

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 153 of 1995(R)

1. Sultan Ansari, son of Jamarli Ansari;
2. Jabbar Ansari, son of Surmali Ansari (Abated vide order dated 14.05.2019);
3. Mustaque Ansari, son of Sultan Ansari
All residents of village: Chitri, Ambatoli, PS: Senha, District: Lohardaga. Appellants

-Versus-

The State of Bihar now Jharkhand Respondent

CORAM :- HON'BLE MR. JUSTICE RATNAKER BHENGRA
HON'BLE MR. JUSTICE AMBUJ NATH

For the Appellant : Mr. A.S. Dayal, Advocate
For the State : Mr. Bhola Nath Ojha, APP
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CAV on: 30/11/2023

Pronounced on: 12/ 02 /2024

Ratnaker Bhengra, J.

Heard the parties.

2. This criminal appeal arises out of judgment of conviction and order of sentence both dated 25.11.1995, passed by the learned Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 63 of 1992 | 27 of 1992 convicting the appellants under section 302 read with section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for life.

3. The prosecution case, as per the fardbeyan dated 05.07.1991 of the informant Kesho Devi (PW-1), is that she is widow and she is residing with her brother Ram Lagan Singh (PW-3). On 05.07.1991, her nephew Biran Singh was in Ahra Don along with Birju Sao(PW-5), who was working in the field and Biran Singh was sitting there and the informant was grazing her buffalo there at about 25 yards north. At about 4:00 p.m. accused Mustaque Ansari, Sultan Ansari and Jabbar Ansari came there from north side along with three unknown persons and accused persons indicated towards Biran Singh and went ahead to north side. The three unknown persons caught hold of Biran Singh and fired upon him and fled away. The informant raised *halla* and went near Biran Singh and found him dead having bleeding injury near right temple. The informant further stated that on *halla* her brother Ram Lagan Singh and Kula Singh and others came there and they saw all the six accused persons fleeing away from the place of occurrence. The informant has alleged that the motive behind the

occurrence is that in the last *Bhado*, the daughter of Jabbar Ansari was killed for which deceased Biran Singh was sent to jail and about four months back Biran Singh was released on bail and due to the above reason, the accused persons have killed Biran Singh.

4. On the basis of fardbeyan of the informant Senha PS case no. 35/1991 dated 05.07.1991 was registered against the appellants and three unknown persons u/s 302/34 IPC and 27 of Arms Act. After investigation charge sheet was submitted and cognizance of the offences were taken and the case was committed to the Court of Sessions. Charges against the appellants were framed u/s 302/34 IPC and trial was held. At the conclusion of trial appellants were convicted and sentenced as aforesaid, hence, this appeal.

5. Prosecution had examined altogether 7 witnesses out of whom PW-1 Kesho Devi is the informant of the case ; PW-2 Lilavati Devi is the mother of the deceased ; PW-3 Ram Lagan Singh is the father of the deceased ; PW-4 is Dr. Vidya Binod Prasad and he had conducted Post mortem examination on the dead body of the deceased; PW-5 is Birju Sao and PW-6 is Kula Singh and both PW-5 and PW-6 were declared hostile and PW-7 is Sudarsan Singh. Defence had also examined two witnesses in support of its case.

6. PW-1 Kesho Devi has stated in her evidence that about 2 $\frac{1}{2}$ years back in the month of *Asadh* on Friday at about 4:00 p.m. she was grazing her buffalow at Ahra Don and his nephew Biran Singh was ploughing the field there. In the meantime six persons came there and out of them she identified three persons namely, Sultan Ansari, Jabbar Ansari and Mustaque Ansari and she did not identify three other persons. These persons pushed Biran Singh and the accused Sultan, Mustaque and Jabbar caught her nephew and Sultan fired upon him near his ear. She rushed there and saw bleeding injury and the accused persons fled away. On *halla* Kula Singh, Ram Lagan Singh, Chunia Singh and other villagers came there. Informant further stated that a year back the daughter of Jabbar Ansari was missing for which deceased Biran Singh was sent to jail. Biran Singh remained in jail for about four months and thereafter he was released and for this reason Biran singh was murdered.

7. PW-2 Lilawati Devi is the mother of the deceased. PW-2 has stated in her evidence that on the day of occurrence at about 3:00 p.m. Biran

Singh had gone to Ahra Don in his field. PW-2 further stated that the accused Sultan Ansari, Mustaque Ansari and Jabbar Ansari alongwith three unknown persons came to her *varamada* and accused Sultan Ansari enquired whether Biran Singh was present in the house or not to which she told that he had gone to Ahra Don. Thereafter, she heard the sound of two gunshots and heard that Biran Singh has been killed. She rushed towards Ahra Don and found bullet injury on the right temple region and blood was oozing out.

8. PW-3 Ram Lagan Singh, is the father of the deceased. PW-3 has stated in his evidence that on 05.07.1991 at about 4:00 p.m., he heard sound of gunfire and *halla* coming from Ahra Don. He rushed towards Ahra Don and saw three persons, namely, Sultan Ansari, Jabbar Ansari and Mustaque Ansari fleeing away towards north side and three other person fleeing away towards south side whom he could not identify. When he reached at Ahra Don he saw Biran Singh in an injured condition with bleeding injury on his right temple. Kesho Devi informed that the accused Sultan Ansari, Jabbar Ansari and Mustaque Ansari along with other had shot dead Biran Singh.

