
(2008) 12 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 492 of 2001

Samundra Nath Pandey and Jitendra Mishra

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-12-2008

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2008) 12 JH CK 0072

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : B.P. Pandey and A.K. Chaturvedi, V.P. Singh, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—Both the appellants were put on trial to face charges under Sections 302/34 of the Indian Penal Code and also u/s 27 of the Arms Act on the allegation that they in furtherance of their common intention did commit murder of Radha Krishna Mishra. Learned trial court having found the appellants guilty for the charges sentenced each of them to undergo rigorous imprisonment for life under Sections 302/34 of Indian Penal code and also to pay fine of Rs. 2000/- and in default to undergo simple imprisonment for three months. They were also sentenced to undergo rigorous imprisonment for two years u/s 27 of the Arms Act. Both the sentences were ordered to be run concurrently.

2. The case of the prosecution is that on 29.5.1994 in the evening, the informant, Supriya @ Supi Mishra, P.W. 1, having served tea to her father, Radha Krishna Mishra, the deceased, came to Balcony of her house and while she was standing over there, she at about 5:15 p.m. saw three unknown persons who came out of the house of appellant No. 1, Samundra Nath Pandey, entered, into the garden and caught hold of her father and started dragging him towards

southern wall. When her father started raising alarms, one of the miscreants fired shot at his father. On hearing sound of firing, her mother, Phul Devi Mishra, P.W. 3 and her Mami (Maternal Aunt), Savita Devi, P.W. 2, also came at the Balcony and saw three miscreants dragging the father of the informant towards the southern wall, where they asked each other to cut him. Meanwhile, one of the miscreants by pointing pistol towards them (informant and others) extended threat and then they entered into room from where they saw one woman standing near the house of Samundra Nath Pandey. Subsequently, all the four miscreants went into the house of Samundra Nath Pandey. After a while, all the four miscreants went away from there and thereafter when they came near the place where the informant's father had been assaulted, they saw him dead and found the throat cut.

3. Meanwhile, when information was received by Sudhir Kumar Roy, D.W. 1, the then Officer Incharge, Sukhdeo Nagar Police Station, that someone has been murdered at Mohalla Vikash Nagar, he along with others came to the place of occurrence, where he recorded the fard beyan (Ext. 1) of P.W. 1, the informant, wherein she stated that one year before, the appellants had held out threat to her father; as there was some dispute relating to drainage and hence they by hatching conspiracy got her father murdered. Thereupon, the case was registered and said Sudhir Kumar Roy took up investigation and held inquest on the dead-body of the deceased and prepared Inquest Report (Ext. 5)

4. In course of investigation, said Sudhir Kumar Roy seized Bhujali (Ext. II) from near the dead-body under Seizure List (Ext. 6/1) and also seized one empty cartridge of 315 Bore (Ext. 1), one empty cartridge of 12 bore (Ext. III), earth smeared with blood (Ext. IV) and one bottle containing Bear (Ext. V) from the house of Samundra Nath Pandey, appellant No. 1, under Seizure List (Ext. 6). Further he seized a sleeper (Ext. VI) from near the house of Samundra Nath Pandey, appellant No. 1, under Seizure List (Ext. 6/2). Thereupon, the dead-body was sent for Autopsy, which was done on the dead-body by Dr. Ram Sevak Sahu, PW. 5, and found following injuries:

(1) Abrasion:- 3 x 2 c.m. on right scapular region.

Incised wound:

(2) (i) 10 x 1/2 c.m. X bone deep right front parietal region of head situated obliquely with chipping of underlying bones.

(ii) 12 x 1 c.m. X soft tissues on front and right lateral neck, cutting soft tissues blood vessels trachea and oesophagus completely.

(iii) 10 X 1 c.m. X soft tissues on right fronto lateral neck just above proceeding injury cutting soft tissue, blood vessels and trachea.

(iv) Linear cut 8 X 1/4 cm. X skin deep on left shoulder area.

Fire arm Injuries. :

(3) Wound of entrance 3 x 2 c.m. on right chest lateral side upper part, surrounded by tatooning 50 X 28 c.m. area. The projectile passed through right eighth inter coastal space, perforating right lungs and then comes to left chest cavity perforating left lung and finally passed through left 3rd inter costal space.

(4) A bullet was found logged in the soft tissues in mid axilliary line. The track of the wound was contused and lacerated. There was blood and blood clots in the thoarasic cavity.

Accordingly, the doctor issued post mortem report (Ext. 2) with an opinion that death of the deceased was due to hemorrhage and shock as a result of above injuries. After completion of the investigation, the police submitted charge-sheet. On committal of the case, charges were framed to which the appellants pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution examined as many as 12 witnesses. Of them, P.W. 1, Supriya @ Supi Mishra, is the informant, whereas P.W. 2, Sabita Devi, is the Maternal Aunt of the informant. P.W. 3, Phul Devi, is the widow of the deceased. All of them testified that they saw the appellants committing murder of the deceased. P.W. 4, Shravan Kumar Pathak, nephew of the deceased, testified that he had seen the appellants fleeing away after committing the offence. That apart, other witnesses, who had accompanied Sudhir Kumar Roy, Officer Incharge, to the place of occurrence, were examined on the point of seizure of those materials mentioned above.

6. After the case was closed, the appellants were questioned u/s 313 Cr.P.C about the incriminating evidences appearing against them which they denied. The defence examined the Investigating Officer as D.W. 1, Thereupon, the trial court after taking into consideration the testimonies of the witnesses passed the impugned judgment whereby the appellants were convicted find sentenced as aforesaid.

