

(2017) 11 JH CK 0021
In the Jharkhand High Court
Case No : 847 of 2008

Sitaram Mahto & Ors.

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 164](#) - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 201](#), [Section 201](#)

Citation : (2017) 11 JH CK 0021

Hon'ble Judges : H.C. Mishra, Ananda Sen

Bench : DIVISION BENCH

Advocate : Renu Bala, Pankaj Kumar

Judgement

1. This criminal appeal is directed against the judgment of conviction dated 19th May, 2008 and order of sentence dated 22 nd of May, 2008 by which the learned Additional Session Judge, Fast Track Court II, Daltonganj, Palamau has found the appellant Bablu Ansari @ Irsad Ansari @ Aslam Ansari guilty for committing offences punishable under Sections 302 of the Indian Penal Code and Section 27 of the Arms Act. After finding the appellant guilty of the aforesaid offences, he was sentenced to undergo rigorous imprisonment for life along with a fine of Rs.5000/- for the offence punishable under Section 302 of the Indian Penal Code and 3 years" rigorous imprisonment for the offence punishable under Section 27 of the Arms Act. It has also been ordered that in the event of failure to pay the

fine amount, the appellant shall undergo further imprisonment for a period of one year.

2. The prosecution case is based on the fardbayan of the informant, P.W.9 - Kalyug Mahto, the father of the deceased wherein he has stated that on 11.06.2005 at about 06.30 p.m., his son Ravi Kant Mehta @ Bablu aged about 18 years went out. Till 09.00 p.m. he did not return, so the informant searched for him, but he was not found thus the informant returned. The next day, i.e., on 12.06.2005, Kailash Ram, at about 06.00 a.m. in the morning came and told that some one has murdered Bablu and has thrown the body near the railway track. On

hearing this, the informant rushed near the railway track where several persons were present from before. He saw the dead body of Bablu, which was lying between the up and down railway lines. The head of Bablu (the deceased) was towards the western side and the legs were towards the eastern side. There was a

bullet injury on the chest of the deceased. The informant did not find any other mark of injury on the person of the deceased. He also stated that there was no blood stains on the spot where the dead body was found. He inferred that his son had been killed by some person some where and his body was brought and thrown between the railway lines.

3. On the basis of the aforesaid statement of the informant, the police registered Daltonganj G.R.P.S. Case No.24 of 2005 under Sections 302 / 201 / 34 of

the Indian Penal Code and Section 27 of the Arms Act. The first information report

was registered against unknown. Police investigated the matter and submitted chargesheet against this appellant and another accused person. Cognizance was taken and the case was committed to the Court of Session. This appellant claimed innocence and thus, was put on trial. Charges were framed for the offence under Section 302 / 34 of the Indian Penal Code 201/34 of the Indian Penal Code and Section 27 of the Arms Act. The appellant pleaded not guilty and claimed to be

tried.

4. To prove the prosecution case, altogether 15 witnesses were examined by the prosecution, who were P.W.1 Sumitra Devi, P.W.2 Rameshwar Mahto, P.W.3 Pramod Kumar Mehta, P.W.4 Nagendra Singh, P.W.5 Kameshwar Kumar, P.W.6 Vidyapati Pal, P.W.7 Laxman Ojha @ Bijul, P.W.8 Sitaram Tiwary, P.W.9 Kalyug Mahto, P.W.10 Ashok Kumar Dubey, P.W.11 Pradeep Kumar Mehta, P.W.12 Dilip Pal, P.W.13 Dr. Vijay Kumar Singh, P.W.14 Tarun Kumar, P.W.15 Vijay Kumar.

Following are the documents, which were exhibited:-

Exhibit 1 - Signature of Pramod Kumar Mehta and Suryodhan Mehta on the seizure list.

Exhibit 2 - Signature of Jitendra Kumar Mehta, Pramod Kumar Mehta and Umesh Kumar Mehta on the production cum seizure list

Exhibit 3 - Signature of Nagendra Singh in the statement under Section 164 Cr.P.C.

