

Shankar Das and Others Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Nov-11-2011

Reported in : 2012CrLJ340(NOC)

Judge : D.N. Upadhyay

Appeal No. : Cr. Appeal (DB) 112 of 2003 with Criminal Appeal No. 126 of 2003

Appellant : Shankar Das and Others

Respondent : State of Jharkhand

Judgement :

1. Both these Criminal Appeals have been preferred against the judgment of conviction and sentence dated 17.1.2006 passed by the Additional Sessions Judge, Fast Track Court No.2, Deoghar in Sessions Trial No. 135 of 1996 whereby the appellants have been held guilty for the offences punishable under sections 326/452/323 IPC and accordingly sentenced to undergo rigorous imprisonment for seven years and to pay fine of rupees ten thousand each and in default of payment of fine, further simple imprisonment for one year under section 326 IPC; rigorous imprisonment for four years and fine of rupees one thousand each and in default, simple imprisonment for two months under section 452 IPC and rigorous imprisonment for one year under section 323 IPC. The appellant namely Angrej Das has also been held guilty under section 307 IPC, apart from sections 326/452/323 IPC and sentenced to undergo rigorous imprisonment for ten years

and to pay fine of rupees twenty thousand and in default of payment, to undergo further simple imprisonment for two years and 60 percent of the fine, if deposited, shall be given to the informant.

2 The prosecution case, as emerges from the fard beyan of the informant Surendra Das PW7 is that on 15.6.1995 after taking his meal, he was sleeping in his house. During the night, appellant Angrej Das with his three associates committed house trespass and they all caused injuries to the informant with an intention to kill him. The informant sustained multiple injuries on his person and he was admitted to Hospital for his treatment where his fard beyan was recorded on 16.6.1995 on the basis of which Jasidih P.S. Case No. 91 of 1995 was registered under sections 452/341/324/307/504/34 IPC and investigation proceeded.

During investigation, names of other appellants came in light and all of them were charge sheeted to face trial for the offences punishable under sections 452/307/326/323/34 IPC. The appellants stood charged under sections 452/307/326/323/34 whereas the appellant Angrej Das has further been charged under section 307 IPC.

Since the appellants pleaded not guilty, the trial proceeded and the prosecution has examined altogether eight witnesses to substantiate the charges. The appellants have also examined two defence witnesses in support of their defence.

3. The informant has been examined as PW7 and he has supported the prosecution case as made out in the fard beyan. He has further disclosed names of all the accused /appellants including the name of Angrej Das, (appellant in Cr. Appeal No.126/2003) in his deposition.

Binod Das PW3, Pradeep Kumar Das PW6 are brothers of the informant PW7 and they have corroborated the evidence adduced by the informant. They have also deposed that Surendra Das informant was assaulted by the accused appellants with a sharp cutting weapon, while he was sleeping in his house. Dhano Devi PW1 is the mother of the informant and she has stated that in the midnight after hearing the alarm raised by her son Surendra Das, she went there and found him injured. Her son had disclosed the name of Angrej Das (appellant in Criminal Appeal No.

126/2003) as assailant. Sanichar Das PW2 and Budhan Das PW5 who are father and the uncle of the informant are hearsay witnesses, and they had attended the injured at the hospital. Nakul Das PW4 has been tendered. Dr. D.K.Pathak PW8 had examined the injured on 16.6.1995 and had found altogether seven sharp cut injuries on the person of the informant PW7. Some injuries were grievous in nature and caused within six hours. The injury report has been proved as Ext. 2.

4. Learned counsel appearing on behalf of the appellants in Cr. Appeal No. 112 of 2003 has submitted that names of these appellants did not find mention in the fard beyan, though all of them were known to the informant from before. Furthermore, Binod Das PW3, is the attesting witness to the fard beyan and he has disclosed names of these appellants, even then the fard beyan did not bear their names. It is further contended that all the material witnesses are close relatives of the informant and no independent witness has supported the prosecution case. Exaggeration and contradictions are apparent in their statements and therefore non examination of the investigating officer is fatal to the prosecution with regard to these appellants. The version of the informant PW7 could not be believed, because in his deposition, he has named these appellants with specific allegation, but these facts did not find mention in the fard beyan and therefore liable to be excluded from any consideration.

5. Learned counsel appearing in Criminal Appeal No.126 of 2003 has subscribed the argument advanced on behalf of the appellants in Criminal Appeal No. 112 of 2003. Apart from that, he has pointed out that Angrej Das is now aged about 60 years and the evidence on record is inconsistent, untrustworthy and unreliable. The land dispute prevailing from before is admitted. Except the relatives no independent witness has come forward. Even the informant has not come with fair hand and he has given contradictory statement in court which could not be relied upon.

