
(2015) 04 JH CK 0156

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 259 of 2009

Satyanand Jee

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

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

Citation : (2015) 3 Crimes 396

Hon'ble Judges : Rakesh Ranjan Prasad, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Jitendra S. Singh, for the Appellant; Anita Sinha, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad and Pramath Patnaik, JJ.—This appeal is directed against the judgment of conviction and order of sentence dated 11th February, 2009 passed by the then Sessions Judge, Lohardaga in S.T. No. 186 of 2007 whereby and whereunder the court having found the appellant guilty for committing murder of Fuldeo Munda convicted him for the offence punishable under section 302/34 of the Indian Penal Code and also under Section 17 of the C.L.A. Act and sentenced him to undergo RI for life and to pay a fine of Rs. One thousand and further to undergo SI for six months for the offence punishable under Section 17 of the C.L.A. Act. The case which was initially made out by the informant Shanti Devi-P.W. 1 in her fardbeyan is that on the day of occurrence i.e. on 27.12.2004 at about 6.30 p.m. while her husband Fuldeo Munda (deceased) was cutting vegetable for its cooking somebody from outside started calling her husband. When her husband did not open the door, the miscreants started raising their voice. Upon it when her husband opened the door and asked from them what is the matter, the miscreants caught hold of her husband and started taking him away with them. They were 15-20 in numbers and were armed with riffle, gun etc. Two of them who were taking the husband of the informant alongwith others

were identified as Satyanand and Rabindra Jee, who were the members of a banned organization MCCI. The accused persons brought her husband below the tree of Tamarind and tied up him around the tree and started assaulting the informant. The informant requested them to let him off, but the miscreants did not pay any heed to her request rather went on assaulting him. When her husband become unconscious all the miscreants fled away from there. Thereupon she started taking her husband, who was in unconscious state, to Sadar Hospital, Lohardaga. But, in the way her husband succumbed to the injuries.

2. Meanwhile, Akil Ahmed, (P.W.-9) the then Sub-Inspector of Police posted at Kisko Police Station received rumour that some members of the extremists party had gone to village Tisia and has been assaulting Fuldeo Munda (deceased). In order to verify it, the I.O. proceeded to the place of occurrence along with the C.R.P.F. personnels. On reaching there, the I.O. came to know that the injured has been taken to hospital. However, the police party on that day remained engaged to nab the culprits. Only on the next date i.e. 28.02.2004 one S.I. Hari Shankar Prasad recorded the fardbeyan (exhibit-2) of the informant, who narrated in the same manner as has been stated above with a motive that since her husband who had been awarded with work of construction of a road had not paid levy to the members of MCCI, they including the appellant committed murder.

3. The I.O. thereupon held inquest on the dead body of the deceased and prepared an inquest report. Thereupon the dead body was sent for post mortem examination, which was conducted by Dr. Nawal Kishore Sinha-P.W-8, who upon holding post mortem examination found the following injuries:

"(i) Abrasion of size 1" x 2" and the other abrasion 1" x 1" on right side to face. Both were adjacent.

(ii) Abrasion of 1: x 1" on right mendibular region.

(iii) Bruise 1" x 1/2" below lower lip.

(iv) Swelling and bruise on hole of left arm and left four arm and left shoulder region.

(v) Swelling in right elbow and right upper fore arm.

(vi) Multiple bruise on hole of back.

(vii) Fracture of left humorous.

(viii) A fracture of right radius and upper end of the right radius."

The doctor issued post mortem examination report (Exhibit 1) with an opinion that the injuries were caused by hard and blunt substance on account of which the deceased died due to shock and haemorrhage. Meanwhile, the I.O. recorded the statement of the witnesses. On completion of the investigation charge sheet was submitted only against the appellant whereas investigation was kept open

for rest of the accused persons. After the cognizance of offence was taken the case was committed to the Court of Sessions where the appellant was put on trial, during which the prosecution examined as many as nine witnesses. Of them P.W-2, 3 and 4 have been declared hostile as they did not support their earlier statements made before the police. P.W. 6-Sukhdeo Munda, the brother of the deceased claimed himself to be the eye witness whereby he deposed that the miscreants came to the house of the deceased and took him near temple under Tamarind tree. There he by hiding himself saw this appellant and other miscreants assaulting the deceased. However, the court did not find him trustworthy as the witness in his earlier statement made before the police had stated that on the day of occurrence he was not in the village. P.W.-1-the informant, the wife of the deceased and P.W.-5 Premchand Munda, the son of the deceased have testified that while the deceased was cutting vegetable in the evening, the miscreants came and started telling them to open the door. When the deceased opened the door they found 20-25 persons there, who were armed with gun. They took the deceased along with them by assaulting him. According to both the witnesses since it was dark, they could not identify any of them. However, they testified that when the miscreants were asking them to open the door the deceased asked as to who they are and upon it one of them told his name as Satyanand. However, the witnesses did not identify the appellant in the court, but the court below putting reliance on that part of the evidence of P.Ws.-1 and 5 where they have testified that they heard someone saying his name as Satyanand, convicted the appellant as defence has failed to put anything on the record that he is not Satyanand. The said judgment of conviction and order of sentence is under challenge.

4. Mr. Singh, learned counsel appearing for the appellant submits that since the witnesses failed to identify the appellant in court it can not be said that the person who declared his name as Satyanand was the appellant and, thereby, the court below has committed illegality in recording the judgment of conviction and order of sentence against the appellant.

5. As against this, learned counsel for the State submits that though the witnesses P.Ws-1 and 5 did not identify the appellant, but they in their evidences have claimed that they heard someone saying his name as Satyanand who remained absconded for long and thereby the court has rightly recorded the judgment of conviction and order of sentence against this appellant.

6. Having heard learned counsel for the parties and on perusal of record, we do find that P.Ws. 1 and 5 i.e. wife and the son of the deceased respectively, did testify that when the deceased asked the miscreants as to who they are, one of them told that he is Satyanand which was over heard by P.Ws. 1 and 5. Only on that basis the appellant was put on trial. During trial P.Ws. 1 and 5 did not identify the appellant in the court as Satyanand. In that situation the prosecution cannot be said to have established that the appellant is the person who had gone to the house of the deceased and had declared his name as Satyanand.

7. Under the circumstances, the court below certainly committed illegality in recording the judgment of conviction and order of sentence and thereby judgment of conviction and order of sentence is hereby set aside. Consequently, the appellant is acquitted of both the charges. In the result, this appeal is allowed and the impugned judgment of conviction and sentence is hereby set aside and the appellant is acquitted of all the charges. The appellant, named above, who is in custody, is directed to be released forthwith, if not wanted in any other case.