Exhibit 3/1 - Statement under Section 164 Cr.P.C. of Nagendra Singh.

Exhibit 3/2 - Certificate of P.W.14 in statement under Section 164 Cr.P.C. of Nagendra Singh

Exhibit 4 - Fardbeyan

Exhibit 4/1 - Endorsement on Fardbeyan

Exhibit 5 - Seizure List

Exhibit 6 - Production cum Seizure list

Exhibit 7 - Seizure list

Exhibit 8 - Postmortem Report

There were 5 material exhibits, which are as under: -

Material Exhibit I - One pair of chappal

Material Exhibit II - One old towel

Material Exhibit III - One bullet

Material Exhibit IV - Three locks

Material Exhibit V - One bunch of keys

5. The Trial Court, after hearing the arguments of the parties and considering

the materials on record, acquitted one Intekhab Ansari, but, vide judgment dated 19th May, 2008 convicted this appellant for the offence punishable under Section 302 of the Indian Penal Code and Section 27 of the Arms Act and further vide order of sentence dated 22nd May, 2008 sentenced him to undergo rigorous imprisonment for life along with a fine of Rs.5000/- for the offence punishable under Section 302 of the Indian Penal Code and 3 years" rigorous imprisonment for the offence punishable under Section 27 of the Arms Act. It was ordered that in

the event of non-payment of fine, appellant has to further undergo imprisonment of

one year.

6. Aggrieved by the Judgment of conviction dated 19th May, 2008 and Order of sentence dated 22nd May, 2008, this appellant has preferred this criminal appeal before this Court.

7. We have heard the counsel appearing on behalf of the appellant and learned Additional Public Prosecutor for the State at length and have also gone through the record of the case.

8. Learned counsel appearing on behalf of the appellant submits that all the witnesses of this case, save and except P.W.4, are admittedly not the eye witnesses to the murder. They are, in fact, hearsay witnesses and post occurrence witnesses. None of these witnesses have stated before the Court that this appellant was involved in the crime. She submits that it is only the P.W.4, friend of

the deceased, who posed himself to be the eye witness and deposed before the Court that he has seen the commission of murder. She submits that this sole alleged eye witness, in his deposition, has stated many a things, which are not corroborated by the other witnesses including the informant, thus, rendering his deposition as unreliable. It is stated that statement of P.W.4 is not corroborated by

any other witness, thus, it would not be safe to base the conviction solely upon the

testimony of P.W.4, which is absolutely unreliable. After analysing the evidence of P.W.4 read with evidence of other witnesses, it can safely be concluded that this P.W.4 is not an eye witness to the occurrence. Thus, there is only one conclusion that, in fact, there is no eye witness to the murder thus, the conviction of the appellant is absolutely bad. She submits that none of the witnesses have stated that this P.W.4 has divulged the name of this appellant as the assailant, that being

so, the name of the appellant taken by P.W.4 as an assailant is not believable. She

submits that surprisingly, when the fardbayan was recorded at the place of occurrence, the P.W.4 was present and if he had disclosed the name of this appellant as the assailant, then there was no occasion as to why the FIR was registered against unknown accused. She submits that much reliance was placed upon recovery of a bunch of keys, which allegedly belonged to this appellant, from

the place of occurrence. She submits that recovery of the keys from the place of occurrence is absolutely incorrect, as it would be evident that the keys were not recovered, but, were produced before the investigating officer by the brother of the

deceased, that too after one day. It is submitted that the prosecution has tried to assert the presence of the accused at the place of occurrence through those bunch of keys by projecting that the keys were found at the place of occurrence where the dead body was found. She submits that this story has no legs to stand as from the evidence, it is clear that the keys were produced a day after the body was recovered and, in fact, the police has not recovered the same from the place of occurrence. She submits that the investigating officer has also categorically stated that the father of the deceased not only did not name the appellant in the fardbayan, but, also did not disclose his name in the restatement also, which clearly goes to show that the P.W.4 had not divulged the name of this appellant immediately, but, rather only to falsely implicate this appellant, has cooked up this

story. It is lastly submitted that in view of the evidence led by the prosecution, the

appellant is entitled to get the benefit of doubt and should be acquitted.

9. Learned A.P.P. supported the judgment and submits that P.W.4 is an eye witness, who has given vivid description as to how the murder was committed by this appellant. He submits that there is nothing on record to suggest that this witness is not an eye witness. It is further submitted that a pair of slippers and towel were seized from near the dead body, which clearly suggests the involvement of this appellant in the crime. It is also submitted that the statement of

P.W.4 was recorded under Section 164 of the Code of Criminal Procedure, wherein also he had given vivid description, which clearly suggests that this appellant is the assailant, who has committed the murder of the deceased. He submits that from perusal of the evidence, only one conclusion can be arrived at, that this appellant has committed murder of the deceased.

10. We have noted earlier that altogether 15 witnesses have been examined in this case on behalf of the prosecution.

(A) P.W.6 and P.W.12 are hostile witnesses.

(B) P.W.2 and P.W.8 are formal witnesses. P.W.2 Rameshwar Mahto stated that he was in his house when at night he heard a sound of fire arm, but, he did not come out. In the morning at about 5-6 a.m., he came out of the house and saw a crowd near the railway line. He went near the railway line and saw the dead body of the deceased. Nothing more was deposed by him.

(C) P.W.8 has stated that he was on duty when he heard some one shouting that a murder has taken place. This witness has neither asked as to who was murdered nor asked as to who had murdered nor did he went to the place of occurrence.

(D) P.W.1 Sumitra Devi, P.W.7 Laxman Ojha and P.W.11 Pradeep Kumar Mehta are hearsay witnesses. P.W.1 has stated that in the morning when she came out, she saw several persons gathered near the railway track. She also reached there

and found that the dead body of Bablu, son of the informant was lying near the railway track. She stated that who had committed the murder was not known to her. She stated that later on she heard rumours in the village that Aslam had committed the murder. She stated that she had not seen any one committing the murder.

(E) P.W.7 Laxman Ojha @ Vijul Ojha stated that he came to know that the son of the informant was murdered and his dead body is lying near the railway track. His neighbour told him that this appellant has committed murder of the deceased. In cross examination, he stated that his statement was not recorded by the police and for the first time he is making his statement before the Court.

(F) P.W.11 Pradeep Kumar Mahto is also a hearsay witness, who stated that he came to know from the villagers that the deceased had been murdered by this appellant. He stated that Jitendra Kumar Mehta has told him that this appellant had killed the deceased. He stated that on the second day of the occurrence, he came to know that this appellant has committed the murder. He stated that the police prepared the inquest report and had send the dead body for postmortem. He stated that at the time of postmortem examination, one bullet was taken out from the chest of the deceased. He stated that he had not seen any one committing the murder of the deceased, but, heard that this appellant had killed him.

(G) P.W.3 Pramod Kumar Mehta is a seizure witness. He deposed that one pair of slippers and one old towel was seized by the police, from near the dead body. He had put his signature on the seizure list, which was marked as Exhibit 1. He stated that the bunch of keys were also seized and he had put his signature on the said seizure list. The said seizure list was marked as Exhibit 2. He stated that he had put his signature along with one Surya Nath Mahto. He stated that the production-cum-seizure list was signed by himself, one Umesh Kumar Mahto and Jitendra Kumar Mehta.

(H) P.W.10 is Ashok Kumar Dubey, who is a police official. He only produced the

seized materials before the Court. He produced the pair of slippers, one towel, one

bullet, three locks and a bunch of keys which were marked as Material Exhibit 1, Material Exhibit 2, Material Exhibit 3, Material Exhibit 4 and Material Exhibit 5. He stated that materials were not sealed.

