
(2003) 04 JH CK 0110

In the Jharkhand High Court

Case No : Criminal Appeal No. 153 of 1996 (R) and 268 of 2002

Sonaram Kachhap and Jagu Bodra and Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 307, 37

Citation : (2003) 2 JCR 629

Hon'ble Judges : Vinod Kumar Gupta, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : Jai Prakash and Ritesh Kumar Bobby in Cri. A. No. 153/96R and U.K. Choubey in Cri. Appeal No. 268/02, for the Appellant; Vijay Gopal, APP, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—The appellants named above have preferred this appeal against the Impugned judgment and order dated 22.7.1996 and 23.7.1996 respectively passed by Shri G.K. Verma, 2nd Additional Sessions Judge, Jamshed--pur in ST No. 124 of 1992 whereby and whereunder they were found guilty for the offence punishable u/s 302/34 and 307/34 of the Indian Penal Code and they were convicted and sentenced each to undergo R.I. for life for the offence u/s 302/34 and R.I. for seven years each for the offence u/s 307/34 of the Indian Penal Code.

2. The prosecution case has arisen on the basis of the self-statement (Ext. 3) of PW 7 Vijay Kumar Singh, S.I. Jugsalai P.S. lodged before the said P.S. on 7.3.1992 at 17.00 hours regarding the occurrence which is said to have taken place on that very day at 15.10 hours in front of scrap taal of one Pusi Babu at Bir Kuwar Singh chowk on the station road, P.S. Jugasalai, District East Singhbhum in which Sailendra Mahto, the driver of three wheeler bearing registration No. BHX 7613 has been done to death.

3. The prosecution case, in brief, is that PW 7, the informant was on patrolling duty in the company of PW 6 Pramod Kumar Singh and PW 9, Pasupati Nath Singh both ASI at 500-600 yards away from the place of occurrence where he got the information regarding the commission of the murder of the driver of a three wheeler bearing Registration No. BHX 7613 and he along with them rushed to the place of occurrence along with two other Hawaldars who met the informant in the way and found the driver of the said three wheeler dead fallen on the ground as a result of the bleeding injury caused at his neck by fire arms. It is alleged that the informant learned from the persons assembled there that three persons had a quarrel with the said deceased on the issue of the payment of fare and one of them who was wearing green full Jersey and black full pant had fired from his countrymade pistol causing injury at the neck of the deceased as a result of which he fell down and died and all the three persons aforesaid had fled away about two or three minutes ago from the place of occurrence towards south and on this information the informant along with his companion aforesaid followed the aforesaid persons towards that direction raising alarms and at the distance of 500-600 yards from the place of occurrence the informant saw them fleeing away and the residents of the vicinity of Iohatal of R.N. Singh and other citizens of that place attempted to apprehend the aforesaid three persons and on this one of them who was wearing the green full Jersey and the black full pant fired from his country made pistol at them which, however, did not hit any of them and they were apprehended. The prosecution case further is that the person who was wearing green full Jersey and the black full pant had disclosed his name as Biswas Prasad @ Birju and the other two disclosed their name as Sonaram Kachhap and Jagu Bodra and in presence of Vijay Kumar Singh and Ram Subakh Singh (both not examined in this case) their person was searched by the informant and a country made pistol and two empty cartridges were recovered from the accused Biswas Prasad @ Birju and one live cartridge each of 303 was recovered from the person of the appellants named above and a seizure list in respect thereof was prepared. It is also alleged that co-accused Biswas Prasad @ Birju and both the appellants aforesaid have made their confessions before the informant and others regarding committing the murder of the deceased.

4. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated in this case on mere suspicion.

5. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that there is no legal evidence at all on the record to substantiate the charges levelled against the appellants and the learned Court below has illegally come to the finding of the guilt of the appellants regarding the commission of the murder of the deceased and the finding of the learned Court below is simply based on surmises and conjectures. It has also been submitted that the learned Court below has failed to evaluate the evidence on the record in proper perspective and has gravely erred in coming to the finding of the guilt of

the appellants. It has also been submitted that there is no eye-witness of the occurrence implicating both the appellants as a participant in the occurrence and PW 7, the informant, PW 6 and PW 9 are not the eye-witnesses of the occurrence and there is no iota of evidence on the record that the appellants have committed the murder of the deceased. It has also been submitted that the appellants and convicted co-accused Biswas Prasad @ Birju were never put on TIP in course of investigation and even the clothes alleged to be worn by co-accused Biswas Prasad @ Birju was not seized and brought on the record. It has further been contended that even the alleged recovered country made pistol was not examined by the ballistic expert to prove the fact that firing was made from the said country made pistol which has caused the death of the deceased and the entire investigation in this case suffers with infirmities. Lastly it has been contended that the recovered country made pistol and live and empty cartridges have not been brought on the record and even the seizure list in respect thereof has not been proved in this case. Lastly it has been contended that PW 7, the Informant has himself investigated the case which is an illegality in view of the ratio of the case of Gholtu Modi v. State of Bihar 1986 BLJ 2 : 1985 E C C 805 and serious prejudice has been caused to the appellants in respect thereof. Therefore, the impugned judgment is unsustainable.

6. The learned APP has submitted that co-accused Biswas Prasad @ Birju along with the appellants were chased by the informant and others and they all were apprehended and a country made pistol with two empty cartridges was recovered from the possession of co-accused Biswas Prasad @ Birju and one live cartridge each was recovered from the conscious possession of both the appellants while they were escaping from the place of occurrence after the commission of the murder of the deceased and it is a circumstances of unimpeachable character which leads to the inference of the guilt of the appellants as a participant in the occurrence.

7. The prosecution has in all examined 10 witnesses in this case PW 7, Vijay Kumar Singh, ASI is the informant and also the I.O. of this case and PWs 6 and 9 are their associates and all the three along with others had come to the place of occurrence on information regarding the commission of the murder of the driver of the said three wheeler. It is pertinent to mention here that PWs 7, 6 and 9 are not the ocular witness of the occurrence regarding the commission of the murder of the deceased. PW 8, Mrs. J. Kerketta is also the I.O. Of this case and she has simply submitted charge-sheet in this case PWs 2, 3, 4, 5 and 10 have turned hostile and they do not at all support the prosecution case. PWs 3 and 4 have admitted their signatures on the seizure list regarding the seizure of the blood stained earth from the place of occurrence and both the witnesses in their cross examination have deposed to have signed the alleged seizure list under pressure, duress and fear of the police. PW 1, Dr. Y. Nath has conducted the postmortem examination on the dead body of the deceased and the postmortem report per his pen is Ext. 1 in this case No. oral and documentary evidence has been adduced on behalf of the defence.

8. It will admit of no doubt that Shailendra Mahto, the driver of three wheeler bearing Registration No. BHX 7613 was found murdered in front of the scarp taal of Pusi Babu at Bir Kuwar Singh chowk at the station road within the jurisdiction of Jug-salai P.S. East Singbhum. It is said that his death has been caused by firearm injury as a result of the altercation on the question of payment of fare. PW 1, Dr. Y. Nath has deposed to have conducted the postmortem examination on the dead body of the deceased on 8.3.1992 at 1.15 p.m. and has found the following ante mortem injuries on the dead body of the deceased :

(a) wound of entry measuring 5.5 cm x 2.5 cm. into neck situated over left neck upper part below mandibular border. There is powder tattooing mark spread over an area of 6" x 5" of the left face and adjoining back of neck. There is blackening and burning of skin margin of the wound. The soft tissue of neck muscles are lacerated and contused. The projectile centering into the soft tissues and muscles entered into the body of 3rd and 4th survival vertebrae and lacerated the spinal cord and fractured the vertebrae. The projectile then lacerated and contused the soft tissues of right neck and made exit through the skin.

(b) wound of exit 1 cm in diameter over right neck 2 cm below the right ear.

(c) Abrasion 3 cm x 2 cm over left pinna upper part.

The medical witness has further deposed to have found contusion of posterior half of the brain and cerebellum and blood and blood clots were also found in a cranial cavity. The medical witness has further deposed that injury Nos. 1 and 2 are the result of the fire arm and death of the deceased has been caused by shock and laceration of spinal cord and injury No. 3 has been caused by hard and blunt substance. The medical witness has also deposed that the time elapsed since death is within 18-24 hours. Ext. 1, the postmortem report per pen of the medical witness corroborates his testimony.

