

(2018) 08 JH CK 0061

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1850, 1949, 1995 of 2004

Syed Mian

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 342, 380, 427, 436, 452
Arms Act, 1959 — Section 27
Explosive Substances Act, 1883 — Section 3, 4
Criminal Law (Amendment) Act, 2013 — Section 17
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2018) 08 JH CK 0061

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

Bench : Division Bench

Advocate : A.K. Kashyap, Anurag Kashyap, Sudhir Kumar, Farooque Ansari,
Hardeo Prasad Singh

Final Decision : Allowed

Judgement

1. As all these three appeals arise out of the same impugned Judgment, they are heard together, and are being disposed of by this common

Judgment.Â

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

3. The appellants are aggrieved by the impugned Judgment of conviction dated 16.10.2004 and Order of sentence dated 18.10.2004, passed by the

learned 6th Additional Sessions Judge (FTC), Palamau at Daltonganj, in Sessions Trial No. 351 of 2001, whereby, these three appellants have been

found guilty and convicted for the offences under Sections 147, 148, and 302 / 149 of the Indian Penal Code. Upon hearing on the point of sentence,

the appellants have been sentenced to undergo life imprisonment for the offence

under Sections 302 / 149 of the Indian Penal Code. No separate sentence was passed for the offences under Sections 147 and 148 of the Indian Penal Code. It may be stated that the other six co-accused facing the trial along with these appellants, have been acquitted of the charges by the Trial Court below.Â

4. The prosecution case was instituted on the basis of the fardbeyan of the informant Sikandar Ansari, the brother of the deceased Samsher Ansari, recorded on 08.12.1999, at about 06:00 A.M. at village Bohita, P.S. Lesliganj, District Palamau, wherein, he has stated that in the previous night, all the family members had gone to sleep after taking their meals. In the night at about 11:00 P.M., his door was knocked and he heard the voice of his father, whereupon, he opened the door and saw that 15 to 20 persons entered the house who were apprehending his father. They were searching his brother Samsher Ansari, who was found in the house and they took away his brother Samsher Ansari and his father Riyasat Hussain along with them and closed the door of the house from outside, confining the other family members in the house. The informant has stated that out of the culprits, he could identify Ramjan Mian, Noor Hussain Mian, Kail Mian, and Syed Mian, who belonged to the same village. When the culprits went away, the villagers opened the door of their house and they proceeded towards the place where his father and brother were taken. They were again surrounded by 30 to 35 persons and they were kept near the Panchayat Bhawan of the village. He saw that house of Samsuddin Mian was on fire and about 60 to 70 persons were surrounding the house. After sometime, when the extremists fled away raising slogans, they went near and saw that his brother Samsher Mian was murdered by slitting his neck and his father was badly assaulted, who was sent to Satbarwa Hospital. The son of Mukhiya informed them that the culprits had blasted their house also, and had taken away the belongings. On the basis of the fardbeyan of the informant, Lesliganj P.S. Case No. 76 of 1999, corresponding to G.R. No. 1392 of 1999, was instituted for the offences under Sections 147, 148, 149, 452, 342, 380, 427, 436, 307 and 302 of the Indian Penal Code, Section 27 of the Arms Act, Sections 3, 4 of the Explosive Substance Act and Section 17 of the C.L.A. Act, against four named accused persons and about 120 extremists, and investigation was taken up. After investigation, the police submitted

the charge-sheet against nine persons, including these appellants.Â

5. After commitment of the case to the Court of Session, charges were framed against all the nine accused persons, for the offences under Sections

147, 148, 302 / 149 and 307 / 149 of the Indian Penal Code, and upon their pleading not guilty and claiming to be tried, they were put to trial. In course

of trial 12 witnesses have been examined by the prosecution. Though the Doctor conducting the post-mortem examination on the dead body of the

deceased has been examined, but the I.O. of the case has not been examined, and the formal F.I.R. has been proved by a formal witness, P.W.-7

Sahabir Oraon, as Ext.3.Â Â Â Â

6. Out of the material witnesses examined, P.W.-9 Kapildeo Singh, P.W.-10 Manik Singh and P.W.-11 Rachya Singh, have turned hostile and have

not supported the prosecution case at all, whereas P.W.-2 Sakur Mian, P.W.-3 Kamlesh Singh and P.W.-8 Md. Mumtaj Ansari, who is the son of

Mukhiya, whose house was burnt, have stated that they could not identify any accused. P.W.-12 Puran Singh has also stated nothing against the

accused persons.Â Â Â

7. P.W.-4 Sikandar Ansari is the informant in the case and the brother of the deceased. This witness has stated that the occurrence had taken place

about three years ago in a Tuesday night. He has stated that 30 to 40 extremists came on his door, and when upon hearing the voice of his father, he

opened the door, 20 to 25 of them entered his house, who had also apprehended his father. They were searching his brother Samsher and they took

Samsher along with them. The extremists had closed the door confining them in the house, and the door was opened after sometime by the villagers.

