
(2018) 06 JH CK 0020

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 133 of 2004

Rahman Ansari And Ors.

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 304, 304II

Citation : (2018) 06 JH CK 0020

Hon'ble Judges : KAILASH PRASAD DEO, J

Bench : Single Bench

Advocate : S.K. Murari, Mukesh Kumar

Final Decision : Allowed

Judgement

1. The instant Criminal Appeal has been preferred against the judgment of conviction and order of sentence both dated 18.12.2003 passed by learned

Vth Additional Sessions Judge, Fast Track Court No. 2, Godda, in Sessions Case No. 79/2002, whereby the two appellants have been convicted by the

learned Trial Court for offence punishable under Section 304 Part II of the Indian Penal Code and awarded rigorous imprisonment for seven years.

The present Criminal appeal has been preferred on 20.01.2004 and has been admitted on 03.03.2004. The appellants have been released on bail by

suspending their order of sentence on 03.03.2004, since then the matter is pending. Rahman Ansari died during pendency of the appeal and as such,

his appeal stands abated and present appeal is only pending, so far Rustam Ansari is concerned.

2. The prosecution case is based upon the fardbeyan of the chowkidar, Gulabi Hazra recorded by A.S.I., Harendra Singh, of Mahagama Police

Station on 07.05.1994 at 22.00 Hrs., on road near Beltikari. The informant has

alleged that, he has heard that an unknown thief had been caught at village Bhanjpur (Mauza-Maskand). He went there and found the thief was tied by the villagers, in injured condition. On inquiry, the villagers disclosed that the thief was injured, while trying to escape after stealing the cow of Rahman Ansari of the village Bhanjpur. Subsequently, the informant accompanied by Rahman Ansari and Rustam Ansari, were taking the thief to Mahagama Police Station, but the thief died in the way, near Beltikari. The informant further claimed, that on being caught, the thief had been assaulted by unknown villagers with lathi, slaps and paina, due to which the thief had died.

3. On the basis of the fardbeyan of the chowkidar Gulabi Hazra, the police registered Mahagama P.S. Case no. 46 of 1994 dated 08.05.1994 against unknown persons. After investigation police submitted chargesheet vide no. 14/94 dated 31.05.1994 under Sections 304/34 of the Indian Penal Code. The cognizance of the offences have been taken and the case was committed to the court of Sessions on 22.08.1994. The charge has been framed against the appellant, under Section 304 of the Indian Penal Code on 24.12.2001 by the trial court, to which, the appellant pleaded his innocence and thus he was put under trial.

4. Heard learned counsel for the appellant, Mr. S.K. Murari, Advocate and learned counsel for the State, Mr. Mukesh Kumar, learned Additional Public Prosecutor.

5. Learned counsel for the appellant has submitted that it is a case, where the appellant has been convicted on the basis of a solitary evidence of

Bhado Thakur (P.W. 2). Other seven witnesses, who have been examined in this case have not stated any facts, so far the commission of the offence

is concerned. Learned counsel for the appellant has submitted, that it is a case, where the unknown thief was caught by the villagers, while he was

taking away the cattle of one, Rahman Ansari and was assaulted by the villagers. The thief sustained injuries on the leg and back of his body. The said

thief was carried over by the chowkidar on bicycle, but in the way, the thief died.

6. The prosecution has examined altogether eight witnesses but except Bhado Thakur (P.W. 2), none of the witnesses have alleged anything against

any person nor against the appellant. So far the statement of P.W. 2 is concerned, he has categorically given name of four persons namely Rahman

Ansari, Rustam Ansari, Yunus Ansari and Sk. Abbas, as the persons, who have assaulted the unknown thief, causing injuries, but the learned Trial

Court has acquitted Yunus Ansari and Sk. Abbas, on the ground that there was no corroborative evidence against these two persons. Learned counsel

for the appellant has further submitted that, so far the evidence produced by P.W. 2 is concerned, the allegation against the four named persons are

same and similar and P.W. 2 has categorically stated that these four persons namely Rahman Ansari, Yunus Ansari, Sk. Abbas Ansari and Rustam

Ansari have assaulted the thief, but Yunus Ansari and Sk. Abbas have been acquitted by the learned Trial Court and Rahman Ansari has died during

pendency of the appeal.

