

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 1494 of 2005

(Against the judgment of conviction dated 16.08.2005 and order of sentence dated 17.08.2005 passed in Sessions Case No. 026 of 2005 arising out of Latehar P.S. Case No. 062 of 2004 by the Court of Learned Additional Sessions Judge, F.T.C., Latehar)

Kail Mian @ Nasruddin Mian son of Liyakat Mian,
Residents of village Tulbul, Police Station-Latehar, District-Latehar

--- --- **Appellant**

Versus

The State of Jharkhand

--- --- **Respondent**

CORAM : HON'BLE DR. JUSTICE S.N.PATHAK
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant
For the State

: Ms. Seema Kashyap, Amicus Curiae
: Mr. Saket Kumar, A.P.P.

C.A.V. on 25/07/ 2024

Pronounced on 27/08/2024

J U D G M E N T

Challenge in the appeal:

This appeal is directed against the judgment of conviction dated 16.08.2005 and order of sentence dated 17.08.2005 passed in Sessions Case No. 026 of 2005 arising out of Latehar P.S. Case No. 062 of 2004 passed by the Court of Learned Additional Sessions Judge, Fast Track Court, Latehar whereby and whereunder the sole appellant has been convicted for the offence punishable under Sections 148, 307/149, 302/149 of IPC, Section 27 of Arms Act and Section 17 of C.L.A. Act and has been sentenced to undergo rigorous imprisonment for three years under Section 148 of I.P.C, rigorous imprisonment for three years and a fine of Rs. 1000/- (Rupees One Thousand), in default of payment of fine, simple imprisonment for one month under Section 27 of Arms Act, rigorous imprisonment for three years and a fine of Rs. 1000/- (Rupees One Thousand), in default of payment of fine, simple imprisonment for one month under Section 17 of C.L.A. Act and rigorous imprisonment for ten years and a fine of Rs. 2000/- (Rupees Two Thousand), in default of payment of fine, simple imprisonment for two months under Section 307/149 of IPC and to go imprisonment for life and to pay a fine of Rs.

5000/- (Rupees Five Thousand), in default of payment of fine, simple imprisonment for six months under Section 302 of IPC and further directed by the Learned Trial Court that all the sentences shall run concurrently.

Prosecution Story:

2. The prosecution case arose in the wake of the *fardbeyan* of the Jaswant Singh (P.W.-5), whose statement was recorded by the A.S.I.-Kedar Rai of Latehar P.S. on 21.07.2004 at 10:20 Hours at Dihi-Murup Pitch Road in between the Villages: Tubaid and Ghor-gadha which is as under:

(a) The informant (PW-5) stated that on 20.07.2004 there was “SHRADH” ceremony of his late father and on 21.07.2004 it was his “BARKHI”. After completing the rituals at his house he along with his younger brother Mohar Singh @ Satwant Singh (P.W.-1) riding on the Hero Honda Motor Cycle were coming to Latehar at about 09:00 o’clock morning and just ahead of them his son Jitendra Kumar Singh (P.W.-2), nephew Santan Kumar Singh and son of his friend namely Raju Ranjan Upadhyay were moving on a T.V.S. Victor Motor Cycle. As they reached the place between village Tubed and Ghorgadha at about 09:30 o’clock morning, the informant saw that about 25-30 M.C.C. extremists wearing uniform and armed with deadly weapons were present, out of them about 8-10 extremists were standing on the road while others were standing beside on the road side. As soon as the extremists saw the informant and his companions approaching towards them, they started firing indiscriminately at them due to which informant’s son Jitendra Kumar Singh (P.W.-2), nephew Santan Kumar Singh and Raju Ranjan Upadhyaya fell down from their Motor Cycle.

(b) From the assembled M.C.C. extremists squad the informant claimed to have identified about eight extremists including the above named accused-appellant at the spot. The informant who was travelling behind upon seeing such indiscriminate firing aimed at them with a view to eliminate them, immediately turned around his Motor Cycle and somehow managed to escape from the scene of occurrence.

