
(2012) 06 JH CK 0016
In the Jharkhand High Court
Case No : Criminal Appeal No. 1780 of 2003

Umesh Mandal	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 06 JH CK 0016

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

Bench : Division Bench

Advocate : Suraj Kumar, for the Appellant; Shashank Shekhar Prasad, APP for the State, for the Respondent

Final Decision : Allowed

Judgement

1. All these appeals arise out of the judgment of conviction dated 14.11.2003 and order of sentence dated 17.11.2003 passed by the learned Additional Sessions Judge, Fast Track Court-XIII, Dhanbad in Sessions Trial No. 22 of 2003 convicting the appellants under sections 302 and 34 IPC and sentencing them to undergo R.I. for life. The prosecution case in brief is as follows: the informant-Pradeep Kumar Mandal gave his fardbeyan on 17.08.2002 at 3.45 AM before the police to the effect that in the preceding night at about 10.00 AM his brother Sanjay Mandal (deceased) as usual went and slept in the veranda of the temple. He along with other family members were sleeping in the house. At about 2.00 AM, on hearing the sound of gunshot, he along with his mother (PW-5), Bhabhi (not examined) and his wife (not examined) rushed towards the temple and saw the appellants fleeing away from the place of occurrence. The appellant-Umesh Mandal was having pistol in his hand. He saw Sanjay Mandal (deceased) was lying injured having sustained bleeding injury on his temporal region. Thereafter, villagers assembled. Sanjay Mandal was taken to the nursing home. In the meantime, police reached there. It was alleged that due to enmity, Sanjay Mandal was killed. On seeing his condition, he was taken to PMCH, Dhanbad

where he was declared dead.

2. Prosecution examined altogether seven witnesses. PWs-1, 2 and 3 have been declared hostile.

PW-4 is the doctor who conducted postmortem and found that the deceased died due to firearm injury.

PW-5 is the mother of the deceased. Her presence at the place of occurrence was mentioned in the FIR.

PW-6 is the wife of the deceased whose presence at the place of occurrence was not mentioned in the FIR.

PW-7 is the police officer. He is a formal witness.

3. Learned counsel for the appellants assailed the impugned judgment on various grounds and submitted that there is no eyewitness in this case and the chain of circumstance is not complete.

4. On the other hand, counsel for the State supported the impugned judgment.

5. The informant and the I.O. have not been examined in this case. PWs-2 and 3 who are said to be sleeping with the deceased, did not support the prosecution case and did not say that they saw the appellants fleeing away from the place of occurrence after the deceased was killed by the firearm injury. PWs-5 & 6 said that on hearing the sound of firing, they rushed to the place of occurrence. It is not possible to believe them as eyewitnesses. It has come on record that the place of occurrence is at some distance from their house. The presence of PW-6 at the place of occurrence was not mentioned in the FIR. There is nothing to show how they learnt that the sound of firing came from the temple side. The place of occurrence has not been proved.

6. After carefully going through the records and hearing the parties at length, we are of the opinion that the prosecution has not been able to prove its case against the appellants beyond all reasonable doubts and they deserve benefit of doubt. In the result, these appeals are allowed. The judgment of conviction and order of sentence passed by the trial court against the appellants, is set aside. Appellants are acquitted of the charges. Appellants-Santosh Mandal and Ajay Mandal @ Ahjay Rout are on bail, they are discharged from their respective bail bonds. Appellant-Umesh Mandal is in jail. He is directed to be released forthwith, if not wanted in any other case.