

(2011) 12 JH CK 0080

In the Jharkhand High Court

Case No : Death Reference No. 3 of 2011 and Criminal Appeal (DB) No. 461 of 2011

State of Jharkhand

APPELLANT

Vs

Manoj Rajwar and Others
 Chhattar @ Chhatrapati
Mandal Vs The State of Jharkhand

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Law (Amendment) Act, 1932 — Section 17
Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 120(B), 148, 149, 302, 307

Citation : (2011) 12 JH CK 0080

Hon'ble Judges : R.K. Merathia, J; Dhruv Narayan Upadhyay, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These Criminal Appeals have been filed against the judgment of conviction and order of sentence dated 22nd June 2011, passed by the learned 1st Additional Sessions Judge, Giridih in Sessions Trial No. 170 of 2008, convicting the appellants Chhattar @ Chhatrapati Mandal, Manoj Rajwar, Anil Ram and Jitan Marandi, for the offences under Sections 148, 302/149, 307/149, 342, 379/149 and 120B of the Indian Penal Code; u/s 27 of the Arms Act and u/s 17 of the Criminal Law Amendment Act (CLA Act) and sentenced to undergo R.I. for two years each for the offence u/s 148 IPC; one year each for the offence u/s 342 IPC; three years each for the offence u/s 120B IPC; seven years each for the offence u/s 307/149 IPC; seven years each for the offence u/s 27 of the Arms Act; six months each for the offence u/s 17 C.L.A. Act. The accused- appellants have further been sentenced to undergo death penalty for the offences u/s 302/149 IPC.

2. The Death Reference has been filed by the State for confirmation of the death sentence awarded to all the accused-appellants, named above, which has been

registered as Death Reference No. 3/2011, whereas the said appeals have been filed by the accused-appellants against the impugned judgment.

3. The prosecution case, in short, is as follows:-

PW-17 Puran Kisku, a police personnel who was deputed as bodyguard of Sri Nunu Lal Marandi, younger brother of Sri Babu Lal Marandi, Ex-Chief Minister of Jharkhand, lodged a fard beyan before the police at 03.30 hours in the morning on 27/10/2007 to the following effect:-

Due to protest against the M.C.C. activities, the family of Sri Nunu Lal Marandi was in the hit list of MCC extremists. At village Chilkhari, a Football tournament was organized by the workers and local citizens of Jharkhand Vikash Morcha on 26/10/2007. After the prize distribution ceremony, a cultural programme was organized, in which Sri Marandi was the Chief Guest. About 3000-4000 persons assembled there from all parts of the Districts and neighbouring districts of Bihar to watch the cultural programme in which Sri Marandi was also present. At about 12.15 hours, programme was inaugurated by Sri Marandi. At that time, 12 armed personnel were present near the dias in the dress of police personnel, about which the informant thought that they were C.R.P.F. personnel, deputed there for security purposes. After an hour, those armed persons left that place. The cultural programme continued till 0.30 hours. All of a sudden, 40-50 persons came near the dias from the side of the green room in the dress of villagers and started firing with carbine from the dias. At that time no police personnel were present there. It was further alleged that 8-10 persons fell down on the dias after receiving firearms injuries. One of the Maoists came on the dias and announced the name of Sri Nunu Lal Marandi from the mike but Sri Marandi visualizing grave situation, fled away from that place after leaving his coat and saved his life. The Maoists again started firing due to which the informant received one firearms injury on his left hand. Then the informant concealed himself under the dias. The Maoists group were telling and calling each other as Chiraj Jee, Paresh Jee, Vivek Yadav, Sunil, Jitan, Bishun Rajwar, Albert, Lakhan, Deepak and Gaga etc.

It is further alleged that all of them raised slogan like M.C.C. Jindabad, Arm Revolution Jindabad, Babu Lal Marandi Murdabad and moved towards north-east side towards the jurisdiction of Chakai Police Station. At about 2.45 A.M., when the police personnel and CRPF personnel reached at the place of occurrence, 17 persons were found dead. The names of 17 persons have been mentioned in the FIR including the name of Anup Marandi, the nephew of Sri Marandi and one unknown person. It is further alleged that 12 persons were found having firearms injuries on their persons. It is further alleged that the miscreants took away licensee DBBL gun of personal bodyguard of Sri Marandi. (After lodging of the FIR, two more persons succumbed to the firearm injuries. Thus in total, 19 persons died, whereas 12 persons were injured by firearms.)

On the basis of the said fardbeyan (Ext-25), formal FIR was drawn up,

Investigation continued, charge sheet was submitted, cognizance was taken and the case was committed to the Court of Sessions.

