

(2019) 03 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1023, 1093 Of 2010, I.A. No. 9631 Of 2017

Shahid Khan And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302

Code Of Criminal Procedure, 1973 — Section 313, 357A

Citation : (2019) 03 JH CK 0031

Hon'ble Judges : H. C. Mishra, J;S. K. Dwivedi, J

Bench : Division Bench

Advocate : S.K. Upadhyay, Dhreej Kumar, Ram Prakash Singh

Judgement

1. Both these appeals arise out of the same impugned Judgement, and as such, they have been heard together and are being disposed of by this common Judgement.

2. Heard learned counsel for the appellants and the learned counsel for the State in both these appeals.

3. The appellants are aggrieved by the impugned Judgement of conviction dated 20th of October, 2010 and Order of sentence dated 26.10.2010, passed by the learned Additional Sessions Judge, F.T.C.-I, Gumla, in S.T. No.46 of 2008, whereby, all these appellants have been found guilty and convicted for the offence under Sections 302 / 34 the Indian Penal Code. Upon hearing on the point of sentence, the appellants have been sentenced to undergo rigorous imprisonment for life with fine of Rs.2,000/- each, for the said offence.

4. The prosecution case was instituted on the basis of the written report of the informant Rehana Khatoon, the wife of the deceased Khalil Khan, given to the Officer-Incharge of Ghaghra Police Station on 10.10.2007, at the place of occurrence, near village Goya, P.S. Ghaghra, District Gumla, wherein she has stated that on the same day she and her husband Khalil Khan had gone towards

Mahadeotanr, for grazing their cattle and cutting grass. While they were cutting the grass, the accused persons, namely, Shahbaz Khan, Afroz Khan, Taslim Khan, Tezmul Khan, Shahid Khan, Moin Khan, Hassan Khan, Tanbir Khan and Mazhar Khan came there variously armed, and Shahbaz Khan, who was armed with a pistol, put the pistol on her temple, asking her to keep quiet, and he instructed the other accused persons to kill her husband, as he was objecting his contract works and was also helping his enemies. It is alleged that on the order given by Shahbaz Khan, all the other accused persons assaulted her husband Khalil Khan by sword, garasa and baluwa, causing injuries to him, due to which he died at the spot. Upon the alarm raised by her, her brother-in-law Shahid Khan came running and he also saw the accused persons fleeing away. She has stated that the occurrence took place due to the previous enmity. On the basis of the written report given by the informant, Ghaghra P.S. Case No. 89 of 2007, corresponding to G.R. No. 851 of 2007, was instituted for the offence under Sections 302 / 34 of the Indian Penal Code, against all the nine named accused persons, and investigation was taken up. Upon investigation the police submitted the charge-sheet in the case against these accused appellants, showing the others to be absconding, and keeping the investigation pending against them.

5. After commitment of the case to the Court of Session, charge was framed against the accused appellants for the offence under Sections 302 / 34 of the Indian Penal Code, and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial. In course of trial 14 witnesses were examined by the prosecution, including the I.Os. and the Doctor, who had conducted the post-mortem examination on the dead body of the deceased. Out of the material witnesses examined, P.W.-1 Md. Azim Khan, P.W.-2 Ropna Pahan, P.W.-3 Mogla Oraon, P.W.-4 Ragak Khan and P.W.-11 Nayeem Khan, have turned hostile and have not supported the prosecution case.

6. P.W.-8 Rehana Khatoon is the informant in the case and the wife of the deceased. She has supported the case as an eye witness to the occurrence, stating that the occurrence had taken place on 10.10.2007 at about 3.00 to 3:30 P.M. She and her husband Khalil Khan had gone to Mahadeotanr, where she was cutting the grass and her husband was grazing the cattle. In the mean time all the named accused persons, including these appellants, armed with tangi, baluwa and sword, came and they surrounded her husband. Shahbaz Khan was armed with revolver which he put on her temple and asked her to keep quiet, and he instructed the other accused persons to kill her husband, whereupon the other accused persons assaulted her husband with the weapons in their hand, due to which her husband died at the spot. She raised the alarm, whereupon her brother-in-law Shahid Khan came running, and he also saw the accused persons fleeing away. She has stated that she gave a written report about the occurrence which was written by Sageer Khan, whereupon she had put her thumb impression. She has again stated that at the time of occurrence, Shahid Khan was holding her husband's head, whereas Shahbaz Khan had assaulted her husband by sword cutting his neck, and other accused persons had also

assaulted him. In all nine accused persons had assaulted her husband. She has identified the accused persons in the Court. In her cross-examination, this witness has stated that it was the month of Ramjan when the occurrence had taken place, and she and her husband both had kept the Roja. She has further stated in her cross-examination that Shahbaz was holding the revolver on her temple until her husband had died. Her attention was drawn towards her statement given before the police, wherein she has claimed to have given the statement before the police that Shahid Khan had held her husband's head and Shahbaz had assaulted him by sword cutting his neck. She had denied the suggestion of falsely implicating the accused persons.