Thereafter they went towards the house of the Mukhiya, where the extremists had taken his brother, and when they came near the Panchayat

Bhawan they were again surrounded by the extremists. The extremists put the house of Mukhiya on fire and they committed the murder of his brother

by slitting his neck. He saw his brother dead after the extremists fled away. They had damaged the house of Mukhiya by bombs also. This witness

has stated that his statement was recorded by the police, whereupon, he had put his signature and the witnesses had also put their signatures and he

has identified the signatures which were marked Exts.-1 series. He has named the accused persons, stating that they are their co-villagers, and has

identified them in the Court. About one accused Kasmul Mian, he has stated that he had come to his house only demanding tobacco, and thereafter

the extremists had come. In his cross-examination, this witness has stated that the villagers had opened the door of his house after about five minutes

of taking away his brother. He has denied the suggestion not to have given the statement before the police that the accused Syed Mian, Noor Hasan

Mian and Ramjan Mian had not taken away his brother. He has stated that Panchayat Bhawan is near the house of Mukhiya, where this informant

and his brother Parvej were also confined by the extremists. He has also stated that there was no enmity with the accused persons. This witness has

denied the suggestion to have given false evidence.Â Â Â Â Â Â Â Â Â Â

8. P.W.-1 is Reyasat Hussain, the father of the informant and the deceased. Though this witness has supported the prosecution case stating that his

son was murdered in the occurrence, but he has stated that he did not identify any accused person. He has stated that he was also hurt in the

occurrence, and was hospitalised for three days. In his cross-examination, he has gone to the extent of saying that his sons had also not named any

accused and he was never informed about the name of the accused persons.

9.Â P.W.-5 is Parvej Ansari, who is also the brother of the deceased. This witness has supported the prosecution case, but has stated that when the

extremists had entered his house, he had not identified anyone. He has stated that the accused persons took away Samsher Ansari and they closed the

door of the house, confining them, and when the extremists went away, the villagers opened the door. He and his family members were going where

the extremists had taken his brother, but they were surrounded by the extremists. This witness has stated that he managed to flee away from there

and he concealed himself and saw that his father was being assaulted by the extremists, who were Ramjan, Syed, Kail Mian and Guthal Mian, who

are present in the Court. He has also stated thatÂ Syed Mian fired a shot on the head of his brother, due to which he fell down. Thereafter, Ramjan

Mian put a cap on his head, read Kalma and slit the neck of his brother. He has stated that he was witnessing the occurrence concealing himself in a

Rahar field. In his cross-examination, this witness has stated that there was no enmity with the accused persons and he has denied the suggestion that

he had not given the statement before the police that Syed Mian had assaulted

his brother by firearm. He has also denied the suggestion not to have given the statement before the police that Syed Mian, Ramjan Mian, Guthal Mian and Kail Mian were assaulting his father. He has also denied the suggestion to have not given the statement before the police that at the time of occurrence he had concealed himself in a Rahar field. He has stated that all the accused persons are his co-villagers and he has denied the suggestion to have given the false evidence.

10. P.W.-6 is Dr. Krishna Murari Shah, who had conducted the post-mortem examination on the dead body of the deceased on 08.12.1999, and had found the following ante-mortem injuries on the dead body :Â

(i) Incised wound in front of throat size 3½â?? x 3½â?? bisecting trachea oesophagus and major neuro vascular bundle and muscles.Â

(ii) Lacerated wound in the right side of the frontal bone above right orbit 2 cm diameter oval in shape blacken margin cranial cavity deep â?" wound of entrance.