4. The accused-appellants pleaded not guilty and claimed to be tried. Their defence was total denial of the prosecution case. They also took the plea of false implication.

5. Their statements were recorded u/s 313 Cr.P.C.

6. The learned counsel appearing for the appellants assailed the impugned judgment on various grounds. They inter alia submitted that there is clear distinction and division between the two group of witnesses. One set of the witnesses, (hereinafter referred to as Group-A witnesses) are the witnesses, who are said to have identified one or the other accused-appellants. The other group of witnesses (hereinafter referred to as Group-B witnesses), are the injured witnesses, who have not identified any of the accused-appellants. It is further submitted that the Group-A witnesses are the residents of distant places, i.e. about 30-40 kilometers away from the place of occurrence, whereas Group-B witnesses are the resident of nearby places. It is surprising how none of the injured witnesses have identified any appellant and how all the Group-A witnesses, who were not injured, have Identified one or the other accused-appellants. It is also surprising how all of Group A witnesses, who said that they fled away after the occurrence, were located by the prosecution for recording their alleged statements u/s 164 Cr.P.C. on 27/10/2007, i.e. Just after two days of the occurrence. It was further submitted that Sri Marandi, who was the Chief Guest and whose nephew Anup Marandi (son of Sri Babu Lal Marandi, Ex-Chief Minister of Jharkhand) was killed, had neither made any statement before the police nor came to depose in the Court though he was admittedly present at the place of occurrence and after the firing started, he was saved by the informant by pushing his chair. Moreover, Sri Marandi was with the police during investigation. It is further submitted that it is also surprising, how the informant, who himself is a police personnel, could not ascertain about the identity of the said 12 armed security personnel, said to be present at the place of occurrence.

It is further submitted that the learned trial court has convicted the appellants mainly on the ground that the Group-A witnesses have disclosed the name of one or the other accused-appellants in their statements recorded u/s 164 Cr.P.C., by the Judicial Magistrate (PW-20) and the same is corroborated by their statements In Court. But such statements are not corroborated by Group- B witnesses. It is also submitted that the case of the prosecution against one Kishun Rajwar was similar, but he has been acquitted. It is further submitted that though the FIR was lodged on 27/10/2007, but the appellants were identified for the first time in Court on 28/08/2009 by PWs-8 and 9 ((Group-A witnesses), i.e. after about one year and 10 months.

It is also submitted that it has come in the evidence that there were entry tickets for the cultural programme but nothing has been brought on records to show

that any of the Group-A witnesses had the tickets to prove their presence. Moreover, none of the organizer of the cultural programme or other persons associated with It, were examined. Even the personal bodyguard of Sri Marandi was not examined, from whom, as per the prosecution, the licensee gun was snatched. It was also pointed out that some of the Group-A witnesses are said to be the extremists, who surrendered before the Government, They also had criminal antecedents.

7. On the other hand, Mr. R. Mukhopadhyay, learned SC-II and Mr. Amresh Kumar, learned APP for the State, supported the impugned judgment and submitted that the prosecution has been able to prove its case beyond all reasonable doubts against the accused-appellants. They also submitted that in this case 19 innocent persons were brutally killed in indiscriminate firing by firearms and about 12 persons received firearms injuries and, therefore, the death penalty is fully justified.

8. We find force in the submissions of the learned counsel for the appellants that the prosecution has not been able to prove its case against the accused-appellants beyond all reasonable doubts for the following reasons:-

Group-A witnesses are PWs.- 1, 8, 9, 10, 11 and 16, who identified one or the other appellants as the persons, who fired indiscriminately at the mob. These witnesses have given a different story. They said that during the cultural programme one person namely Ramesh Mandal came on the stage, removed the cover from his face and addressed the public through the mike that the extremists group was only concerned with Sri Nunu Lal Marandi and they have no enmity with other persons. Thereafter, indiscriminate firing started and there was a commotion at the place of occurrence. Whereas the injured Group-B witnesses namely, PWs- 12, 13, 14, 15, 17, 21, 23, 24, 25 did not support the first part of the said story that one person came on the stage and addressed the public through mike as has been said by the Group-A witnesses. Injured Group-B witnesses said that they were watching the cultural programme during which suddenly indiscriminate firing was started by the extremists, in which several persons died and several persons including them got firearms injuries. None of Group-B witnesses have identified any accused-appellant or any other person specifically. These witnesses have not identified the accused-appellants in Court. PW-2 deposed that he is not in a position to identify the extremists. It is surprising as to how none of Group-A witnesses, who identified one or other appellants, did not get any injury in the indiscriminate firing and commotion if they were also amongst the persons watching the cultural programme. It is also surprising that none of the Group-B witnesses, who received firearms injuries, identified any of the appellants or any other persons. Group-B witnesses include PW-17, Puran Kisku, who is the informant and the police bodyguard of Sri Marandi. He interalia said that when the firing was started, he pushed the chair of Sri Marandi by which Sri Marandi was saved but he did not identify any of the appellants either in his evidence or in Court. Thus, there is a clear division and

