

(2017) 11 JH CK 0018
In the Jharkhand High Court
Case No : 1233 of 2006

Siddhi Nath Ranjan

APPELLANT

Vs

M/s Heavy Engineering Corporation Ltd & Ors

RESPONDENT

Date of Decision : 11-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#) - Punishment for murder

Citation : (2017) 11 JH CK 0018

Hon'ble Judges : H. C. Mishra, Ratnaker Bhengra

Bench : DIVISION BENCH

Advocate : Amit Kumar Choubey, Vijay Kumar Gupta

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant and learned counsel for the State.
2. The appellant is aggrieved by the Judgment of conviction dated 15th of July, 2006 and Order of sentence dated 18th of July, 2006, passed by the learned Additional Sessions Judge, F.T.C.-II, Jamshedpur, in Sessions Trial No. 471 of 2004, whereby, the sole appellant has been found guilty and convicted for the offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. Upon hearing on the point of sentence, the sole appellant has been sentenced to undergo R.I. for life for the offence under Section 302 of the Indian Penal Code and R.I. for 3 years for the offence under Section 27 of the Arms Act, and both the sentences were directed to run concurrently.
3. The prosecution case was instituted on the basis of the fardbeyan of the informant-deceased Mangal Bhuiyan, which was recorded while he was alive on 15.8.2004 at 19.45 hours, in the Emergency Ward of M.G.M. Hospital, Jamshedpur. In his fardbeyan, he has stated that he was preparing the offerings for the Deity at Tara Mandir in front of cremation ground at Bhuiyandih,

Jamshedpur. The priest of the Temple, Baba Dharmendra was also present there. At about 7.00 P.M., two persons, one of whom was the accused Gopal Machhua, came and started assaulting Dharmendra Baba, whereupon Baba Dharmendra fled away from there. Thereafter both of them started assaulting the informant Mangal Bhuiyan and when he objected, Gopal Machhua assaulted him by pistol, causing injury below his neck and near his cheek. He was brought to M.G.M. Hospital, Jamshedpur, where he gave his fardbeyan before the police. On the basis of the fardbeyan of the informant Mangal Bhuiyan, Sitaramdera P.S. Case No. 53 of 2004 corresponding to G.R. No. 1290 of 2004, was instituted for the offences under Sections 307 / 34 of the of the Indian Penal Code and Section 27 of the Arms Act and investigation was taken up. After some days, the deceased died, and accordingly, Section 302 of the Indian Penal Code was added. After investigation, the police has submitted the charge-sheet in the case.

4. Upon commitment of the case to the Court of Session, charge was framed against the sole accused for the offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, and upon the accused's pleading not guilty and claiming to be tried, he was put to trial. In course of trial, prosecution has examined 8 witnesses in this case, out of whom, P.W.-3 Pintu Bhuiyan, P.W.-4 Sukhdeo Bhuiyan and P.W.-5 Santosh Kumar Lal, have turned hostile and have not supported the prosecution case. Though, P.W.-6 Sanjit Lohar has also been declared hostile by the prosecution, but this witness has stated that he had seen the deceased in injured condition and he had brought him to the hospital and the deceased was in his senses, and subsequently, he learnt that Gopal Machhua had assaulted him by firearm. In his cross-examination, he has stated that he had no knowledge as to how the deceased was injured.

5. P.W.-2 Dhani Ram, is the eyewitness to the occurrence and he was also present at the place of occurrence and preparing the offerings for the Deity. He has stated that the accused Gopal Machhua along with one unknown person came and assaulted the priest of the Temple, whereupon the priest fled away, thereafter he assaulted Mangal Bhuiyan by gun, causing firearm injuries in between his neck and chest. Mangal Bhuiyan was brought to M.G.M. Hospital, Jamshedpur, and thereafter he was brought to Ranchi and subsequently, he died after eight days. He has stated that the statement of Mangal Bhuiyan was recorded at M.G.M. Hospital, Jamshedpur, which was read over to him and he put his thumb impression, as he was in his senses. This witness had also put his thumb impression. In his cross-examination, he has stated that he had not entered the emergency ward of the hospital. Police alone had gone in the emergency ward.

6. P.W.-1 Dharmendra Prasad is the Priest of the said Temple. He has also supported the prosecution case as hearsay witness, stating that Gopal Machhua came at the Temple, where they preparing the offerings for the Deity and he assaulted him by feet, whereupon, he went to the local M.L.A. for making complain and Mangal Bhuiyan and Dhani Ram remained there in the Temple.

Subsequently he learnt that Mangal Bhuiyan was assaulted by firearm by this accused. He has identified the accused, present in the Court. There is nothing of much importance in his cross-examination.