(I) P.W.14 Tarun Kumar is the Judicial Magistrate, who had recorded the statement, under Section 164 of the Code of Criminal Procedure, of Nagendra Singh. The said statement was marked as Exhibit 3/1. The handwriting and signature of P.W.14 was marked as Exhibit 3/2.

(J) P.W.5 and P.W.15 are the two investigating officers. P.W.5 had proved the fardbayan and endorsement on the same, which was marked as Exhibit 4 and Exhibit 4/1. He stated that on 12.06.2005, he received a written information from Station Master that near the railway goomty an unknown dead body is lying. After receiving the said information, he proceeded to the place of occurrence and saw the dead body near the railway crossing. There he recorded the fardbayan of the informant, Kalyug Mahto. He recorded the restatement of the informant. This witness stated that the informant, in his restatement, had stated that some person

had murdered his son by fire arms. He further stated that a pair of slippers and old

pink towel was recovered near the dead body and a seizure list was prepared. The seizure list was marked as Exhibit 5. He stated that at the place of occurrence, during investigation, a bunch of keys was found, which was produced by Jitendra Mahto, who told him that Nagendra Singh had given this bunch of keys to him and

had said that the said bunch of keys fell from the pocket of this appellant while he was fleeing after committing the crime. The said keys were also seized and a seizure list was prepared, wherein Pramod Kumar Mehta and Umesh Mahato had put their signature. The said seizure list was marked as Exhibit 6. He stated that he got the statement of Nagendra Singh recorded under Section 164 of

the Code of Criminal Procedure. Dead body was sent for postmortem.

Chargesheet was filed against this appellant. He reiterated that the bunch of keys was handed over by Jitendra Kumar Mehta and the bunch of keys belonged to Bablu Khan (the appellant) and all the locks of the house of Bablu Khan (the appellant) got opened by those keys. He stated that the seizure list of the keys was prepared on 13.06.2005. He admitted that the slippers and towel were not sent for forensic examination. He stated that he had recorded the statement of several persons while investigating the case. He stated that the statement of Nagendra Singh was recorded on 13.06.2005 at the place of occurrence when several villagers and the mother and father of the deceased were also present. He denied the suggestion that he did not investigate the case properly. The second investigating officer is P.W.15, Vijay Kumar, who stated that he had taken over the investigation from the earlier officer. The major part of the investigation was already completed by Shri Kameshwar (P.W.5). He stated that he submitted chargesheet under Section 302, 201 / 34 of the Indian Penal Code and Section 27 of the Arms Act. He proved the inquest report, which was marked as Exhibit 9, but,

admitted that the said exhibit was not prepared in his presence.

(K) P.W.13 . Vijay Kumar Singh had proved the postmortem report as Exhibit 8. Admittedly, he was not the doctor, who had conducted the postmortem. He stated that the postmortem was conducted by Dr. Kundan. He stated that the death occurred due to gun shot injury and due to haemorrhage and loss of blood. He stated that there was a bullet injury on the person of the deceased.

(L) P.W.9 Kalyug Mahto is the informant. He supported his version in the FIR. He stated that his son went out in the evening, but, did not return. On the next day

at about 06.00 a.m. his neighbour stated that someone has murdered Bablu and his body is lying near the railway track. He went to the place of occurrence and saw the dead body of Bablu, his son, lying between the up and down tracks. His head was directed towards the western side and the legs towards the eastern

side. He stated that there was a bullet injury on his chest and there was no other injury. He stated that he could not say as to who had committed the murder. He stated that the police came and recorded his statement. Postmortem was conducted. He stated that on the next day, he came to know from Jitendra, his elder son that this appellant has committed the murder of the deceased. He stated