9. PW-4 is Doctor Vidya Binod Prasad who had conducted post-mortem examination on the dead body of the deceased Biran Singh and found the following ante-mortem injuries:

"External Examination:

1. *Gunshot wound right front temporal region circular in shape, 4 cm in diameter under lines of tissue and bones were missing. Brain matter was trinkling down through wound.*
2. *Tattooing in front of face, chest and both shoulders present.*

Internal Examination:

Head: Major portion of the brain was liquified.

Thirteen pellets and two foreign materials circular in shape probably meant for packing the pellets were also taken out from the cerebral cavity.

Chest and lungs pale.

Heart: Right chamber contained liquid blood, left chamber was empty.

Abdomen: All abdominal viscera were pale. Stomach was empty."

Doctor further stated that the above injuries were ante-mortem caused by firearm pellets. Doctor opined that death was due to shock and hemorrhage due to the injuries in brain and time elapsed since death is 12 to 24 hours.

10. Mr. A.S. Dayal, the learned counsel for the appellants, has argued that from the evidence brought on record by the prosecution, it is

evident that none of the witnesses except PW-1 Kesho Devi is alleged to be eye-witness. PW-1 Kesho Devi is not a reliable and truthful witness as she has made material improvements in the case. According to her fardbeyan, the deceased Biren Singh was caught hold of by three unknown persons and one of them had fired at him causing his death. However, in her evidence in court she has stated that all the appellants caught Biran Singh and thereafter, the appellant Sultan Ansari fired upon him as a result of which he died. The learned counsel for the appellants has further argued that in the examination under section 313 of the Code of Criminal Procedure also, no question has been put to the appellants about catching hold of the deceased Biran Singh and no question was also put to the appellant Sultan Ansari that he had fired at Biran Singh. The learned counsel has further argued that Birju Sao (PW-5), who according to the informant was working in the field at the alleged time of occurrence, has also not supported the prosecution case and, as such, he was declared hostile. The learned counsel has further argued that another witness Kula Singh (PW-6) who is alleged to have arrived at the alleged place of occurrence on hearing *halla*, has also not supported the prosecution case and has been declared hostile. The learned counsel has further argued that Investigating Officer of the case has not been examined due to which the attention of the witnesses could not be drawn to their statements made before the Investigating Officer. The learned counsel has further argued that according to the evidence of Ram Lagan Singh (PW-3), there was no enmity between the parties and the appellants used to visit their house. In that view of the matter, the prosecution has failed in establishing the motive alleged, for the alleged occurrence.

11. Mr. Bhola Nath Ojha, the learned counsel for the State, has argued that in this case the evidence of the star witness PW-1 Kesho Devi is fully corroborated by the medical evidence. PW-1 in her evidence has deposed that appellants had caught hold of Brian Singh, now deceased and the Sultan Ansari had fired with a pistol or gun at the side of his ear. Informant being a rustic lady, there may be few inconsistencies in her evidence and between the version of the FIR and the deposition and that possibility is not beyond happening. The learned counsel has then referred to the evidence of PW-4 Doctor Vidya Binod Prasad who had found following external injuries on the person of the deceased-(1) *Gunshot wound right front temporal region circular in shape, 4 cm in diameter under*

lines of tissue and bones were missing, brain matter was trickling down through wound and (2) Tattooing in front of face, chest and both shoulders present.

Further, the doctor has also stated that a country made pistol if fired from close range will cause such injury. Hence, prosecution case is fully established.

CONCLUSION

12. Having heard both the counsels and gone through the records of the case, it can be stated that the prosecution case rests essentially upon the evidence of the informant PW-1 Kesho Devi and its corroboration by the medical evidence. In this case, a significant inconsistency lies in fardbeyan of the informant and in her evidence. In the fardbeyan, informant has stated that appellants were along with the three other unknown accused persons at the place of occurrence and three unknown persons caught hold of Biran Singh and fired on his head fatally injuring him, leading to his death. However, in her deposition informant has specifically stated that appellants had caught hold of the deceased and appellant no.1 Sultan Ansari, then fired upon the deceased. Hence in the fardbeyan, the fatal shot fired is not in any way attributed to the three appellants nor the firing of pistol to anyone of them, however, in her deposition informant states that the main assault was done by these three appellants and Sultan Ansari fired the fatal shot. When PW-1 can make such improvements, the question does arise, whether the sole testimony of such a witness can be trusted or relied upon. Moreover, the Investigating Officer of the case has also not been examined, and hence, the appellants had thus been deprived of putting forth relevant questions to the witnesses, particularly, the informant PW-1. Further, PW-5 Birju Sao, who as per the FIR was at Ahra Don along with the deceased, has in his evidence has not supported the prosecution case and has been declared hostile. Another witness PW-6 Kula Singh, who arrived at the place of occurrence on alarm, has also not supported the prosecution case and has been declared hostile. Hence, on the inconsistency of the informant PW-1, the failure of the other said eye-witness PW-5 to support the prosecution case and turning hostile, the lack of support by PW-6 and the non-examination of the Investigating Officer may just allow some benefit of doubt in the case to be extended to the appellants.

13. Hence, for the aforesaid reasons, this Court sets aside the impugned judgment of conviction and order of sentence both dated 25.11.1995, passed by the learned Additional Judicial Commissioner, Lohardaga in Sessions Trial No. 63 of 1992 | 27 of 1992. Accordingly, the appellants are acquitted of the charges and are discharged of their liabilities of bail bonds.

14. Accordingly, this criminal appeal is allowed.

(Ratnaker Bhengra, J.)

(Ambuj Nath, J.)

Jharkhand High Court, Ranchi,

Dated: 12 / 02 /2024

S.B.