
(2018) 07 JH CK 0087

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 423, 252 of 2006

Suresh Pandey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 31-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 323, 337, 427, 448

Arms Act, 1959 — Section 27

Code Of Criminal Procedure, 1973 — Section 133, 313

Citation : (2018) 07 JH CK 0087

Hon'ble Judges : H.C. MISHRA, J;B.B. MANGALMURTI, J

Bench : Division Bench

Advocate : A.K. Sahani, Shekhar Sinha

Final Decision : Allowed

Judgement

1. Both these appeals arise out of the common Judgment, as such, they are heard together and are being disposed of by this common Judgment.Â

2. Heard learned counsel for the appellants and the learned counsel for the State.Â Â Â

3. The appellants in both these appeals are aggrieved by the impugned Judgment of conviction dated 30.01.2006 and Order of sentence dated

31.01.2006, passed by the learned 5th Additional Sessions Judge, East Singhbhum, Jamshedpur, in Sessions Trial No. 281 of 2003, whereby, the

appellants have been found guilty and convicted for the offences under Sections 148, 302 / 149, 307 / 149, 448 / 149, 427 / 149 of the Indian Penal

Code, as well as Section 27 of the Arms Act. Upon hearing on the point sentence, the appellants have been sentenced to undergo R.I. for life for the

offence under Sections 302 / 149 of the Indian Penal Code, R.I. for seven years for the offence under Sections 307 / 149 of the Indian Penal Code,

R.I. for six months for each of the offences under Sections 448 / 149 and 427 / 149 of the Indian Penal Code, R.I. for one year for the offence under

Section 148 of the Indian Penal Code and R.I. for three years for the offence under Section 27 of the Arms Act, and all the sentences were directed

to run concurrently.

4. The prosecution case was instituted on basis of the fardbeyan of the informant, Raghuvir Singh, the father of the deceased Harinarayan Singh @

Hira Lal Singh, recorded at M.G.M College Hospital, Jamshedpur, at about 10:00 A.M., on 14.5.1993, wherein he has stated that on the same day at

about 8:00 A.M., the accused persons were putting a wall blocking the eastern door of his house, which was objected by the informant. It is also

stated that for the dispute of the same land, there was a proceeding under Section 133 of the Cr.P.C., also pending. It is alleged that upon objection by

the informant, the accused persons started pelting stones and firing pistols upon the informant and his family members. The accused Anirudh Pandey

fired upon the informant from his country-made pistol but the informant saved himself. Thereafter, Suresh Pandey fired the pistol, injuring Harinarayan

Singh @ Hira Lal Singh, the elder son of the informant, over his left eye, due to which, he sustained bleeding injuries and fell down and became

unconscious. In the meantime, about 30-40 unknown persons assembled in favour of the accused Anirudh Pandey and all of them started pelting

stones in which the informant Raghuvir Singh, his wife Murti Devi, his sons Raj Kumar Singh, Rajdeo Singh and Raj Mohan Singh were badly

injured. The accused persons also committed mischief in the house by destroying the tiles of the roof of the house. His son Harinarayan Singh died in

MGM Hospital. On the basis of the fardbeyan of the informant, Telco P.S. Case No.108 of 1993, corresponding to G.R No.945 of 1993, was

instituted for the offences under Sections 147, 148, 149, 448, 427, 337, 323, 307 and 302 of the Indian Penal Code, and Section 27 of the Arms Act,

against the named accused persons and investigation was taken up. After investigation the police submitted the charge-sheet in the case.

5. Upon commitment of the case to the Court of Session, charge was framed against the accused appellants for the offences under Sections 148, 302

/ 149, 307 / 149, 448 / 149, 427 / 149 of the Indian Penal Code and also Section 27 of the Arms Act, and upon the accuseds' pleading not guilty and

claiming to be tried, they were put to trial. In course of trial, ten witnesses were examined on behalf of the prosecution, including the I.O., and the

Doctor, who had conducted the post-mortem examination on the dead body of the deceased. The Doctor, examining the injuries of the informant and

his family members, has not been examined, nor any injury report has been proved. Out of the material witnesses examined, P.W.-7 Gullo Mahto, who

is the neighbour of the informant, has turned hostile and has not supported the prosecution case, whereas P.W.-6A Rina Devi, the daughter-in-law of

the informant and P.W.-8 Bikerma Singh were only tendered by the prosecution.