7. Out of the other material witnesses examined by the prosecution, P.W.-5 Md. Sageer Khan, P.W.-6 Zahid Khan, P.W.-7 Jalil Khan, P.W.-9 Shahid Khan and P.W.-10 Nasir Khan are only hearsay witnesses. Except P.W.-5 Mr. Sageer Khan, all of them are the own brothers of the deceased. They have stated that upon hearing about the occurrence, they went there and saw the dead body of their brother with injuries and they were informed about the occurrence by the wife of the deceased. P.W.-5 Md. Sageer Khan had written the written report, which he has proved, and the same was marked Exhibit-1. This witness is also the witness to the seizure list relating to the seizure of blood stained soil from the place of occurrence, on which he has proved his signature, which was marked Exhibit-2. P.W.-7 Jalil Khan is also the witness to the inquest report of the dead body, on which he has proved his signature, and the signature of another witness, which were marked Exhibits-3 and 3/1 respectively. Enmity between the accused persons and all these witnesses are an admitted fact. In his evidence, P.W.-9 Shahid Khan has also stated that he had seen the accused persons fleeing away from the place of occurrence.

8. P.W.-12, Dr. R.K. Agarwal had conducted the post-mortem examination on the dead body of the deceased on 11.10.2007, and had found eight incised wounds on the dead body of the deceased, including the neck and other parts of the body. There were incised wounds in the front and back of neck, cutting of soft tissues, blood vessels, trachea, oesophagus, and cervical vertebra No. 4 was also completely cut with the spinal cord. He has stated that all the injuries were ante-mortem in nature, and caused by sharp cutting weapons and the death was due to the shock and haemorrhage caused by the injuries. He has proved the post-mortem report to be in his pen and signature, which was marked Exhibit-4. It may be stated at this place that the post-mortem report, which has been proved as Exhibit-4, shows that there were semi-digested food (rice etc.) in the stomach of the deceased.

9. P.W.-13 Chandrama Singh is one of the I.O., in the case, and he has only stated that he had recorded the statements of some witnesses and on 11.02.2008 he had arrested the accused Hassan Khan from his house. About the other accused persons, he has stated that they had surrendered in the Court on 12.02.2008, and after completing the investigation, he had submitted the charge-

sheet in the case.

10. P.W.-14 Anil Kumar Mishra has stated that on 10.10.2007 he was posted as Sub-Inspector of Police at Ghaghra Police Station, and on that day there was an information by way of rumour that one person had been murdered at village-Goya. He went to the place of occurrence along with the police party, where he found the dead body of the deceased Khalil Khan. The written report about the occurrence was given by the wife of the deceased, at the spot to the Officer-Incharge of the P.S., on the basis of which police case was instituted and the charge of investigation was handed over to him. He has proved the formal F.I.R., which was marked Exhibit-5. He has proved the inquest report of the dead body and he had also seized the blood stained soil from the place of occurrence, and had prepared seizure list, which also he has proved, and both these documents were marked as Exhibits- 3/2 and 2/2 respectively. He recorded the re-statement of the informant and the statements of some witnesses, and thereafter he was transferred and he handed over the charge of investigation. In his cross-examination, the necessary contradiction in the evidence of the informant was taken by the defence, and this witness has admitted that the informant Rehana Khatoon had not given the statement before him that Shahid Khan was holding the head of her husband and Shahbaz Khan had assaulted her husband by sword cutting his neck. He has also admitted in his cross-examination that the blood stained soil was not sent for chemical examination. He has denied the suggestion of making faulty investigation.

11. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them. No evidence was adduced by the defence. On the basis of the materials on record, all these four appellants have been convicted and sentenced by the Trial Court below as aforesaid.

12. Learned counsel for the appellants has submitted that the impugned Judgement of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law, inasmuch as, the case is based on the evidence of the interested witnesses only, and there is only one eye witness to the occurrence, who is the wife of the deceased, and she is also a highly interested witness, in view of the admitted enmity between the parties. The other prosecution witnesses supporting the prosecution case are only hearsay witnesses, and they were informed about the occurrence by the informant herself. It is submitted that enmity is admitted in the case with all the witnesses supporting the prosecution case, and all the independent witnesses have turned hostile and have not supported the prosecution case at all. Learned counsel also submitted that in the evidence of P.W.-8 Rehana Khatoon, the only eyewitness to the occurrence, there is no specific allegation of assault against any of these accused appellants, rather there is only omnibus allegation against them. The informant has tried to make specific allegation against the accused Shahid Khan stating that he was holding the head of the deceased at the time of assault, but

this is an improvement made by her, as such statement was not made before the I.O., as is apparent from the evidence of P.W.-13 Anil Kumar Mishra. Learned counsel also submitted that there is no recovery of any weapon of offence in the case, and in view of the fact that there is admitted enmity between the parties, the appellants were entitled to the benefits of doubt, as the case is supported only by the highly interested witnesses.

13. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that P.W.-8 Rehana Khatoon is the wife of the deceased and she has fully supported the prosecution case as an eye witness to the occurrence, stating that all the accused persons had assaulted the deceased on the orders given by Shahbaz Khan. She has also stated that all the accused persons were variously armed. The case is also supported by the brothers of the deceased as hearsay witnesses, and they had seen the dead body of the deceased with injuries on his body, including the injuries on the neck. The ocular evidence of these witnesses is fully corroborated by the medical evidence of P.W.-12 Dr. R.K. Agarwal, and the post-mortem proved by him as Exhibit-4. Learned counsel accordingly, submitted that the prosecution has been able to prove the case against the accused appellants beyond all reasonable doubts, and there is no illegality in the impugned Judgement of conviction and Order of sentence passed by the Trial Court below, worth any interference by this Court.

14. Having heard learned counsels for both the sides and upon going through the materials on record, we find that there is only one eyewitness to the occurrence, who is P.W.-8 Rehana Khatoon, the informant in the case, and the wife of the deceased. She has stated that at the time of occurrence, all the accused persons came there and the co-accused, Shahbaz Khan had put the revolver on her temple, asking her to keep quiet, and on the orders given by him, all the accused persons, who were armed with various sharp cutting weapons, had assaulted her husband, causing his death at the spot. She has further stated in her evidence that at the time of occurrence, Shahid Khan was holding her husband's head, whereas Shahbaz Khan had assaulted her husband by sword cutting his neck. As such, according to the evidence of this witness, there is specific allegation of assault against the co-accused, Shahbaz Khan to have given the fatal blow on the body of the deceased. This accused has not faced the trial. However, in her cross-examination, she has stated that Shahbaz Khan was holding the revolver on her head till her husband had died. This statement in her cross-examination demolishes the allegation that Shahbaz Khan had assaulted the deceased by sword, cutting his neck, and consequently, her entire evidence as eyewitness to the occurrence, also becomes doubtful. The allegation against the accused Shahid Khan, that he was holding her husband's head, at the time of assault by Shahbaz Khan, also gets demolished by her own statement, as also by the evidence of the I.O., P.W.-14 Anil Kumar Mishra, stating that the informant had not given any such statement before him. The informant has further stated that the occurrence had taken place during the month of Ramzan, and both her husband and this witness had kept Roza on the day of occurrence. The

occurrence had taken place in the day at about 3.00 to 3:30 P.M., and the post-mortem report, proved as Exhibit 4, clearly shows that there were semi digested food (rice etc.) in the stomach of the deceased. This also belies the story that the deceased had kept Roza on the day of occurrence, as had the deceased kept the Roza, he must have remained without any food and water for at least about eleven hours from the time of occurrence, and there was no chance of presence of any semi digested rice etc., in his stomach. The enmity between the accused persons and all the witnesses, who have supported the prosecution case, either as eyewitness or as hearsay witnesses, is an admitted fact. The independent witnesses have not supported the prosecution case and they have turned hostile. There is no recovery of any weapon of offence in the case, even though there is evidence against nine named accused persons to have assaulted the deceased by sharp cutting weapons.

15. We find that the witnesses supporting the prosecution case are highly interested witnesses and their evidence does not inspire confidence for the reasons stated above. We are of the considered view that in the facts of this case, these appellants were entitled to be given at least the benefits of doubt, and the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law.

16. For the foregoing reasons, the impugned Judgement of conviction dated 20th of October, 2010 and Order of sentence dated 26.10.2010, passed by the learned Additional Sessions Judge, F.T.C.-I, Gumla, in S.T. No.46 of 2008, convicting and sentencing the appellants, Shahid Khan, Taslim Khan, Hassan Khan and Afroz Khan for the offence under Sections 302 / 34 of the Indian Penal Code, are hereby, set aside. Consequently, all these appellants are given the benefits of doubt and they are acquitted of the charge. The appellant, Shahid Khan is in custody undergoing the sentence. He is directed to be released and set at liberty forthwith, if his detention is not required in any other case. The appellants, Taslim Khan, Hassan Khan and Afroz Khan are on bail, and they are discharged from the liabilities of their respective bail bonds.

17. Before parting with this Judgment, we wish to record that though the prosecution has failed to establish the case against these appellants, but it is apparent from the evidence on record that the husband of P.W.-8 Rehana Khatoon had been murdered brutally, and she is the victim of crime in this case. She is entitled to be duly compensated under the Victim Compensation Scheme, under Section 357-A of the Code of Criminal Procedure. We accordingly, direct the Member Secretary, Jharkhand State Legal Service Authority, Ranchi, to take up the matter with the concerned District Legal Services Authority, so that P.W.-8 Rehana Khatoon may be duly compensated at an early date. Let a copy of this Judgment be sent to the Member Secretary, Jharkhand State Legal Services Authority, Ranchi, for the needful.

18. Both these appeals are accordingly, allowed. Consequently I.A. No. 9631 of 2017, pending in Cr. Appeal (D.B.) No. 1023 of 2010, also stands disposed of. Let

the Lower Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgement.