
(2012) 02 JH CK 0094

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 1288 of 2004

Sanjay Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 332

Citation : (2012) 2 JLJR 356

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the Judgment of conviction and order of sentence dated 22.05.2004 and 24.05.2004 respectively, passed by the 6th Additional Sessions Judge, Fast Track Court, Palamau, Daltonganj in Sessions Trial No. 126/2002 convicting the appellant under Sections 148, 353/149, 332/149, 307/149, 302/149 and 379/149 of the Indian Penal Code and sentencing him to undergo life imprisonment. The life imprisonment naturally is against the conviction for the offence u/s 302/149 of the Indian Penal Code which covered the other sentences. The prosecution case in short is that a written report was lodged by Kedar Ram, ASI on 13.04.2001 at about 2:00 p.m. to the following effect.

That in the previous night i.e. on 12.04.2001 at about 7:00 p.m., the patrolling party led by him was coming. All of a sudden, the extremists, members of MCCI, who were in ambush, resorted indiscriminate firing on Police force as a result one bullet hit the driver after breaking the windscreen and due to that, the driver lost the control and the vehicle stuck to a ditch on the left side. The Police party too, in defence, opened fire on the extremists. One constable Sita Ram sustained bullet injury and collapsed on the spot and, thereafter, the extremists looted away his rifle. Another bullet of the extremists passed touching the body of Lal Bahadur Singh (P.W. -2) due to which, he sustained injuries. Similarly, constable

Binod Kumar Tiwary (P.W. -15), Yugesh Kumar and Sujay Prasad Singh (P.W. -11) also sustained bullet injuries due to the firings caused by the extremists. The extremists looted away three rifles and disappeared into the dark. The Home Guard Amresh Mahto (Driver) could not be immediately traced out but later his dead body was found.

2. Mr. T.R. Bajaj, learned Senior Counsel appearing for the appellant assailed the impugned Judgment and submitted as under.

The informant has not been examined in this case. The investigation of this case was not properly done otherwise positive materials could have come and the alleged looted rifles could be recovered. The non-examination of the Investigating Officer has prejudiced the case of the appellant. He further submitted that the conviction is based on identification made by the P.Ws. 1, 3 and 5, which are not reliable. The Motor Vehicle Inspector has not been examined. He would have been the best person to say as to whether the light of the Police vehicle could remain on, after it turned turtle. " Moreover, in such light the witnesses could not identify the miscreants.

3. On the other hand, Mr. Ravi Prakash, Learned Counsel for the State supported the impugned Judgment.

4. The prosecution has examined twenty witnesses. P.Ws. 1 to 10 - villagers have turned hostile. P.Ws. 11 and 12 are the injured Police personnel. They have fully supported the incident as narrated in the F.I.R.. P.Ws. - 13 and 15 are also the Police personnels, who identified the appellant in Test Identification Parade as well as in Court. Moreover, P.W. -15 is also an injured witness. P.W. -14 though identified the appellant in Court but said that he did not attend Test Identification Parade. The Trial Court has also not relied on P.W. -14. Therefore, we are also not considering the evidence of P.W. -14.

P.W. -16 is the Doctor who conducted postmortem on the deceased Amresh Mahto and proved the postmortem report of the deceased Sita Ram. The medical evidences corroborates the alleged fire arm injuries. P.Ws. 17 to 19 are the Judicial Magistrate who conducted Test Identification Parade. In this case, we are concerned with P.W. -18, who conducted Test Identification Parade of the appellant. P.W. -20 is a formal witness.

5. In our opinion, only by non examination of Investigating Officer, it cannot be said that the investigation was not properly done. Mr. T.R. Bajaj fairly admitted that the appellant is not disputing the occurrence as narrated in the F.I.R.. However, he stressed that the identification of the appellant is not reliable. In our opinion, the prosecution case cannot be disbelieved for non-examination of the informant and the Investigating Officer. Moreover, the appellant has not suffered any prejudice by it.

6. So far as the alleged doubt on the Test Identification Parade is concerned, it appears that the appellant was in jail in connection with another case being

Hariharganj P.S. Case No. 41 of 2001 from which, he was remanded in this case on 17.07.2001. The Test Identification Parade was held on 27.07.2001. There is nothing to indicate that the identifying witnesses had occasion to see the appellant in the Police Station. Moreover, P.Ws.-13 and 15 categorically said that they had not seen the appellant in the Police Station and they had clearly identified the appellant in the light of vehicle. These witnesses have identified the appellant in Test Identification Parade as well as in Court. There was no suggestion to these identifying witnesses that the light of vehicle was not on, rather these witnesses have specifically said that even after the vehicle turned, it was heading towards road and the light was on. In view of such evidence, in our opinion, non-examination of Motor Vehicle Inspector has not prejudiced the defence. After carefully going through the record and hearing the parties at length, in our opinion no ground is made out for interfering with the impugned Judgment. In the result, this Criminal Appeal is dismissed and the impugned Judgment of conviction and order of sentence dated 22.05.2004 and 24.05.2004 respectively, passed by the 6th Additional Sessions Judge, Fast Track Court, Palamau, Daltonganj in Sessions Trial No. 126/2002 stands upheld.