6. P.W.-2 Raghuvir Singh is the informant of the case. This witness has stated that the occurrence had taken place on 14.5.1993 at about 8:00 A.M.

Anirudh Pandey was constructing a wall in front of the door of the house of this witness, which he objected stating that there was already a

proceeding under Section 133 of the Cr.P.C. Upon the objection of this witness, the accused persons, Anirudh Pandey and Suresh Pandey who were

armed with country-made pistols, Dinesh Pandey, Ramesh Pandey and Uttam Pandey, who were armed with stones and bricks, started pelting the

stones and bricks, causing injuries on him. Anirudh Pandey also fired pistol but this witness managed to save himself. Thereafter Suresh Pandey also

fired pistol causing injury upon his eldest son Harinarayan Singh @ Hira Lal near his left eye, and he fell down. In the meantime, 30-40 unknown

persons entered his house and assaulted his wife Murti Devi and his sons Raj Kumar Singh, Rajdeo Singh and Raj Mohan Singh. They also destroyed

the tiles of the roof of the house. The eldest son was brought to M.G.M. Hospital, where the Doctor declared him dead. His fardbeyan was recorded

at the hospital, upon which he had put his signature and the same was marked Exhibit-2, on his identification. He has stated that due to the pelting of

stones, his aforesaid family members were also injured who were treated for their injuries. He has identified the accused in the Court. In his cross-

examination, this witness initially denied about the counter-case, but subsequently he has admitted that for the occurrence of the same day, there was

a counter-case filed by the accused persons, but he had no knowledge whether the accused persons were injured or not. He has stated that the pistol

was fired upon him by Anirudh Pandey from a distance of about 5 feet, but he has no knowledge whether the bullet hit the wall of his house or not.

He had not seen whether any cartridge was recovered by the police or not. He has admitted that the firing was not repeated upon him by Anirudh

Pandey. This witness has stated that all the aforesaid accused persons including 30-35 persons had entered into his house where they had assaulted

and injured his family members and all of them were treated in M.G.M. Hospital. He had no knowledge whether any weapon was recovered by the

police or not. He has also denied the suggestion that on the date of occurrence, Suresh Pandey was not present, as he was working in the S.D.O. Court at

Chhapra. This witness has denied the suggestion of giving false evidence.Â Â

7. P.W.-5 Murti Devi is the wife of the informant and the mother of the deceased, P.W.-3 Raj Kumar Singh, P.W.-4 Raj Mohan Singh and P.W.-6

Raj Deo Singh are the sons of the informant and the brothers of the deceased, and all of them have also supported the prosecution case more or less

in the same manner as stated by the informant P.W.-2 Raghuvir Singh, except that P.W.-3 Raj Kumar Singh, P.W.-4 Raj Mohan Singh have stated

that Suresh Pandey had fired two shots, first shot missed and the second shot hit the deceased, Harinarayan Singh @ Hira Lal, which ultimately

proved fatal. They have also stated about the assaults made upon them by the other accused persons after entering the house and committing the

mischief, due to which they were injured and some of them stated that they were treated for their injuries. P.W.-3 Raj Kumar Singh has also stated

that other 25-30 unknown persons had also entered the house. They have also stated about the mischief committed by the accused persons, damaging

the roof tiles of their house. These witnesses have also denied the suggestion in their cross examinations that the accused, Suresh Pandey was not

present at Jamshedpur on the date of occurrence, rather he was working in the S.D.O. Court at Chapra.Â

8. P.W.-1 Dr. Lalan Choudhary had conducted the post-mortem examination on the dead body of the deceased on 14.5.1993 and had found the

following injuries over the dead body.Â Â

(1) Entry wound of size 1 cm. x 1 cm. over upper lid of the left eye. Lower eye lid was contused.Â

