarding murder of her husband. Santosh has not been examined by the prosecution. The wife of Pramod informed her that her husband was murdered but neither Pramod nor his wife has been examined in this case. In the month of May, 1997, while her daughter PW 5 Preeti Kumari was in the courtyard then one letter was thrown inside the garden. PW 4 did not see as to who threw it, nor she read it. Her daughter PW 5 Preeti Kumari got it burnt without informing her father. PW 5 has also deposed that in the month of May, 1997, while she was in her house, this appellant threw a letter which she burnt. This letter was thrown by this appellant but after two months of that incident, she informed her father who scolded this appellant. When considered the evidence of both these witnesses who are the-best witnesses to prove the genesis of the alleged occurrence, does not inspire confidence regarding commission of murder of Rakesh Prasad. Even if the said letter was dropped in the month of May, 1997, but what was the cause to give effect of killing Rakesh Prakash after seven months on 1.1.1998. Simply dropping a letter without any sexual assault or misbehaviour does not convince my mind that such a heinous crime of murder will be done regarding a letter thrown seven months prior to the alleged occurrence when the letter was not read over as what was the contents in it. The only evidence, as I think, is the evidence of the informant himself who is PW 12 as the other witnesses are seizure list witnesses, inquest witnesses, tendered witnesses or hostile witnesses. PW 10 Mukhtar Alam is an independent and natural witness. Near his house, Rakesh Prasad was shot dead. PW 10 just came out of his house on hearing sound of firing. He saw Rakesh Prasad lying dead. He also saw one hawai chappal, one gamchha and one another chappal which were seized by the police in his presence on which he and Deepak Kr. Verma signed (Ext. 2/1 and 3/1). The other mohalla people also came out of their house and saw three persons fleeing away from the P/O who were chased by the mohalla people of Anda Gali, but could not be apprehended. This witness informed Deepak Verma and Panchu Da. They came to his house and on phone, Deepak Verma informed the police regarding murder committed in their mohalla. Police was informed on phone at 9.30 p.m. and police reached there after 20.25 minutes. The police inspected the dead body, but did not prepare inquest report. He also found chappal, gamchha, but no seizure-list was prepared at that time. After half an hour or quarter to one hour, the police took the dead body on jeep. This witness PW 10 along with Deepak Verma went to the police station on police jeep and signed on the inquest report. Exts. 2 and 3 series at 11.00 p.m. night on empty format of inquest report. Thereafter Deepak Verma and this witness PW 10 Mukhtar Alam were taken to their respective homes on police jeep. Inquest report, Ext. 4 shows that it was prepared on 2.1.1998 at 6.00 a.m. at the P/O mohalla near Nagar Pirpati in front of the house of Mukhtar Alam which was sent on 1.1.1998 at 12.45 hour. PW 13 Bindeshwari Prasad Mishra IO of this case on telephonic message, entered S.D. Entry and proceeded to the P/O. He prepared the inquest report in carbon process which was written by S.I.N.K. Mishra on which he signed (Ext. 9). N.K. Mishra also seized bloodstained soil, shoe, chappal, old gamchha and prepared seizure-list (Ext. 5). The dead body

was found in front of the house of Riyasat Hussain father of Mokhtar Alam and Butu Mian. He received telephone message and entered S.D. Entry and proceeded for the P/O and reached there and prepared inquest report on 1.1.1998 at 23 hours, but due to mistake, 2.1.1998 has been mentioned after overwriting the inquest report also on the seizure-list. He recorded the fardbeyan of the informant at 1.15 a.m. night on 2.1.1998. He has proved the station diary entry. Exts. A-series, regarding requisition of dog squad but there is no such report as to what was the result of that investigation after dog squad was requisitioned. PW 12 claims that after taking liquor, they reached Anda Gali where in front of the house of Riyasat Mian and Butu Mian his friend Rakesh Pradhan @ Anjali Kumar was shot at touching his temporal region resulting his death. He claims to have identified this appellant when torch was accidentally flashed at his face, but the torch was not produced before the IO. (PW 13) nor the IO (PW 13) has seized that torch.