7. P.W.-7 is Dr. A.K. Choudhary who was posted as Tutor in Forensic Medicine, M.G.M. College, Jamshedpur, and he had conducted the post-mortem examination on the dead body of the deceased on 27.8.2004 at 12.15 P.M. and found the following injuries on him:-

"Dressed fire arm wound of entrance, overlapped supraclavicular region 4 cm. x 1 cm. x soft tissue. Plane one intact projectile (bullet) recovered from inner upper, chest wall right side, preserved and handed over to police. Upper lobe of left lung contused." He has stated that the injuries were ante-mortem in nature and caused by firearm and the cause of death was due to shock and hemorrhage. He has identified the post-mortem report to be in his pen and signature, which was marked Exhibit-1.

8. P.W.-8 Lakhan Ram, S.I. of police, had only recorded the fardbeyan of the deceased-informant. He has stated that he reached the M.G.M. Hospital, Jamshedpur, and recorded the fardbeyan of the deceased. He has identified the fardbeyan to be in his pen and signature and he has stated that upon finding the fardbeyan to be true, the informant and the witness put their thumb impressions. He has proved the fardbeyan and the same was marked Exhibit-2. In his cross-examination, he has admitted that he had not obtained the signature of any Doctor or any para-medical staff on the fardbeyan. He has stated in his cross-examination that Mangal Bhuiyan was in his senses while he was giving his fardbeyan.

9. The statement of the accused was recorded under Section 313 of the Cr.P.C., wherein he has denied the evidence against him. On the basis of the evidence on record, the sole appellant was found guilty, convicted and sentenced by the Trial Court below, as aforesaid.

10. Learned counsel for the appellant has submitted that the impugned Judgment of conviction and Order of sentence are absolutely illegal and cannot be sustained in the eyes of law, inasmuch as, the prosecution has failed to bring home the charges against the sole accused beyond all reasonable doubts. It is submitted that the F.I.R. cannot be taken as dying declaration of the deceased, inasmuch as, there is nothing on record to show that at the time of giving the fardbeyan, the deceased was in his senses and the certificate of Doctor had not been obtained thereon. Learned counsel, accordingly, submitted that the fardbeyan cannot be treated as a dying declaration of the deceased. Learned counsel has further submitted that most of the prosecution witnesses have turned hostile and only two prosecution witnesses, one of whom is hearsay witness have supported the case. Learned counsel, accordingly, submitted that the prosecution has not proved the case beyond all reasonable doubts and in the facts of the case the appellant ought to have been given the benefit of doubt.

11. Learned counsel for the state, on the other hand, has opposed the prayer and has submitted that the prosecution has been able to prove all the charges against the sole appellant beyond all reasonable doubts, inasmuch as, P.W.-2 Dhani Ram has supported the prosecution case as eyewitness to the occurrence, clearly stating that it was this accused, who had assaulted the deceased by firearm. P.W.-1 Dharmendra Prasad, who was the priest of the Temple has rightly supported the case as hearsay witness, as after being assaulted, he had gone to complain to the local M.L.A., and he could not see the deceased being assaulted by the accused. Learned counsel, accordingly, submitted that ocular evidences of these witnesses are fully corroborated by the medical evidence of P.W.-7 Dr. A.K. Choudhary and the post-mortem report, proved by him as Exhibit-1. Learned counsel accordingly, submitted that there is no illegality in the impugned Judgment of conviction and Order of sentence, passed by the Trial Court below.

12. Having heard learned counsels for both the sides and upon going through the record, we find that the F.I.R. was lodged by the deceased himself while he was alive, stating that this accused had assaulted him by firearm, causing injury below his neck and near his cheek. This fardbeyan of the informant deceased is fully corroborated by the evidence of eyewitness P.W.-2 Dhani Ram and the medical evidence of P.W.-7 Dr. A.K. Choudhary. As such, there is no occasion to doubt the genuineness of this fardbeyan, simply because of the fact that there is no signature / certificate of the Medical Officer thereon. P.W.-8 Lakhan Ram, S.I. of police, who had recorded the fardbeyan, has stated that the informant was in his senses and he could give the fardbeyan.

Eyewitness P.W.-2 Dhani Ram and even the hostile witness P.W.-6 Sanjit Lohar have stated that the informant was in his senses when he was brought to the hospital. The ocular evidence of the eyewitness is also fully corroborated by the medical evidence of P.W.-7 Dr. A.K. Choudhary, who had found the firearm wound of entrance, and the injury just below the neck and just upper to the chest and the bullet was also recovered from the wound.

13. Since the ocular evidence of the eyewitness is fully corroborated by the medical evidence of P.W.-7 Dr. A.K. Choudhary and the post-mortem report, proved by him as Exhibit-1, we do not see any illegality in the impugned Judgment of conviction and Order of sentence, passed by the learned Trial Court below.

14. Accordingly, the impugned Judgment of conviction dated 15th of July, 2006 and Order of sentence dated 18th of July, 2006, passed by learned Additional Sessions Judge, F.T.C.-II, Jamshedpur, in Sessions Trial No. 471 of 2004, whereby the appellant Gopal Machhua has been found guilty, and convicted and sentenced for the offences under Section 302 of the Indian Penal Code and Section 27 of the Arms Act, are hereby, affirmed. The appellant is already in custody and serving out the sentence.

15. There is no merit in this appeal and the same is accordingly, dismissed. Let

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