
(2006) 07 JH CK 0054

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 177 of 1999 (R)

Ramautar Seth and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 324, 34, 452

Citation : (2006) 4 JCR 383

Hon'ble Judges : R.K. Merathia, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : A.K. Das, No. 1 and B.M. Tripathy, K.S. Nanda, Nos. 2, 3 and 4, H.K. Mahto, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—This appeal is directed against the judgment of conviction and order of sentence dated 26.3.1999 and 19.4.1999 respectively, passed by Shri Birender Singh, 1st Additional Judicial Commissioner, Khunti, in Sessions Trial No. 708 of 1994, convicting the appellants under Sections 302/34 and 120-B of the Indian Penal Code and sentencing them to undergo imprisonment for life.

2. It appears from the previous order that Mr. K.S. Nanda, learned Counsel appearing for the appellants had stated that appellant No. 1, Ramautar Seth took back the papers saying that he will engage different counsels and thus he is not appearing for him. In these circumstances, appellant No. 1 was noticed and on his request to appoint amicus curiae, Mr. A.K. Das, Advocate, was appointed.

3. By order dated 9.8.1999, the informant was added as party respondent in this appeal and pursuant to such notice he has appeared through Mr. H.K. Mahto.

4. The prosecution case, in short, is that on 16.3.1994 at 9 p.m., the informant, Ram Pad Seth (PW 5) gave his fardbeyan before the police alleging therein as follows. At about 3.30 p.m. on the same day, Chhote Lal, his middle brother, aged about 45 years and his youngest brother, Sub-hash, aged about 30 years,

went on motorcycle to the market. The informant also started for the market on his cycle after 2-3 minutes. As soon as the informant reached near Tangidih Tanr at about 3.45 p.m. he saw that at some distance, the appellants stopped the motorcycle and surrounded it. Appellant No. 1, Ramautar Seth dragged his brothers from the motorcycle and fired at them from the pistol. Chhote Lal after having firearm injury started fleeing away. In the meantime, appellant No. 2, Durlabh fired at his younger brother, Subhash, who also started fleeing after receiving injury. The appellants chased his brothers and charged bombs, by which his brothers fell down on different places. Then Rutu Munda, appellant No. 4 (Ritu Puran Munda) and appellant No. 3 Ram Dayal Munda gave repeated dagger and "bhujali blows and killed his injured brothers. Rutu Munda was having a bag on his shoulder and a dagger in his hand and Ram Dayal Munda had a weapon like "hhujali. After killing his brothers, the appellants fled away. Due to fear, he concealed himself behind the bushes and when the appellants fled away, he returned to the village and informed about the occurrence. About the motive, it is alleged that about ten months back, appellant No. 1 had killed Gurwari Devi, "bhabhi of the informant with Bomb, for which a murder case (being S.T. No. 133 of 1997) was going on. Appellant No. 1 and his uncles, Chandra Mohan and Anil had threatened him that he and his brothers will be killed. Chandra Mohan and Anil are also involved in this murder as in the last evening they and the appellants had a secret meeting in their house. Appellant No. 1 is a notorious criminal, who was arrested two years back in connection with some case and from that time he was having doubt on the informant family and he became enemy of his family and accordingly has committed the crime.

5. Appellants were put on trial. The trial Court acquitted Chandra Mohan and Anil on the ground that prosecution could not prove that they also conspired with the appellants for the crime. The appellants were also acquitted for the charges u/s 120-B, IPC. However, they were convicted u/s 302/34 IPC.

6. PW 1, Pashupati Seth and PW 3, Gyanendra Seth have put their signatures on the seizure of bloodstained soil and the inquest report prepared at police station. PW 2, Ram Pravesh Seth is a neighbour of the deceased. PW 4, Bhim Seth has been declared hostile. PW 5 is Ram Pada Seth-Informant. PW 6, is the Investigating Officer. PW 7 is the doctor who conducted postmortem on both the deceased.

7. Learned Counsel for the appellants submitted that PW 5, who has been projected as the only eye-witness is not the eye-witness. His presence at the place of occurrence is doubtful.

PW 2 stated that Chhotu, elder brother of the deceased, came and informed him that there was a rumour that Subhash and Chhote have been murdered. This witness was told to enquire. He went at the place of occurrence along with PW 3 and saw the dead bodies. When they returned, Chhotu told them to inform at the police station, which they did. Police came and took away the dead bodies. Chhotu did not go to police station. He further said that the informant, Ram Pada

is hearing his depositions.

It was submitted that no witness of the village has come forward to say that the informant gave out the names of the appellants before them. With reference to DW 1, it was submitted that informant was at the site where he was constructing his house at the time of alleged occurrence. It was further submitted that the police did not seize the motorcycle at the place of occurrence. It was further submitted that due to enmity appellants have been implicated. It was lastly submitted that though it was a market day but no independent witness has been examined. Learned Counsel for the appellant took us to the materials on record in support of their contention.

8. It is true that PW 5 is the only eye-witness but he has fully supported his fardbeyan. His evidence is fully corroborated by the medical evidence. The doctor has found one firearm injury on left arm of deceased, Chhote Lal and seven stab wounds on vital parts of the body such as abdomen and chest. As per the opinion of doctor, the death was due to above injuries, which were caused by firearm and by sharp cutting pointed weapons such as dagger and "bhujali. On the person of other deceased, Subhash, doctor found three stab wounds on vital parts of the body such as abdomen and chest caused by sharp cutting/pointed weapon such as dagger or "gupti. He further found one abrasion and one lacerated wound on the head caused by hard blunt substance. As per the doctor, the death was due to the said injuries.

PW 5, the informant has inter alia that he told about the incident to his elder brother, Chhotu and villagers. Then he and the villagers came to the place of occurrence. Chhotu sent information to the police station. The police came at 9 p.m. He gave his fardbeyan before the police. The distance of place of occurrence is about two kilometers from his house. He did not meet any villager on the way while he was returning from P.O. He kept the motorcycle with him as permitted by the police. His house was being constructed at the time of occurrence. PW 2 also said that Chhotu told him to inform the police. The evidence of PW 5 remained unshaken. His evidence coupled with other materials on record cannot be brushed aside only because his elder brother, Chhotu, to whom he informed about the murder, has not been examined. Chhotu was not the eye-witness. It is true that bomb injuries have not been found on the persons of the deceased. As per PW 5, he was seeing the occurrence from a distance. The deceased were injured and when they tried to escape, they were chased and killed by the appellants by causing several injuries. There is no reason to disbelieve PW 5. The trial Court has rightly disbelieved DW 1, Sai Nath Munda, inasmuch as this witness did not say as to in what circumstances he was watching PW 5, for the whole day. PW 5 has said that he followed the deceased persons within a couple of minutes, after they left. It is not impossible that he could cover a distance of about two kilometers in a short time on cycle and witness the occurrence from a distance.

We are told that the conviction of appellant No. 1 in the aforesaid Sessions Trial

No. 521 of 1996 has been confirmed up to High Court. In the Lower Court Records, there is certified copy of the judgment dated 26.1.1998 passed in S.T. No. 133 of 1997, in which appellant No. 2 Durlabh, appellant No. 3, Ram Dayal and one Ashok Seth were convicted under Sections 452 and 324 of the Indian Penal Code on the basis of the information given by one of the deceased, Chhote about an occurrence which took place on 27.12.1995. In these circumstances, the motive for the occurrence appears to be present.

9. On the whole, we are satisfied that there is no reason to interfere with the judgment under appeal. Accordingly, this appeal is dismissed.

Amareshwar Sahay, J.

10. I agree.