

**(2012) 07 JH CK 0004**

**In the Jharkhand High Court**

**Case No : Criminal Appeal (DB) No. 634 of 2003**

Sanjay Kumar Sharma and Another

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision : 10-07-2012**

**Acts Referred:**

Arms Act, 1959 — Section 27  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation : (2013) 2 JLJR 146**

**Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J**

**Bench : Division Bench**

**Advocate : Anand Kumar Sinha and B.N. Jha, for the Appellant; Ram Kishore Pd., Praful Jojo for the Informant and Mr. Amaresh Kumar, for the Respondent**

**Final Decision : Allowed**

## **Judgement**

1. This appeal arises out of judgment and order of conviction and sentence dated 7.4.2003 passed by Sri P.C. Agarwal, Additional Judicial Commissioner, FTC, Ranchi, in Sessions Trial No. 161 of 2002 whereby the appellants have been held guilty for offences under Sections 302 /34 of the Indian Penal Code and accordingly they have been sentenced to undergo rigorous imprisonment for life. They have also been convicted u/s 27 of the Arms Act and have been sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs. 1,000/- (one thousand) each. However, both the sentences have been ordered to run concurrently. Prosecution case, in short, is that the informant Santosh Kumar Jaiswal (PW-6) lodged fardbeyan with the Police on 1.2.2011 at about 7.00 a.m. that at about 5.30 A.M. when his father Hari Shankar Prasad Jaiswal (deceased) was going on a bicycle to attend his duty, he heard sound of firing from eastern side of the quarters near the hydrant (chapakal). The father of the informant was running raising alarms to save his life as the appellants were chasing to kill him. The informant and others saw from the window that the father of the informant was running towards the quarters followed by the appellants having pistols in their hands. Then, one more fire shot was done by the appellant Arun Sharma.

The informant and others rushed to the ground floor and saw that the appellant Sanjay Sharma shot at the back of the father of the informant. The informant and others tried to apprehend the appellants, but they fled away. It was further alleged that in the month of May, 2000 brother of one the appellants was killed and it was suspected that the brother of the Informant Bhola Kumar Jaiswal (PW-7) was involved in that case in which PW-7 had come out of Jail about two months before and thereafter the appellant Sanjay Kumar Sharma used to call him but he refused. Sanjay Kumar Sharma appellant also asked PW-7 to kill a person which was denied by him. It was suspected that for this reason father of the informant was killed by the appellants.

2. On the basis of the said fardbeyan of the informant (PW-6), Jagamathpur P.S. Case No. 16 of 2001 was registered. After investigation, charge-sheet was submitted against the appellants who faced the trial and were convicted as aforesaid.

3. Mr. B.N. Jha, learned counsel for the appellants, assailed the impugned judgment on various grounds and submitted that the prosecution has not been able to prove its case beyond all reasonable doubts and the eye witnesses projected by the prosecution are not the eye witnesses and their evidence is not cogent, convincing and trustworthy and the appellants have remained in jail for more than 11 ? years and they deserve benefit of doubt.

4. On the other hand, learned counsel appearing on behalf of the State has supported the impugned judgment.

5. After carefully going through the materials on the records and hearing the parties at length, we are inclined to give benefit of doubt to the appellants for the following reasons.

6. The prosecution has examined altogether 12 witnesses. PWs-1 and 2 are inquest witnesses. PWs-3 and 4 are seizure list witnesses and they have been declared hostile. PW-6 is the informant. PW-7 is the brother of the informant. PW-8 is a neighbour who has also been declared hostile. PW-9 is Dr. Ajit Kumar Sahu who conducted post mortem on the dead body of the deceased and found four firearms injuries, two on the chest, one on the thigh and one on the finger of the deceased. He also found one lacerated injury on the back of the deceased. PW-10 Abhai Kumar Sinha is the main Investigating Officer. PW-11 is another eye witness, PW-12 is the initial Investigating Officer.

7. Though PWs-6, 7 and 11 are the main eye witnesses, but as per the prosecution, several inmates were present in the quarter of the informant, such as brother, mother, sister and others, but PWs-6, 7 and 11 have not mentioned any role played by any other inmates of the house. It further appears that there are vital contradictions in the narration made in the fardbeyan and the evidence of PWs-6, 7 and 11. In the fardbeyan it was, inter alia, stated that both the appellants, with firearms in their hands, were chasing the father of the informant and when he reached near the quarters, the appellant Arun Sharma fired at the

back of his father. But in his deposition, PW-6 inter alia stated that the second shot was fired by the appellant Sanjay Kumar Sharma on his father, due to which he fell down. Surprisingly, this witness also described the nature of the bullet to be "315". This witness accepted that PW-7 was present in court at the time of his evidence. Though in view of the said statement of PW-6 that PW-7 was present in court at the time of evidence of PW-6, the evidence of PW-7 could be kept out of consideration. But even if it is considered, he said that the appellant Arun Sharma fired at the back of the head of deceased and the appellant Sanjay Sharma fired at the waist of the deceased from a point-blank range, but no such injury on the waist or head of the deceased were found by the doctor. PW-11 inter alia said that the appellant chased the deceased and when he alongwith others came down the upstairs, the appellants had fled away after killing the deceased by that time. The prosecution has not been able to prove that PWs-6 and 7 could see the occurrence from the window as stated by him. In our opinion, the evidence of PWs-6 and 7, who have claimed to be the eye witnesses, is not trustworthy and cannot be safely relied upon. As already noted above, there are vital contradictions in medical evidence and the fardbeyan. From the fardbeyan it appears that two shots were fired from the firearms, but from the medical report, it appears that the deceased died due to four fire arm injuries. All the three witnesses, PWs-6, 7 and 11 have given out different stories about the injuries caused to the deceased. Thus, it cannot be safely said that PWs-6, 7 and 11 are eye witnesses.

8. In view of the facts and circumstances of the case as discussed above, in our opinion, the prosecution has not been able to prove its case beyond all reasonable doubts and the appellants deserve benefit of doubt. For the reasons aforesaid, this appellant is allowed and the impugned judgment and order of conviction of the appellants by the trial court in Sessions Trial No. 161 of 2002 is hereby set aside. The appellants are in custody. They are directed to be released forthwith, if not wanted in connection with any other case.