The hawai chappal left at the P/O was claimed by this informant explaining that while fleeing away from the P/O out of fear as the mohalla people alleged him and his friends Ajay Kumar, Dhiraj Kumar, Santosh Kumar, Ranjit Kumar and Bablu to be the assailants, they fled away from the P/O. The evidence of the informant (PW 12) is quite unnatural that first he informed Ajay Kumar, Dhiraj Kumar, Santosh Kumar, Ranjit Kumar and Bablu Kumar who were sitting by the side of fire bone in the house of Madan Babu. These witnesses have not supported the case of the informant as PW 14 Bablu Kumar is a hostile witness. Dhiraj Kumar PW 2 is a tendered witness, Ajay Kumar (PW 7) is also a hostile witness who simply corroborates that he was informed by informant PW 12 that Rakesh Pradhan was shot dead but at that time, informant PW 12 Bhola Prasad Jaiswal had not named this appellant as assailant. Madan Babu in his house where they were sitting near the bone fire, has not been examined along with Santosh Kumar and Ranjit Kumar. The conduct of the informant itself is suspicious as when the mohalla people alleged that he and his associates were the assailants and were chased then out of fear, informant fled away and went to his house. Being a close friend of the deceased, even he did not go to inform the police, rather he went to his house. Even then he did not enter into his house in the cold night of 1st January, 1998. He remained outside his house concealing himself for about 3 hours under a cemented bench. This shows that instead of raising hue and cry as the P/O place is surrounded by many neighbours having houses and buildings. Police station is hardly at a distance of 1 k.m. from the P/O and the house of the deceased is also very near even then he remained mum and concealed under a cemented bench. He has taken the plea that out of perplex, he did not inform, but when he became normal, then was going to inform the police, but on his way at Kishori Chowk, he saw the police jeep where his statement was recorded in presence of Deepak Kr. Verma and Mustauq Alam who had signed on it. Surprisingly, Deepak Kr. Verma and Mustaque Alam were not among those, who were sitting in the house of Madan Babu by the side of burning bone fire to warm up themselves. Even then they were signatories on

the fardbeyan of the informant recorded by PW 13, but have not been examined as a witness in this case. The story of taking liquor was also falsified by PW 8 Dr. Narendra Kumar who conducted autopsy on the dead body of Rakesh Prasad. The manner of alleged assault has also not been corroborated by the medical evidence of Dr. Narendra Kumar as he found besides firearm injury, one lacerated injury, that is also 5-1/2" x 1/2" x scalp deep over left side of head just back of left pina caused by hard and blunt substance. This injury remained unexplained. Informant even on the next day did not inform PW 4 Chitra Pradhan, wife of the deceased rather after 5 days, he claims to have informed her which is quite absurd. Informant is very specific in his evidence paragraph 26 that till his fardbeyan was recorded, none was there. Then how Deepak Verma and Md. Mustaque Alam signed on it also creates doubt in the prosecution story. The doubt is further deepened when evidence of PW 10 Mukhtar Alam, an independent natural witness of the locality is considered. He has deposed that at night police reached the P/O place, saw the dead body and also hawai chappal, gamchha and one another chappal at the P/O. But at that place, no inquest report or seizure-list was prepared on 1.1.1998. This witness Mokhtar Alam (PW 10) and Deepak Verma (not examined) were taken to the police station on jeep where their signatures were obtained on blank format of inquest report and seizure-list on which they signed Exts. 2/1 and 3/1 respectively. When they came out along with mohalla people, they saw three persons fleeing away from the P/O who could not be identified and could not be traced out. His friend Deepak Verma at 9.30 p.m. on 1.1.1998 informed the police on phone and after 20-25 minutes police reached at the P/O but the inquest report, the seizure-list and other documents were prepared including the fardbeyan (Ext. 4) on 2.1.1998 i.e. after much delay giving enough opportunity to concoct the prosecution case. The FIR was also received in the office of the CJM after one day.

10. When the evidence of PW 12 is considered I find that his evidence is full of contradictions and suspicions. His evidence could not be corroborated by any of the independent witness even by PW 4, PW 5 and PW 10 who are not in inimical term with this appellant. The other independent witnesses are either hostile or tendered witnesses. The investigation done by the IO creates doubt in the proper investigation of the case. Ext. A series which were proved by the IO in course of his evidence when those documents were called for by the Court also gave another story of the alleged occurrence as to when it took place, as to whether at the first instance the assailants were named or not. The delay in recording the fardbeyan, preparing inquest report, seizure list and receiving of the FIR on 3.1.1998 in the office of the CJM has also given enough opportunity to concoct the prosecution case. The learned Court below has not evaluated the evidence of PW 12, PW 13, PW 4 and PW 5 and also the evidence of PW 10 in a proper manner holding this appellant guilty for the charges u/s 302, IPC and 27 Arms Act, which, in view of the facts, circumstances, evidence oral and documentary, cannot be sustained.

11. In the result, I find merit in this criminal appeal which succeeds and is

allowed. The appellant is acquitted after setting aside the order of conviction and sentence passed by the learned Court below. As the appellant is in custody, he is ordered to be released forthwith if not wanted in any other case.