(c) After some time when they learnt that all the extremists had left the place of occurrence and had gone towards the forest then the

informant and his brother again rushed back to the site and there, they saw that his nephew Santan Kumar Singh and Raju Ranjan Upadhyaya son of his friend were lying dead and his own son Jitendra Singh (P.W.-2) was nowhere seen. He immediately started calling out his son in response to which they finally traced his son in bush in a seriously injured condition with profused bleeding on account of bullet injury. The informant immediately rushed his injured son to Latehar Hospital for treatment from where he was referred to Ranchi.

(d) The informant further alleged that he and his family had always protested against the conduct of M.C.C. extremists which has resulted into development of enmity between him and the extremist group and had further resulted into murder of his cousin brother in the year 1995 and his house was also set on fire by the extremists also in the same year. Later, extremists had twice made an unsuccessful attempt on the life of the informant in the year 1996 and 1997 but he had managed to survive such attempt on his life. The informant claimed that on account of his old enmity, the above named M.C.C. extremist in the company of other members of the outlawed organization had tried to kill the informant and had plotted to eliminate him and in the consequence of which they had laid an ambush and had made indiscriminate firing at him in which his nephew and his friend's son were killed and his younger son was critically injured. His *Fardbayan* was recorded by the Police.

3. On the basis of the aforesaid fardbeyan of the informant (PW-5) Latehar P.S. Case No. 062 of 2004 dated 21.07.2004 under Sections 302/34 of I.P.C., Section 27 of Arms Act and Section 17 of C.L.A. Act was registered. After investigation, charge-sheet was submitted against accused person for the offences under Sections 147, 148, 149, 324, 307, 302 of I.P.C., Section 27 of Arms Act and Section 17 of C.L.A. Act and accordingly cognizance was taken for the said offences and case was committed to the court of Sessions.

Charge and decision of the Trial Court:

4. Charge against the accused person (appellant) was framed on 07.03.2005 by District & Sessions Judge, Latehar for the offence punishable under Section 147, 148, 307/149, 302/149 and 324 of IPC,

and section 27 of Arms Act, and section 17 of C.L.A. Act. The content of the charge was read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

5. The defence of the appellant under Section 313 Cr.P.C was that he had not committed the alleged offence and denied all the evidence adduced against him. He had also stated nothing about the occurrence and claimed that he was innocent.

6. The learned court below after conducting the full-fledged trial passed the impugned judgment of conviction and order of sentence, which is under challenge in this appeal.

7. Heard learned Counsel for the appellant and the learned A.P.P. for the State.

Arguments advanced on behalf of the Appellant:

8. At the outset, it is submitted on behalf of the appellant that the learned trial court has committed error in appreciating the deposition of the witnesses particularly the eye witnesses PW-5, PW-2 and PW-1 who are on inimical terms with this appellant and the independent witness PW-7 Bindeshwar Mistry has not supported the case of the prosecution.

9. Further, the versions of the said eye witnesses namely PW-1, PW-2 and PW-5 are self contradictory and they are not consistent in their depositions particularly on the point of identification of the appellant and it has been alleged that there were twenty-five to thirty extremists but no specific overt act has been attributed against this appellant and the entire allegations are vague and equivocal.

10. Further, it has been pointed out that the PW-2 who is said to be the victim of the occurrence but from his statement it does not appear that he had identified the appellant on the place of occurrence rather he learnt the name of appellant while the said miscreants numbering 20 to 25 were calling the name of each other amongst themselves.

11. Further, PW-3 is hearsay witness but he had not stated the name of the appellant who was involved in the firing upon the deceased persons and this witness PW-3 was the first person to whom the incident was disclosed by the informant and so called eye-witnesses did not disclose the name of the appellant among the miscreants as there was no allegation of overt act against him and similarly PW-4 did not take the

name of the appellant and because of previous enmity and dispute this appellant has been made accused by the so-called eye witnesses PW-1, PW-2 and PW-5.