9. It is pertinent to mention at the very outset that as per the prosecution case a large number of persons had assembled at the place of occurrence where the deceased is said to have been shot down dead and the assailants have fled away from there. The prosecution case further is that the appellants along with the co-accused Biswas Prasad @ Birju were apprehended by PWs 7, 6 and 9 with the help of the residents nearby lohatal of R.N. Singh 500-600 yards from the place of occurrence in course of chase. PWs 7, G and 9 in their evidence on oath have deposed to have come to the place of occurrence on information immediately soon after the occurrence and on getting information that the culprits have fled away towards south of the place of occurrence and they chased them and also caught them with the help of the residents of the vicinity and in that course co-accused Biswas Prasad @ Birju who was wearing green full Jersey and black full pant has also made a firing and a country made pistol with two empty cartridges was recovered from the conscious possession of co-accused Biswas Prasad and one live cartridge was recovered from the conscious possession of each the appellants and they have confessed their guilt before them. No witness is

forthcoming to support the prosecution case as the ocular witness of the commission of the murder of the deceased by the appellant and co-accused Biswas Prasad @ Birju as well as their apprehension on chase in course of which one shot was fired by co-accused Biswas Prasad @ Birju who was wearing green full Jersey and black full pant. Therefore, there is total absence of any ocular testimony regarding the commission of the murder by co-accused Biswas Prasad @ Birju who is alleged to be wearing a green full Jersey and black full pant. The said green Jersey and black full pant alleged to be worn by co-accused Biswas Prasad @ Birju has not been brought on the record for the reasons best known to the prosecution and it is a fatal lacunae of the prosecution case to establish the Identity of co-accused Biswas Prasad @ Birju as a person who is said to have fired at the deceased causing his death at the place of occurrence as well as firing made by him on the persons who were attempted to apprehend him in the course of chase. PW 7, the informant, PW 6 and PW 9 cannot be termed as the ocular witness of the occurrence regarding the commission of the murder of the deceased in the manner as alleged as when they reached the place of occurrence after the commission of the murder of the deceased, they have found the deceased dead fallen on the road. The appellants as well as co-accused Biswas Prasad @ Birju have also not been put on TIP for their identification as a participant in the occurrence for the reasons known to the prosecution and to crown all even the alleged recovered country made pistol was not examined by the ballistic expert to establish the fact that the firing has been made by co-accused Biswas Prasad @ Birju at the deceased as well as the persons who had attempted to apprehend him and the appellants and therefore, there is total absence of any legal evidence on the record to establish the fact of the firing alleged to have been made by the said country made pistol causing the death of the deceased. There is also no legal evidence on the record regarding the recovery and seizure of the country made pistol, empty cartridges and live cartridges from the person of the appellants and co-accused Biswas Prasad @ Birju from their conscious possession as deposed by PWs 7, 6 and 9. Therefore, the evidence of PWs 7, 6 and 9 that on getting information regarding the fleeing away of the culprits towards south of the place of occurrence and they were chased by them and their consequent apprehension does not stand corroborated by any legal and reliable evidence on the record of any independent, natural and competent witness of the occurrence. And last but not the least, the informant has himself conducted the investigation of this case which has been deprecated in the case of *Gholtu Modi* 1985 E C C 805 (supra). It has been rightly held in that case that the informant should not have taken up the investigation in his own hand as he may not be impartial as the informant being the Investigating Officer of this case must have made strenuous efforts to collect the evidence in support of his statements which is the basis of this case to get laurels. Therefore, in the facts and circumstances of this case the investigation conducted by PW 1 cannot be said to be impartial and fair.

10. To sum up there is no legal and reliable evidence at all on the record to

establish the fact beyond all reasonable doubts that there had been an altercation between the deceased and the appellants besides co-accused Biswas Prasad with the deceased on the question of fare. There is also no legal evidence on the record to show that co-accused Biswas Prasad (c) Birju, who was allegedly, wearing green full Jersey and black full pant, has made firing at the deceased causing his death. No natural, competent and independent witness of the alleged occurrence has come to support the prosecution case. The prosecution case is also replete with inherent infirmities which I have referred to above which do not at all implicate and connect the appellants as well as co-accused Biswas Prasad @ Birju with the occurrence in question having their participation therein which the deceased is said to have been done to death by fire arm injury. The investigation of this case has also been not conducted properly and fairly. The learned Court below did not consider all these aspects meticulously in proper perspective and the impugned judgment therefore suffers with manifest illegalities and the finding of the guilt of the appellants arrived at by the learned Court below is not valid and correct. Therefore, the impugned judgment cannot be sustained.

11. There is merit in this appeal and it succeeds. The appeal is hereby allowed. The impugned judgment of the learned Court below so far the appellants are concerned is hereby set aside. Both the appellants are found not guilty and they are, accordingly, acquitted. Let both the appellants be set free forthwith, if not wanted in any other case.

Lakshman Uraon, J.

12. I agree.