(iii) Lacerated wound in the back of skull 2â? x 2â? cranial cavity deep. Brain tissue coming out of wound. Cranial cavity was full of blood. Brain

tissue totally lacerated â?" wound of exit.Â Â This witness has stated that wound Nos. (ii) and (iii) were connected with each other. Injury No.(i)

was inflicted by sharp cutting weapon whereas injury Nos. (ii) and (iii) were inflicted by firearm. The death was caused due to shock and hemorrhage

caused by the above mentioned injuries. He has proved the post-mortem report to be in his pen and signature, which was marked Ext.-2.Â

11. The statements of the accused persons were recorded under Section 313 of the Cr.P.C., wherein they have denied the evidence against them. No

evidence was adduced by the defence. On the basis of the evidence on record, these appellants have been convicted and sentenced for the offences,

as aforesaid.Â

12. Learned counsels for the appellants have 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, in as much as, the prosecution has failed to bring home the charges against the appellants beyond all

reasonable doubts. It is submitted by learned counsels that none of the independent witness, examined by the prosecution, has supported the case and

they have either turned hostile, or have stated that they did not identify any

accused. Even the father of the deceased, P.W.-1 Reyasat Hussain, though has supported the occurrence and stated that he was also hurt in the occurrence, but has stated that he could not identify any accused and even his sons never informed him about any accused. Learned counsels submitted that even though P.W.-4 Sikandar Ansari has identified the accused appellants in the Court to be amongst the extremists, but has stated that they are his co-villagers. He has not detailed any role played by the accused, nor has he stated that these accused persons were armed with any deadly weapon. The case is supported only by P.W.-5 Parvej Ansari, but he has made improvements in his evidence, in as much as, he has stated that he had seen Syed Mian assaulting the deceased by firearm, but the allegation of assaulting the deceased by firearm is not there either in the F.I.R., or in the evidence of P.W.-4 Sikandar Hussain. Both in F.I.R. and in the evidence of P.W.-4 Sikandar Hussain, it is stated that the deceased had suffered only one injury, i.e., slit in his neck, and there is no mention of any firearm injury on the deceased. P.W.-5 Parvej Ansari has also stated that the accused Ramjan Mian slit the neck of his brother, and he had seen all these, concealing himself in a Rahar field. Learned counsels submitted that though the suggestion was given to this witness that he had not given such statements before the police, which he has denied, but the I.O. has not been examined in the case, due to which the defence has been vitally prejudiced, as the real facts could not be taken from the I.O. Learned counsels also submitted that in the evidence of this witness there is no allegation of assault against the appellant Noor Hussain Mian. Learned counsels accordingly, submitted that the prosecution has failed to bring home the charges against the accused appellants beyond all reasonable doubts, and in the facts of this case the accused appellants were entitled at least to the benefits of doubt.

13. Learned counsel for the State, on the other hand, has opposed the prayer, submitting that though most of the witnesses have turned hostile in the case, but the case is fully supported by P.W.-4 Sikandar Hussain, the informant in the case, and P.W.-5 Parvej Ansari, the brother of the deceased. It is submitted by learned counsel that P.W.-5 Parvej Ansari has given the details of assaults upon the deceased stating that the accused Syed Mian had assaulted the deceased by firearm, whereas the accused Ramjan Mian had slit

the throat of the deceased and both these injuries were found upon the deceased by P.W.-6 Dr. Krishna Murari Shah, who had conducted the post-mortem examination on the dead body of the deceased. Learned counsel submitted that P.W.-4 Parvej Ansari has named all these appellants and has accordingly, submitted that the prosecution has been able to bring home the charges against all the accused appellants beyond all reasonable doubts, that they being the members of the unlawful assembly, in prosecution of the common object thereof, had committed the murder of the deceased, and as such, there is no illegality in the impugned Judgment of conviction and Order of sentence passed by the Trial Court below.Â

14. Having heard learned counsels for both the sides and upon going through the record, we find that most of the witnesses have either turned hostile, or though have supported the occurrence, but have stated that they could not identify the accused. Even P.W.-1 Reyasat Hussain, who is the father of the deceased, who, according to the prosecution case, was all along with the accused persons and was also assaulted and injured by them, has stated that he did not identify any of the accused, even though admittedly, all the accused appellants are his co-villagers. He has also stated that his sons also never informed him about the accused persons. The prosecution case is supported by two witnesses, P.W.-4 Sikandar Ansari and P.W.-5 Parvej Ansari, and they have stated that all the accused are theirÂ co-villagers. P.W.-4 Sikandar Ansari, though has supported the case and has identified the accused persons in the Court, but he has not stated about any role of these accused persons. He has not even stated that these appellants were armed with any deadly weapon. Surprisingly, this witness is absolutely silent about the allegation that his father was also taken away by the extremists and was assaulted and injured by them. The fact remains that though he had identified one more accused Kasmul Mian, in the Court, but he has stated that he had come only for taking tobacco. So far as P.W.-5 Parvej Ansari is concerned, though he has stated that the accused persons had entered into his house, and he has also admitted in his cross examination that the accused persons are his co-villagers, but he has clearly stated that he did not identify any accused while they had entered the house. This witness has stated that after opening of the door by the villagers when they went towards the place of occurrence, they were apprehended by other extremists, but he