12. It has further been stated that PW-2 Jitendra Kumar Singh was the most competent witness who was alleged to have sustained firearm injury but he had not seen the appellant on the spot rather he had heard that the miscreants were calling amongst themselves their respective names and merely on suspicion the appellant had been made accused without proper identification and PW-1 and PW-5 were riding on another Motor Cycle which was about 300 yards behind the Motor Cycle on which the occurrence took place and as such the statement of the informant PW-5 that he had identified the accused persons is unbelievable from a distance of 300 yards and that too when there was allegations that miscreants were firing from the bushes and it is a case of the prosecution that two brothers PW-1 and PW-5 both were riding on one Motor Cycle and the other three persons including the PW 2 and deceased persons were riding on another Motor Cycle who was 300 yards away ahead of the Motor Cycle of the PW-1 and PW-5 and their versions are not consistent to each other but all these aspects has not been taken into consideration properly by the learned trial court and in a sweeping manner without any cogent evidence, the impugned judgment of conviction and order of sentence has been passed against the appellant and therefore impugned judgment of conviction and order of sentence is fit to be set aside.

Arguments advanced on behalf of the State.

13. On the other hand, learned A.P.P. appearing on behalf of the State opposed the contentions raised on behalf of the Appellant and submitted that there are three eye witnesses including PW-1 Mohar Singh @ Satwant Singh, PW-2 Jitendra Kumar Singh (who is injured also) and PW-5 Jaswant Singh (who is the informant) and all have consistently and uniformly taken the name of the appellant and therefore the learned trial court has rightly relied upon these three truthful witnesses and passed the impugned judgment of conviction and order of sentence against the appellant.

14. Further, it has also been pointed out on behalf of the State that the

Doctor PW-6 Dr. Dilip Kumar and the I.O.-PW-8 Maheshwar Ram has also been examined and their depositions are also supporting the case of the prosecution particularly with respect to manner and mode and therefore there is no legal point to interfere in the impugned judgment of conviction and order of sentence and they deserve to be sustained and this appeal is fit to be dismissed.

Appraisal & Findings

15. Having heard the parties, perused the record of the case including the trial court records.

16. It is manifest from the record that the prosecution has been able to examine eight prosecution witnesses which are as under:

1. P.W.1-Mohar Singh @ Satwant Singh
2. P.W.2-Jitendra Kumar Singh
3. P.W.3-Om Prakash Chatriya
4. P.W.4-Raj Kumar Upadhyaya
5. P.W.5-Jaswant Singh
6. P.W.6-Dr. Dilip Kumar
7. P.W.7-Bindeshwar Mistri
8. P.W.8- Maneshwar Ram

17. Apart from the oral witnesses, the prosecution has also marked the following documents: -

Exhibit-1- The signature of Satwant Singh (P.W.-1) on the carbon copy of inquest report of the deceased Santan Kumar Singh.

Exhibit-2- The signature of Om Prakash Chatriya (P.W.-3) on the carbon copy of inquest report of the deceased Santan Kumar Singh.

Exhibit-2/1- The signature of Raj Kumar Upadhyaya (P.W.-4) on the carbon copy of inquest report of the deceased Raju Ranjan Upadhyaya.

Exhibit-3- *Fardbeyan*.

Exhibit-4 and 4/1- Two Post-Mortem Reports.

Exhibit-5- signature of Maneshwar Ram on Chargesheet

Exhibit-6 and 6/1- Two Carbon Copy of inquest reports.

Exhibit-7- Whole Case Diary.