Internal: - Left eye was found ruptured under skin of left frontal region was found contused. Left orbit was pierced. Extradural haemorrhage in frontal

region was found. Brain matter and membrane pierced through & through antero

posteriorly obliquely towards right side. Six pieces or broken metallic bullet & its cover were found embedded in the right side occipital bone, which were removed and properly sealed. Massive extra cranial haemorrhage was found.Â

Â Â Â This witness has stated that the cause of death was the head injury and weapon used was the firearm. He has proved the post-mortem report to be in his pen and signature, which was marked Exhibit-1. The defence declined to cross examine this witness.Â

9. P.W.-9. Sakaldeo Ram is the I.O. of the case. This witness has stated that on 14.5.1993, he was posted as Officer-Incharge of Telco Police

Station. He received the fardbeyan on the basis of which, Telco P.S. Case No. 108 of 1993 was instituted and he took over the charge of investigation

himself. He went to M.G.M. Hospital and he prepared the inquest report of the dead body. He has however not proved the inquest report and has

admitted in his cross examination that the same was not available. He inspected the place of occurrence on 14.5.1993 at about 1:30 P.M., which he

has detailed. He has stated that in one room, there was a door on the eastern side where he was informed that the deceased was standing where he

was assaulted by Suresh Pandey by firearm. He has stated that there was lot of blood at the place of occurrence, but the same was washed away by

the wife of the informant. However, there were some bloodstains scattered here and there, which had dried. He has also stated that adjacent to the

courtyard of the house, the house and wall of the accused Anirudh Pandey were there. He has also given the boundary of the house of the informant.

He recorded the statements of the witnesses and he also received the post-mortem report. Though he has stated that he had received the injury

reports also and submitted the charge-sheet, but in his cross examination, this witness has admitted that he had not received the injury report. He has

proved the F.I.R., which was marked Exhibit-3. In his cross examination, this witness has stated that during investigation, he had received one more

F.I.R. lodged by the accused Anirudh Pandey, which related to Telco P.S Case No.109 of 1993 in which the deceased and his brothers were made

the accused. He has admitted that he was the I.O. in the said counter case also. He had not found any empty cartridge at the place of occurrence.

Though he was informed that there were two firings made at the place of

occurrence but he did not find any empty cartridge there. He had found some pieces of stones at the place of occurrence. This witness has also stated that there is no mention in the case diary about the injuries on Murti Devi, Raj Deo Singh and Raj Mohan Singh and he had not even received the injury reports. He had also not mentioned about the broken tiles of the roof of the house of the informant. He has denied the suggestion of making faulty investigation in the case.Â

10. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them.Â

One certified copy of the judgment in G.R. Case No.946 of 1993, rendered on 31.3.2000, was proved by the defence which was marked Exhibit-A.

The said Judgment relates to the counter case lodged by the accused on the same day, in which, the witnesses Raghuvir Singh, Raj Deo Singh and Raj Kumar Singh were found guilty only for the offence under SectionÂ 323 of the Indian Penal Code, and they were given the benefit of the Probation of Offenders Act. On the basis of the evidence on record, the accused appellants have been convicted and sentenced by the Trial Court as aforesaid.Â

11. Learned counsel for the appellants has submitted that the impugned Judgment of conviction and Order of sentence passed by the Trial Court

below cannot be sustained in the eyes of law, inasmuch as, the prosecution has failed to bring home the charges against the appellants beyond all

reasonable doubts. It is submitted by the learned counsel that the enmity due to the land dispute is admitted between the parties, but no document has

been brought on record by the prosecution to show that there was a proceeding between the parties under Section 133 of the Cr.P.C. It is also

submitted by the learned counsel that though the witnesses have stated that the informant, his wife and his sons were also injured in the occurrence,

but neither any injury report has been proved by the prosecution, nor the Doctor examining the said injureds were examined by the prosecution.