Being aggrieved with the said judgment this appeal has been preferred.

7. Learned Counsel appearing for the appellants submits that though P.Ws. 1, 2 and 3 claimed that they had seen the appellants committing murder of the deceased but neither the informant, P.W. 1 in her fard beyan (Ext. 1) nor P.Ws. 2 and 3 in their statements made u/s 161 Cr.P.C. have stated so, rather all of them had raised suspicion against the appellants of committing offence and as such their testimonies never inspire confidence to be believed still the trial court believed the version of those witnesses. Similarly the trial court should not have relied upon the testimony of P.W. 4 who though has claimed to have seen the appellants while they were fleeing away from the place of occurrence, but in fact, it is an afterthought, as he had not disclosed the said fact to the informant while she was giving her fard beyan and thus it was submitted that under the aforesaid situations, the trial court has committed grave illegality in recording the order of conviction and hence the same is fit to be set aside.

8. As against this, learned Counsel for the State and the informant submit that the informant, having seen murder being committed of her father, must have been in mental trauma and in such a state of mind, she may not have been able to state about the occurrence correctly but subsequently in course of evidence, she came out of the mental trauma and stated about the manner of occurrence in which it occurred and under these situations, the trial court has rightly believed the testimony of the informant, P.W. 1.

It was further submitted that appellant No. 1, Samundra Nath Pandey, was inimical to the deceased and hence he had previously held out threat of dire consequence and keeping in view this aspect of the matter and also the fact that certain incriminating articles were recovered from the house of appellant No. 1, Samundra Nath Pandey, who after the occurrence was seen running away by P.W. 4, the prosecution can certainly be said to have proved the case beyond all reasonable doubts.

9. Having gone through the records, it does appear that P.W. 1, the informant, has testified that while her father was in the garden, the appellant No. 1 and also the appellant No. 2 as well as one unknown person came there and that the appellant No. 1 fired shot at the deceased and then they brought the deceased near the boundary wall, where the appellant No. 2 assaulted him with Bhujali and then the appellant No. 1 along with other accused came to his house and fled away, but the testimony of P.W.1 never gets corroboration from the narration made by her in her fard beyan (Ext. 1) where she has stated that some unknown persons came to her house and committed murder of her father and she simply had expressed her suspicion about the involvement of the appellants by making statement that these appellants by hatching conspiracy committed the offence.

It would be quite significant to note here that P.W. 1 had made statement in presence of the Superintendent of Police. Subsequently, in her subsequent statement, she had reiterated the same fact, as has been given in the fard beyan (Ext. 1), and as such, it is hard to believe that P.W. 1 had made statement out of fear and that such statement was an outcome of the disturbed mental condition of P.W. 1. Moreover, nothing seems to be there on the record that the appellants are the hardened criminal. In that situation, it does not stand to reason that P.W. 1 out of fear did not speak truth at the time of lodgment of the case. However, after 7 to 8 months, she made statement before the Investigating Officer, wherein she changed her version and made statement like that of her testimony which, in the facts and circumstances, can easily be said to be afterthought and, therefore, the testimony of P.W. 1 never inspires confidence to be believed. Similarly, the testimonies of P.Ws. 2 and 3 that they saw the appellants committing offence are also not believable, as they had not stated about the active involvement of these appellants in their statements made u/s 161 Cr.P.C. as P.W. 3 has herself admitted in her cross-examination that she had not disclosed about the identity of the accused persons. So far as P.W. 2 is concerned, she has stated in her cross-examination that she had named the

appellants before the police but D.W. 1, Sudhir Kumar Roy, the first Investigating Officer, who was not examined by the prosecution, rather was examined by the defence as D.W. 1, has stated that P.W. 2 has not stated the said fact before him. Moreover, had P.W. 2 and P.W. 3 identified the accused persons at the time of committing crime, they must have disclosed it to P.W. 1 and then the name of the appellants would have been there as the active participants in the occurrence, but it is not so and, therefore, under these situations, the testimonies of P.Ws. 2 and 3 are also not believable. Likewise the testimony of P.W. 4, who in his evidence claimed to have seen the appellant No. 1 fleeing away taking firearms in his hand, is also not believable, as according to his evidence, when he came to the place of occurrence, he had talk with P.W. 1 to whom he has disclosed that the accused persons were fleeing away with the firearms. Had that been true, this fact would have been certainly there in the fard beyan (Ext. 1), but the said fact is conspicuously absent in the fard beyan.

10. Going further in the matter, it does appear that certain materials, such as empty cartridges, earth smeared with blood and bear bottle, are said to have been recovered from the house of the appellant No. 1 and the recovery of those articles have been taken to be incriminating circumstances pointing towards guilt of the appellants, but in absence of any forensic report linking empty cartridge with bullet used in committing murder, recovery of empty cartridge cannot be said to be the incriminating circumstance showing guilt of the appellants. Similarly, the recovery of earth smeared with blood in absence of any report of the expert that it was of the same blood group as that of the deceased, it will never go to show the guilt of the appellants.

11. Thus, the testimonies of the witnesses, claimed to be the eye witnesses, having been found untrustworthy, the prosecution can certainly be said to have failed palpably in proving the charges.

12. Accordingly, the conviction and sentence awarded by the trial court is hereby set aside and the appellants are acquitted of the charges levelled against them. Consequently, both the appellants are directed to be released forthwith if not wanted in any other case.

13. In the result, this appeal is allowed.