distinction between Group-A and Group-B witnesses, on the point of identification of the accused-appellants.

It is also surprising that Sri Marandi, who was a very important witness in this case and whose nephew Anup Marandi, was also killed, did not make any statement either before the police or before the Court. No other person(s), who were the natural witnesses like the organizers of cultural programme or the other persons associated with the cultural programme like Anchors, Generator Operators, Artists etc., were examined in this case. It may also be noted that Group - B witnesses are the resident of nearby places, whereas the Group-A witnesses are the resident of distant places, i.e. about more than 30 kilometers away. It appears that some of the Group-A witnesses were the part/members of the extremists group and they claimed to identify the accused-appellants. Pws-19, 26, 27 and 28 are the hostile witnesses. PWs-3, 4, 5, 6, 7, 18 and 22 are the Doctors, who conducted the Post Mortem on the body of the deceased and also examined the injured witnesses. PW-20 is the Judicial Magistrate, who recorded the statements of the Group-A witnesses u/s 164 Cr.P.C. PWs- 29 and 30 are the Investigating Officers of this case.

9. The appellants have not disputed the occurrence but their case is that they have falsely been implicated in this case through Group-A witnesses about whom there is serious doubt about their presence at the place of occurrence. The learned trial court has convicted the appellants mainly on the basis of the statements of Group-A witnesses, recorded u/s 164 Cr.P.C. before the Judicial Magistrate (PW-20) and their statements before the Court but, in our opinion, in the absence of any corroboration, the statements of Group-A witnesses cannot be accepted that they were the eye-witnesses of the occurrence. The prosecution has not taken pains to get the accused-appellants identified without any doubt.

10. The learned counsel for the State relied on paragraphs 31, 32 and 33 of the judgment of the Supreme Court in the case of " Krishna Mochi and Others Vs. State of Bihar,

There is no difficulty in agreeing with the observations made by the Hon''ble Supreme Court, but the facts of the said case are different from the facts of the present case. In the said case, the witnesses, who identified the accused persons, were either of the same village or were the injured witnesses, which is not the position in the case in hand.

11. Counsel for the State also relied on the judgment of " Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi),

Again, there is also no difficulty In appreciating that even though there is no previous TIP, the Court may appreciate the dock identification as being above board, but in the present case, as noticed above, the prosecution has not taken pains to get the appellants/other culprits, identified beyond any doubt.

12. As already noticed above, there is serious doubt about the presence of Group-

A witnesses at the place of occurrence. Therefore, on the basis of their statements u/s 164 Cr.P.C. and their deposition in the Court, it will not be safe to uphold the conviction.

13. It is true that the crime in which 19 innocent persons were brutally killed and about 12 innocent persons suffered firearm injuries by indiscriminate firing, is a very very cruel act on the part of the persons, who did this crime, but the State/prosecution is equally cruel. It failed in its duty to prove its case beyond all reasonable doubts against one or other appellants or against any other culprits. We are constrained to make these observations. This is the State of affairs in a case in which the brother of Ex-Chief Minister was a target and his son was also killed alongwith 18 other innocent persons. The State is failing in its duty in all such crimes committed by the extremists. Such incidents have been continuing and are getting promoted by the inactions and indifference of the State to the plight of the innocent victims. Similar is the position in a good number of other crime cases. We can only hope for justice by the almighty.

14. In the facts and circumstances, noticed above, we are left with no option than to give the appellants benefit of doubt, as the prosecution has utterly failed and neglected to prove its case beyond all reasonable doubt against the appellants and/or other culprits.

15. In the result, the impugned judgment is set aside. Consequently, the Death Reference no. 3/2011, is rejected and the all the appeals are allowed. The appellants, Chhatar @ Chhatrapati Mandal, Manoj Rajwar, Anil Ram and Jitan Marandi, who are said to be in jail, are directed to be released forthwith if not wanted in any other criminal cases.

However, this judgment will not prejudice the parties in the trial of any other accused.