6. Learned counsel for the State, on the other hand, submitted that only because the witnesses are close relatives, their testimony cannot be discarded, or brushed aside. The informant was not cross examined with regard to the identity of other appellant, nor any question was put to him whether remaining accused appellants,

except Angrej Das, were known to him from before or not. Oral evidence of the informant finds support from the medical evidence and therefore these Criminal Appeals have no merit.

7. It is not disputed that the appellant Angrej Das is named in the fard beyan, while the names of remaining accused (appellants in Cr. Appeal No. 112/2003) were disclosed during investigation. The evidence of PW1 Dhano Devi indicates that the informant had disclosed the name of Angrej Das and three unknown who were the assailants. According to her statement, she (PW1) was the witness who had first reached near the informant after he sustained injuries. She did not say that Pradeep Kumar PW6 was also present there and sustained any injury on his person, But Pradeep Kumar PW6 has gone to the extent of saying that Chhura blow was also inflicted to him. The version of Pradeep Kumar PW6 does not find support from the medical evidence that he had sustained any injury. I feel that the learned trial court has not considered this aspect in the impugned judgment. Thus, it is apparent and undisputed that names of all the four appellants in Criminal Appeal No.112 of 2003 were brought on record as afterthought though the fard beyan, which is the earliest disclosure of the incident, did not disclose names of these appellants.

8. The presence of relatives, friends and neighbour is normally expected, if any untoward happens within a dwelling house and they are the natural witnesses to any such incident if occurred at such place. The evidence of such witness cannot be discarded only on account of their being relative subject to the condition that the statement must reveal the truth without being influenced from any corner. As discussed above, the informant has named only appellant Angrej Das in the fard beyan and he did not identify remaining accused at the time of incident, but during his examination in court, he has named all the appellants with specific overt act committed by each of them. In the statement of PW1, name of only Angrej Das has come but Pws 3 and 6 who are brothers of informant have named all the appellants. Though the informant in his fard beyan has not said that his brother Pradip Kumar PW6 was also sleeping with him and he had sustained injury inflicted by means of dagger, but PW6 had gone to the extent of saying this fact in his deposition and therefore the statement of all these witnesses are not

consistent with regard to participation of appellants in Criminal Appeal No. 12 of 2003 in the alleged offence. In the result, the judgment of conviction and sentence passed against them cannot be sustained and stands set aside. They are discharged from the liabilities of their bail bonds and set at liberty.

9. So far as Angrej Das appellant in Cr. Appeal No. 126 of 2003 is concerned, the evidence of all the material witnesses available on the record is consistent that he had committed trespass and caused injuries to the informant with a dagger. Sharp cutting injuries caused to the informant finds support from the evidence of Dr. D.K.Pathak PW8 and the injury report (Ext.2). Only because the witnesses have implicated more persons in course of investigation and deposition in court, the evidence which is consistent, corroborative, inspiring confidence and unerringly pointing towards the act committed by Angrej Das, cannot be thrown away and conviction can be passed against that accused and he could not get the benefit of the fact that other accused on such evidence have been acquitted. The story of splitting grain from chaff is to be adopted.

10. I have examined the impugned judgment and the order of conviction and sentence. I am unable to understand as to why charge under section 323 IPC was framed, though no such evidence was available. Therefore, conviction and sentence under section 323 IPC passed against the appellant Angrej Das stands set aside.

11. Considering age of the appellant Angrej Das and the time consumed in disposal of the appeal, I further feel inclined to reduce the sentence as inflicted against Angrej Das appellant in Criminal Appeal No. 126 of 2003 and accordingly, sentence inflicted is modified and he is directed to undergo rigorous imprisonment for five years and to pay fine of Rs. 5000/- (rupees five thousand) under section 307 IPC and in default of payment of fine, to undergo further imprisonment for six months, rigorous imprisonment for two years and to pay fine of rupees one thousand and in default of payment of fine, further imprisonment for two months under section 452 IPC, rigorous imprisonment for three years and to pay fine of rupees one thousand and in default of payment of fine, to undergo two months imprisonment under section 326 IPC. All the sentences shall run concurrently.

12. With the above modification in the sentence, the appeal filed on behalf of the appellant Angresh Das, is dismissed. His bail bond stands cancelled and he is directed to surrender before the court below within one month from the date of this judgment, failing which the trial court shall take all possible steps to secure his attendance, so that the convict may serve out the sentence and after appearance of the appellant, the modified conviction warrant as indicated herein above shall be issued.

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