18. No evidence has been adduced on behalf of the defence by the Appellant.

19. It is admitted case of the prosecution and as emanating from the evidences adduced on behalf of the prosecution that both the parties the informant people and the appellant was on inimical terms. Law is well settled on the point of enmity that enmity is a double-edged weapon, providing motive both for the offence as well as for false implications. In this backdrop, this Court proceeds to examine and appraise the evidences adduced on behalf of the prosecution more cautiously and diligently so that neither the guilty party gets wrongly escaped on the plea of enmity nor any innocent person gets wrongly convicted on that basis.

20. **P.W.-1 Mohar Singh @ Satwant Singh** is said to be the eye witness and in the examination in chief he did not utter that the appellant Kail Mian @ Nasruddin Mian had shot the deceased persons nor injured Jitendra Kumar Singh (P.W.2) rather he had stated that 15-20 miscreants/extremists started firing indiscriminately upon them and he had heard that the extremists Sudhir Ji, Kail Ji (appellant), Vinod Ji and Kalim Ji were talking amongst themselves with one another by taking their names uttering that innocent persons have been killed and thereafter they fled away. He had also stated that the entire occurrence was stated to him by Jitendra Kumar Singh (P.W.2) as evident from para-3 of the cross-examination. Although he had identified the appellant present in the dock at the time of recording his statement during the course of the trial without stating that he had seen at the place of occurrence that he was firing upon the deceased persons or injured person. Thus, this witness did not see the appellant who was firing at the deceased persons and injured PW-2 and only on suspicion the appellant has been named which is not finding support from the deposition this witness PW-1.

21. **P.W.-2 Jitendra Kumar Singh** is the injured eye witness and in his examination in chief he also did not state pointedly that the appellant had fired upon the deceased persons nor upon him rather he had stated that total miscreants were 15-20 in number and they had started firing upon them and he heard that the miscreants were talking amongst themselves by taking name of one another in between themselves in which this appellant Kail Mian @ Nasruddin Mian was one of them apart from Sudhir Ji, Shivram Ji, Madan Ji, Surender Ji, Kalim Mian

and Suresh Ji but he did not see that this appellant had fired upon him or the deceased persons by which he has injured although in para 13 he had stated that the appellant was also firing at the place of occurrence and thus there is a major contradiction in his version on the point of identification of the appellant amongst the miscreants who had fired by the firearm to the deceased or the injured person. His version is also not supporting the case of the prosecution that it was the appellant who had fired upon the deceased or upon this injured witness. In the cross-examination, the defence has been taken on behalf of the appellant that the father of this witness had been instituting false case upon the innocent people under the pretext of M.C.C. Extremists in order to extort money by compromising.

22. **P.W.-3 Om Prakash Chatriya** is a hearsay witness. He came to know from the informant that M.C.C. Extremists have killed the deceased persons and injured Jitendra Kumar Singh (P.W.-2). He has made the signature over the inquest report of Santan Kumar Singh which has been marked as Exhibit-2, thus this witness does not help the case of the prosecution to the extent that the appellant had killed the deceased person and injured PW-2 Jitendra Kumar Singh by firearm.

23. **P.W.-4 Raj Kumar Upadhyaya** is another witness. This witness is also the witness of the inquest report and he had put his signature upon the inquest report of the deceased Raju Ranjan Upadhyaya which was marked as Exhibit 2/1 and he had heard that the M.C.C. Extrimists had fired upon the deceased persons and he categorically stated that he had not seen the occurrence.

24. **P.W.-5 Jaswant Singh** was the informant of this case. This witness has categorically stated that the appellant was known to him from before and from the deposition of this witness it is also evident that he had opposing the M.C.C. Extremists activities and on several occasions he had been attacked by the M.C.C. Extremists since 1995 when the brother of this witness was killed by the M.C.C. Extremists but in the examination in chief this witness had stated that on the date of occurrence 25-30 M.C.C. Extremists had started firing upon them and amongst the extremists, he had identified Vinod Lohra @ Surender Ji, Sudhir Ji @ Sakhiya Uraon, Kalim Mian, Kail Mian (appellant), Madan