that a bunch of keys was handed over by Nagendra Singh to Jitendra and Nagendra told this fact to Jitendra. Jitendra Mahto is his elder son, who died. He identified his signature on the fardbayan, which was marked as Exhibit 4/1 and signature of his son Jitendra Kumar was marked as Exhibit 4/2 and fardbayan was marked as Exhibit 4. In cross examination, this witness stated that at the place of occurrence, there was no discussion about the assailants with the villagers. He also deposed that he told the police that some one had murdered his son and had thrown the dead body on the railway track. He stated that none of the villagers had

informed him as to who had killed his son. He stated that when his restatement was recorded, there were 15-20 villagers, but, no one told him that who had committed the murder. He stated that the police had recorded his statement thrice.

He stated that he had stated before the police that he has not stated before any villager that Bablu Khan had murdered his son.

11. From the evidence of all these witnesses, we find that none of them are eye witnesses to the occurrence. From the evidence, it is clear that it is Nagendra Singh, who told Jitendra Kumar Mehta (brother of the deceased and elder son of the informant), by giving a bunch of keys, that this appellant had committed the murder of the deceased and he had seen the occurrence. Jitendra Kumar Mahto was not examined because he died before he could be examined. Thus, the only eye witness in this case is Nagendra Singh, the P.W.4, who stated that he returned

from the market and went to sleep on the terrace of Sarpanch's house where Bablu Khan and Intekhab were already sleeping. After some time, Bablu and

Intekhab went down. The deceased, thereafter, came and asked to accompany him to Barwadih to which, this appellant stated that he will go when the day breaks. Then this appellant and Intekhab again came and asked for tobacco and Ganja. This appellant consumed Ganja and they slept. At about 03.30 p.m., this appellant, the P.W.4, the deceased and Intekhab went to ease themselves in the field and when they were returning, the appellant stopped the deceased and this witness and demanded money, when both these witnesses and the deceased informed this appellant that they did not have any money with them. This appellant

took out a pistol, then this P.W.4 tried to snatch the said pistol, upon which this appellant fired a shot, which pierced the right chest of the deceased and the deceased fell down. This witness tried to catch this appellant and Intekhab, but, they fled. While fleeing, the slippers, the towel and a bunch of keys belonging to this appellant fell at the place of occurrence. This witness, then rushed to his house and informed this matter to all. The police came, seized the towel, slippers and the bunch of keys and sent the body for postmortem. This witness identified his statement given under Section 164 of the Code of Criminal Procedure, which was marked as Exhibit 3. He stated that he made hue and cry in the village and thus, the villagers reached the place of occurrence and saw the dead body of the deceased. He stated that the father of the deceased was already present when the

police came to the spot. He stated that in front of the police, he stated that this appellant had committed the murder of the deceased. He further stated that at that

time 10-20 persons were already present including the informant. He stated that the police did not record his statement at the place of occurrence, rather his statement was recorded on the next day. He stated that the police had not recorded the statement of any person on the very first day. He stated that this appellant had taken Rs.5000/- from him, but, was not returning.

12. Now it has to be seen whether on the basis of the statement of this witness the prosecution has been able to prove that the appellant has committed murder

of

the deceased, beyond all reasonable doubt. As stated, this witness is the sole eye witness to the occurrence. Now the question is, from the evidence led, whether this witness is a reliable witness or not and whether he actually is an eye witness. This witness has stated that he had seen the occurrence and near the railway line this appellant had shot dead the deceased. As per this witness, he rushed to the village and informed about the occurrence. As per the evidence of this witness, he has disclosed the name of this appellant as the assailant immediately. If that be so, then it is absolutely surprising as to why and how the FIR has been lodged against an unknown person. The statement of this witness that he has informed the villagers that this appellant is the assailant is not believable, after going through the deposition of P.W.9, the informant, who happens to be the father of the

deceased. The informant has categorically stated that at the time of recording the fardbayan and even during his restatement, he was not aware as to who killed the

deceased, whereas P.W.4, the self-claimed eye witness in paragraph 8 has clearly stated that when police came, he disclosed before the police, in front of the villagers that this appellant had murdered the deceased. A father, whose son has been murdered, will definitely not withhold the name of the assailant in his fardbayan, if he knows his name. Non-mentioning the name in FIR or in the restatement clearly suggests that P.W.4 has not disclosed the name of this appellant at the place of occurrence.