Â Â Â Â Â Learned Counsel for the appellant has further submitted, that in this case inquest Report has not been exhibited and as such, it cannot be

ascertained that which injury has been caused by which of the accused, on which part of the body of the thief. Learned counsel for the appellant has

further submitted that the Post-Mortem Report, which has been proved and exhibited in this case, as Exhibit 1, is the only documentary evidence

exhibited, and it is the only basis of prosecution case but from perusal of the post-mortem Report, it cannot be ascertained that by which injury, caused

upon the deceased, the deceased has died. Learned counsel for the appellant has further submitted, that the Investigating Officer has not been

examined in this case and further non-mentioning of the injury report in the inquest report (which has not been exhibited), has caused serious prejudice

to the appellant. Learned counsel for the appellant has further submitted, that it is a case, where on the basis of evidence of solitary witness, learned

Trial Court has convicted two persons and has acquitted two other co-accused persons, on the same set of evidence. Learned counsel has further

submitted, that the evidence of P.W. 2 has not been corroborated by any of the witnesses present in the village and as such, relying upon the evidence

of P.W. 2, which has been partly disbelieved by the learned Trial Court, conviction cannot sustain in the eyes of law.

7. Learned counsel for the State, Mr. Mukesh Kumar, Additional Public Prosecutor has submitted that the unknown thief was caught and his

identification could not be established but he has been carried by the mob. LearnedÂ counselÂ for theÂ State has further submitted, that the

evidence of P.W. 2 is sufficient for holding the conviction of the appellant, as P.W. 2 has taken the name of four persons namely Rahman Ansari,

Yunus Ansari, Sk. Abbas, Rustam Ansari. Further present appellant was alleged to have assaulted the unknown thief and as such, the conviction of

the appellant is justified and this court may not interfere at this stage. Learned counsel for the State has further submitted that, it is true that Inquest

Report has not been exhibited in this case and only document, which has been exhibited is the post-mortem report.

8. After hearing Mr. S.K. Murari, learned counsel for the appellant, Mr. Mukesh Kumar, Additional Public Prosecutor for the State and on perusal of

the records, this court is of the opinion that the conviction of the appellant is only on the basis of solitary evidence of P.W. 2, which is itself not worth

accepting, as the evidence of P.W. 2 has not been corroborated by any of the witnesses present in the village. Further the trial court has disbelieved

part of evidence adduced by Bhado Thakur (P.W. 2) by acquitting Yunus Ansari and Sk. Abbas and on same set of evidence convicted the appellant.

Secondly, the non-examination of the Investigating Officer coupled with the fact that the Inquest Report has not been exhibited, conviction of the

appellant cannot sustain in the eyes of law and the benefit of doubt must go in the favour of the appellant.Â

9. Accordingly, this Court is of the opinion that the evidence of P.W. 2 cannot be relied upon, as his evidence is uncorroborated with the evidence of

the other prosecution witnesses. Secondly inquest report has not been produced in the learned Trial court nor exhibited. Thirdly, the post mortem

report does not suggest that which injury is fatal for the injured due to which, the deceased has died. As per the prosecution case the deceased has

sustained injuries on the leg and back and post mortem report suggests that the cause of death was due to haemorrhage and shock, as a result of

internal injuries leading to cardiac failure. As such, this court is of the opinion that the conviction cannot sustain in the eyes of law.

10. As a cumulative effect of the discussions made above, this court is of the opinion, that the appellant is acquitted by giving benefit of doubt. The

impugned judgment of conviction and order of sentence, both dated 18.12.2003, passed by learned Additional Vth Sessions Judge, Fast Track Court

No. 2, Godda, in Sessions Case No. 79/2002 in connection with Mahagama P.S. Case no. 46 of 1994 consequent to G. R. No. 406/94 is set aside and

the appellant is acquitted of the offence committed under section 304 Part-II of the Indian Penal Code.Â

11. The appellant, who is on bail is discharged from liability of his bail bond.Â Â Â Â

12. In the result, the present criminal appeal is allowed.

13. Let the lower court record be sent along with a copy of this judgment to the court concerned, at once for necessary action.

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