Bhuiyan, Kewal Uraon, Suresh Uraon and Shiv Ram ji but did not utter a single word that the appellant had fired upon the deceased persons and his son Jitendra Kumar Singh (injured P.W.-2). From the cross-examination, it is found that the Motor Cycle of this witness was far behind 350 yards away from the Motor Cycle upon which the extremists had fired under which the deceased persons had died and one person was injured and he had also stated that as soon as the firing had started, this witness stopped his Motor Cycle about 350 yards away and went back and after sometime he reached to the place of occurrence and thus the identification of the appellant by this witness becomes doubtful because it is admitted by him that the appellant was known to him from before and he did not utter a single word about his firing upon the deceased persons or the injured person and therefore his deposition that the appellant was amongst the miscreants who had fired upon the deceased persons and upon injured person P.W.-2 becomes doubtful because of the admitted enmity.

25. **P.W-6 Dr. Dilip Kumar** had conducted the post-mortem of the deceased persons. P.W-6 found following injuries as antemortem in the body of deceased Santan Kumar:

“(A) (i) One oval shaped wound of entry size -1/2” x 1/2” x 1 1/2” over the front of chest on the left side of the 5th inter costal space.

(ii) One wound of exit with lacerated margin-size – 3”x2”x2” over the back of the chest on the left side of the inter costal space.

On dissection –left lung was punctured, heart was also punctured, chest cavity filled up with blood.

And as per opinion of doctor conducting the post-mortem examination, the death of the deceased was due to hemorrhage and shock by fire arm injury.

(B) On the same day Doctor had conducted the post mortem examination on the dead body of Raju Ranjan Upadhyaya, also and as antemortem injuries on his person he has found-

(i) One abrasion over the face on the left side.

(ii) One oval shaped wound of entry size- 1/2”x 1/2”x 2”

over front of the chest on the right side.

(iii) One wound of exit lacerated margin size- 2"x1"x1" over the back of chest on left side over seventh inter costal space.

On dissection- Lung was punctured, heart was empty, chest cavity was filled with blood.

And as per opinion of doctor conducting the post mortem examination, the death of the deceased was due to haemorrhage and shock due to the fire arm injury.

During his evidence the Doctor has proved both post mortem reports as Ext. "4" and "4/1" respectively."

26. **P.W.-7 is Bindeshwar Mistri** who was hearsay witness and he has been declared hostile as he stated that he did not see the occurrence from his own eyes and he has no knowledge about the said occurrence.

27. **P.W.-8** is the Investigating Officer (I.O.)-namely **Maneshwar Ram** of this case.

From the version of the I.O. PW-8 it is found that he did not utter a single word as to whether this appellant was the member of the banned extremist organization namely M.C.C. and the alleged incident was committed by the member of banned extremist organization namely M.C.C. and nor the I.O. stated that this appellant was ever member of the said banned extremist M.C.C. organization and thus this witness has not supported the version of the informant people that this appellant Kail Mian @Nasruddin Mian being the member of the banned extremist organization namely M.C.C. committed the offence because the informant people had been opposing the banned extremist organization namely M.C.C. and therefore the miscreants of the banned extremist organization namely M.C.C. including this appellant had been harbouring animosity with the informant people and hence caused this incident by killing the deceased persons and causing injury to P.W.-2 Jitendra Kumar Singh.

28. Recapitulating the entire evidences as appraised in the fore-going paragraphs, it is well founded that the informant people were on inimical term with this appellant and hence, under the guise that this appellant was the member of the banned extremist organization namely M.C.C.

and on earlier occasion also the extremists had been attacking upon the informant people because the informant people had been opposing the activities of banned extremist M.C.C. organization, the appellant had been falsely implicated in the present offence. There is no iota of proof corroborating the version of the informant people that this appellant was the member of banned extremist organization namely M.C.C. P.W.-8 who has been examined as I.O. in this case did not utter a single word with respect to the involvement of the appellant in the banned extremist organization namely M.C.C.