Learned counsel further submitted that though it is the specific case of the prosecution that after injuring the deceased by means of firearm, all the

accused persons alongwith 35-40 unknown persons entered the house of the appellant and committed mischief by destroying the roof tiles of the house

of the informant, but the I.O. has not found any such mischief committed in the

house and he has admitted in his cross-examination that there was no mention about the destroying of the roof tiles of the house in the case diary. Learned counsel submitted that the defence has also proved the judgment of the Trial Court in the counter case, in which there was conviction against the witnesses. Learned counsel for the appellants has also drawn the attention of the Court towards the evidence of the hostile witnesses P.W.-7 Gullo Mahto, who is the neighbour and who had stated that he had heard that the firings were made from both sides, in which Hiralal had died. Learned counsel submitted that accordingly, it cannot be said that by the firing made by whom the deceased had died. Learned counsel submitted that the prosecution case is supported only by the informant, his wife and his sons, who are highly interested witnesses, and in view of the admitted enmity due to land dispute between the parties, the false implication of the accused persons cannot be ruled out. It is submitted that in the facts of this case the prosecution has failed to bring home the charges against the appellants beyond all reasonable doubts.Â

12. Learned counsel for the State on the other hand, has opposed the prayer and has submitted that P.W.-2 Raghuvir Singh, the informant of the case, P.W.-3 Raj Kumar Singh, P.W.-4 Raj Mohan Singh, P.W.-5, Murti Devi and P.W.-6 Raj Deo Singh have fully supported the prosecution case stating that it was the appellant Suresh Pandey, who had assaulted the deceased by firearm causing his death. These witnesses have also supported the fact that the accused Anirudh Pandey had also fired pistol upon the informant, but the informant managed to save himself and all the accused persons had assaulted and injured the informant, his other sons and the wife, due to which they had sustained injuries. The witnesses have also supported the fact about the committing of the mischief in the house of the appellant and destroying the tiles of the house of the informant. It is submitted that though the injury reports of the other injureds could not be proved, but the prosecution has proved the firearm injury upon the deceased Harinarayan Singh @ Hira Lal Singh, by examining P.W.-1 Dr. Lalan Choudhary and the post-mortem report proved by him as Exhibit-1, which clearly show that the deceased had received firearm injury on his left eye and the pellets of the firearm were still in the wounds of the deceased embedded in the occipital bone. The Doctor had also found massive extra-cranial haemorrhage and the

injury was sufficient to cause death of the deceased in the ordinary course of nature. Learned counsel accordingly, submitted that the prosecution has been able to bring home the charges against all the appellants beyond all reasonable doubts and there is no illegality in the impugned Judgment of conviction and Order of sentence passed by the Trial Court below.Â Â

13. Having heard learned counsels for both sides and upon going through the record, we find that the enmity between both the sides due to the land dispute is admitted in this case and though it is the case of the prosecution that there was a proceeding under Section 133 of the Cr.P.C., but nothing has been brought on record to prove any such proceeding pending between the parties. Though all the witnesses supporting the prosecution case have stated about the assaults made upon them causing injuries to them and also stated that they were treated for their injuries, but neither the Doctor treating them has been examined by the prosecution, nor their injury reports have been proved. Even the I.O. P.W.-9 Sakaldeo Ram has clearly stated that he had not mentioned anything about their injuries in the case diary, nor had he received any injury report of the injureds. This witness has proved the place of occurrence, but he did not find any fired cartridge at the place of occurrence, nor did he find any sign of mischief committed at the place of occurrence destroying the tiles of the roof of the house of the informant and has admitted that there was no such entry in his case diary.Â