managed to flee away and he saw the occurrence by hiding himself in a Rahar field. He has stated that he saw that the appellant Syed Mian had assaulted his brother by firearm causing injury on his head and he also saw Ramjan Mian slitting the neck of his brother after reading Kalma. This witness has stated nothing in his evidence about the role played by the appellant Noor Hussain Mian. In his cross-examination, this witness has denied the suggestion not to have given the statements before the police that he had seen the accused Sayed Mian assaulting by firearm and Ramjan Mian slitting the neck of his brother after reading Kalma, and to have seen the occurrence hiding himself in a Rahar field. It is the case of the appellants that no such statement was given by this witness before the police, and due to non-examination of the I.O., the defence has been vitally prejudiced, as true facts could not be taken from the I.O. We have looked into the case diary, and we find that it is a fact that no such statements were given by this witness before the police, rather, he had also claimed to have witnessed the occurrence from the same place from where his brother was witnessing the occurrence. His brother P.W.-4 Sikandar Hussain has stated he and his brother Parvej were confined by the extremists near the Panchayat Bhawan and has not stated about any specific role of any of the accused. He could see his deceased brother dead only when the extremists went away. We also find from the case diary that the I.O. has given the details of the place of occurrence, wherein there is no mention about any Rahar field nearby. We are of the considered view that in the facts of this case the evidence of P.W.-5 Parvej Ansari does not inspire confidence, and cannot be relied upon, so as to form the basis of conviction of the accused appellants. We are also of the considered view that even in the evidence of P.W.-4 Sikandar Ansari there is nothing to show that the accused appellants were the members of unlawful assembly armed with deadly weapons, and they were also sharing the common object of the unlawful assembly to commit the offence. Indeed about one member of the alleged unlawful assembly, i.e., accused Kasmul Mian, this witness has stated that he had come only for taking tobacco. As such, even on the basis of the evidence of P.W.-4 Sikandar Ansari, the appellants could not be found guilty and convicted for the offences charged. For the aforesaid reasons, we find that the prosecution has miserably failed to bring home the charges against

these accused appellants beyond all reasonable doubts, and in the facts of this case, the appellants were entitled at least to the benefits of doubt. As

such, the impugned Judgment of conviction and Order of sentence passed by the Trial Court below, cannot be sustained in the eyes of law.

15. For the foregoing reasons, the impugned Judgment of conviction dated 16.10.2004 and Order of sentence dated 18.10.2004, passed by the learned

6th Additional Sessions Judge (Fast Track Court), Palamau at Daltonganj, in Sessions Trial No. 351 of 2001, convicting and sentencing the appellants

Syed Mian, Noor Hussain Mian and Ramjan Mian for the offences under Sections 147, 148 and 302 / 149 of the Indian Penal Code, are hereby, set

aside. All these appellants are given the benefits of doubt and they are acquitted of the charges. The appellants— Syed Mian and Ramjan Mian are in

custody, undergoing the sentence. Let them be released and set at liberty forthwith, if their detention is not required in any other case.—

16. The bail of the appellant Noor Hussain Mian in Cr. Appeal (D.B.) No.1949 of 2004, was cancelled by this Court—s order dated 19.04.2018, as

no one was appearing in his appeal, and NBW was ordered to be issued. By order dated 23.07.2008, in view of the execution report that Noor

Hussain Mian is bed ridden and not in a position to move out of bed, as also in view of the undertaking by learned counsel for the other appellant, that

he shall assist the Court on his behalf also as amicus curie, this Court had directed not to execute the NBW against this appellant until further orders.

Since the appellant Noor Hussain Mian is also acquitted of the charges, the N.B.W. issued against him shall stand recalled.— —

17. In the result, all these three appeals, are accordingly, allowed. Let the Lower Court Records be sent back to the Court concerned forthwith, along

with a copy of this Judgment.