Further, it is also emerging from the versions of the prosecution witnesses particularly the eye witnesses P.W.1, P.W.2 and P.W.5 that presence of this appellant is doubtful because they came to know about the name of the appellant amongst the miscreants from the fact that the miscreants were talking amongst themselves by calling their respective names and hence it is safely inferred that they did not see the appellant at the spot at all that it was appellant who fired upon the deceased persons or injured although the so called eye witnesses have told that it was the appellant who had fired from the gun under the pretext that he was one of members of banned extremist miscreants (M.C.C.).

29. P.W.5 Jaswant Singh who is claiming himself to be the eye witness had fled away from the place of occurrence since the alleged firing commenced and the motor cycle upon which he along with P.W.-1 was riding was about 350 yards behind from the front motor cycle upon which P.W.-2 and deceased persons were travelling upon whom firing was done and P.W.-5 having seen the alleged firing by the miscreants immediately turned around the motor cycle and fled away from the place of occurrence and thus his claim to identify the appellant is doubtful. This witness P.W.-5 had categorically admitted this fact that he had been opposing the banned extremist organization namely M.C.C. activities on the previous occasion also in the year 1995, 1996 and 1997 and therefore he has named the appellant to involve in this offence being the member of the banned extremist organization namely M.C.C. but there is no slightest evidence that this appellant had been the member of the banned extremist organization namely M.C.C. as evident from the versions of I.O. (PW-8).

P.W.8 did not utter any fact about which it is found that the appellant was the member of the banned extremist organization namely M.C.C. P.W.-1 is said to be eye witness but he himself had stated that he came to know about the occurrence from Jitendra Kumar Singh (P.W.-2) who is the injured eye witness and therefore his version that he had seen the appellant firing from the gun gets totally falsified. Further it is also found from the version of P.W.2 who is said to be the injured eye witness and who had stated in unequivocal terms that he came to know about the involvement of this appellant in the commission of the offence because the miscreants were calling themselves by taking their names amongst themselves where he also heard that they were uttering that the innocent people were killed and therefore this witness had also not seen the appellant firing from the gun upon the deceased persons and the injured person and thus the involvement of this appellant becomes totally falsified from the testimonies of the eye-witnesses PW-1, PW-2 and PW-5 which are contradictory to each other amongst themselves.

30. Further there is no persuasive and convincing evidence to connect the appellant in the commission of the offence as there is no evidence that the appellant was the member of the banned extremist organization namely M.C.C. when no witness had seen that it was appellant also who fired upon the deceased persons and injured persons and the appellant has been simply named because miscreants were talking amongst themselves by taking names of several miscreants.

31. In the aforesaid crystallized findings of this Court based on the evidences adduced on behalf of the parties, it is inferred that the learned trial court did not appreciate the depositions of the witnesses adduced on behalf of the prosecution in a holistic manner particularly with respect to the depositions of the so-called eye witnesses P.W.-1, P.W.-2 and P.W.-5 in absence of any cogent evidence about the involvement of the accused appellant in the commission of the offence.

Result:

32. In result, this Criminal Appeal is allowed.

33. Impugned judgment of conviction dated 16.08.2005 and order of sentence dated 17.08.2005 against the appellant Kail Mian @ Nasruddin Mian passed by the Court of Learned Additional Sessions Judge, F.T.C.,

Latehar in Sessions Case No.26 of 2005 is hereby set aside. The appellant is acquitted from the charges levelled against him. Since the appellant is on bail and therefore, he is discharged from the liabilities of bail bonds.

34. Let the Trial Court Records and the copy of the judgment be also transmitted to the concerned learned trial Court.

(Dr. S.N. Pathak, J.)

(Navneet Kumar, J.)

Basant B.
Jharkhand High Court
Dated 27/08//2024