14. We are of the considered view that so far as the appellants Anirudh Pandey, Dinesh Pandey and Uttam Pandey, in Criminal Appeal (D.B) No.252 of 2006, are concerned, the allegations against them are not proved by the cogent evidence brought on record. Though the witnesses have made the allegations against them also, of assaulting and injuring the informant and his wife and sons, and also of committing mischief and destroying the tiles of the roof of their house, but these allegations are supported only by highly interested witnesses, i.e., the informant, his wife and his sons, and there is nothing on record to prove these allegations by independent witness / documentary proof. Even the I.O. did not find any broken tiles, nor he had seen their injuries, or got their injury reports. As such, keeping in view the admitted enmity between the parties, we are of the considered view that even though these highly interested witnesses, have deposed against the accused

Anirudh Pandey, Dinesh Pandey and Uttam Pandey also, but there is lack of sufficient evidence to show that they were also sharing the common object of the unlawful assembly for committing the offences. As such, they are entitled to the benefits of doubt, and the impugned Judgment of conviction and Order of sentence passed against all the three appellants in Criminal Appeal (DB) No. 252 of 2006, cannot be sustained in the eyes of law.Â

15. So far as the appellant Suresh Pandey in Criminal Appeal (D.B) No.423 of 2006 is concerned, we find that his conviction and sentence also, for the offences under Sections 307 / 149, 448 / 149 and 427 / 149 of the Indian Penal Code, cannot be sustained in the eyes of law, for the reasons already stated above. But so far as his conviction and sentence for the offences of committing rioting armed with deadly weapon, and murder of the deceased Harinarayan Singh @ Hira Lal Singh by illegal fire-arm is concerned, all the prosecution witnesses have stated in unequivocal terms that he was a member of unlawful assembly, armed with pistol, and he had fired pistol causing injury over the left eye of the deceased. This ocular evidence is fully corroborated by the medical evidence of Dr. Lalan Choudhary and the post-mortem report proved by him as Exhibit-1, who had found the firearm injury on the same site as described by the witnesses and the underlying injury in the brain was also found. The Doctor had found massive extra-dural and extra-cranial haemorrhage and the brain matter was also found pierced, which clearly show that the firearm injury inflicted upon the deceased was sufficient in the ordinary course of nature to cause his death. Though the informant, his wife and their sons are highly interested witnesses, but we find that this part of their evidence is fully corroborated by the medical evidence of P.W.-1 Dr. Lalan Choudhary and the post-mortem report proved by him as Exhibit-1. Even the I.O., P.W.-9. Sakaldeo Ram had seen the dead body and had also found the blood stains at the place of occurrence. We find and hold that the appellant Suresh Pandey has been rightly convicted and sentenced for the offences of committing rioting and murder of the Â deceased by the illegal fire-arm, and there is no illegality in the conviction and sentence of the appellant, Suresh Pandey on these scores.Â

16. For the foregoing reasons, the impugned Judgment of conviction dated 30.01.2006 and Order of sentence dated 31.01.2006, passed by the learned

5th Additional Sessions Judge, East Singhbhum, Jamshedpur, in Sessions Trial No. 281 of 2003, convicting and sentencing the appellants, Anirudh

Pandey, Dinesh Pandey and Uttam Pandey in Criminal Appeal (D.B) No.252 of 2006, are hereby, set aside. These appellants are given the benefits

of doubt and they are acquitted of the charges. All these appellants are on bail, and they are discharged from the liabilities of their respective bail

bonds.Â

17. The impugned Judgment of conviction and Order of sentence so far as they relate to the appellant Suresh Pandey in Criminal Appeal (D.B)

No.423 of 2006, are also set aside as regards his conviction and sentence of for the offences under Sections 307 / 149, 448 / 149 and 427 / 149 of the

Indian Penal Code. We however, do not find any illegality in the conviction and sentence of the appellant Suresh Pandey, for the offences under

Sections 148 and 302 / 149 of the Indian Penal Code, and Section 27 of the Arms Act, which we hereby, affirm. The appellant Suresh Pandey is

already in custody, undergoing the sentence.Â

18. In the result, Criminal Appeal (D.B) No.252 of 2006, is hereby, allowed, whereas Criminal Appeal (D.B.) No. 423 of 2006 is allowed in part only,

to the extent indicated above. Let the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this

Judgement.Â Â Â Â