13. The informant, i.e., the father of the deceased has deposed that it is his elder son Jitendra Kumar Mahto, who disclosed that P.W.4 Nagendra Singh had told him that this appellant had committed murder of the deceased and then only he came to know about the aforesaid fact. It has also come in evidence that this fact has not been mentioned by P.W.4 in his entire evidence. There is not a single whisper that this witness had disclosed the name of the appellant as assailant to Jitendra Kumar Mehta. Further if we see the statement of the informant, he says

that his son was murdered at some other place and his body was thrown on the railway track, but, this eye witness, P.W.4 states that the murder had taken place on the railway track where this appellant had shot the deceased on his chest and he fell down. The postmortem suggests that because of the fire arm injury resulting in haemorrhage, the deceased died. As per the doctor there was loss of blood. Surprisingly, no blood was found at the place of occurrence. The fardbayan also suggests that there was no blood found where the dead body was lying. This fact suggests that the murder had not taken place where the body was found. Thus, P.W.4 has also not stated correctly about the place of occurrence where the murder had taken place. Thus, this witness, i.e., P.W.4, as per the opinion of this Court is not an eye witness. Further, it can be said that the prosecution has also not been able to prove the place of occurrence.

14. This witness further tried to implicate this appellant by handing over a bunch of keys to Jitendra Kumar Mahto and told him that the keys belonged to this appellant, which fell from his pocket, while he fled after committing murder of the deceased. As per this witness, the bunch of keys was found from the place of occurrence. Surprisingly, the keys were handed over on 13.06.2005, i.e., a day after the dead body and the other materials were recovered. The slippers and the towel were recovered near the dead body by the police on 12 th June, 2005 itself. This means that the police did not find any bunch of keys from the place of occurrence. We have perused the seizure list, which clearly suggests that this bunch of keys were produced before the investigating officer on 13.06.2005. Further, the conduct of this witness, P.W.4, in producing the bunch of keys also creates doubt in the mind of this Court as to whether actually the keys were recovered from the place of occurrence or not. If the keys were recovered at the time of the recovery of the body, then the question arises as to why the same were not seized by the police on 12.06.2005 itself. Further this witness, P.W.4, himself did not hand over the same to the police. This genuinely gives an impression that the alleged recovery of the keys from the place of occurrence is not a correct fact.

Further as per P.W.4, the recovered slippers and towel belonged to this appellant, but, the same has not been confirmed by the investigating officer.

15. From cumulative effect of all these facts, we come to a conclusion that P.W.4, who poses himself to be an eye witness, is not so. P.W.4 cannot be an eye witness to the said occurrence. Thus, we hold that P.W.4 is not at all a reliable witness. If we discard the evidence of P.W.4, all other witnesses are either formal or hearsay witnesses. The conviction of this appellant, thus, cannot be based on the statement of any hearsay witnesses. Thus, the prosecution, in view of this Court, has not been able to prove the guilt of this appellant beyond all reasonable doubt.

16. After careful consideration of the evidence of prosecution witnesses and the materials on record, we set aside the impugned judgment of conviction dated 19th

May, 2008 and order of sentence dated 22nd of May, 2008 passed by learned Additional Session Judge, Fast Track Court II, Daltonganj, Palamau in Session Trial No.330 of 2006 / Session Trial No. 59 of 2006. The appellant stands acquitted. The appellant, who is in custody, should be set at liberty forthwith, if his

detention is not required in any other case. This appeal stands allowed.

17. Let the Lower Court Records be transmitted forthwith to the Court concerned with a copy of this judgment.