

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 580 OF 2018

Dhirendra Singh @ Pappu

.. Appellant

Versus

State of Jharkhand

.. Respondent

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.02.2017 passed by the High Court of Jharkhand in Criminal Appeal (DB) No. 1324 of 2005, by which the High Court has dismissed the appeal preferred by the appellant herein-original accused and has confirmed the order of conviction and sentence passed by the learned Sessions Court convicting the accused for the offences punishable under Section 302 read with Section 34 IPC and Section 27 of the Arms Act, the original accused No. 2 has preferred the present appeal.

2. The prosecution case in nutshell was that one Suraj Mandal – P.W.27 gave the *Fardbeyan* recorded at Tata Main Hospital, Jamshedpur on 08.08.1987 at 12.15 hours. The case of the prosecution was that the informant along with one Nirmal Mahto (the deceased) and others reached Jamshedpur in the previous night at about 10.30 p.m. and stayed at TISCO Guest House. They had come for attending the last rites of mother of one Avtar Singh Tari. On 08.08.1987 at about 11.45 a.m., they along with some other persons came out of the guest house for going to the house of Avtar Singh Tari. Some other persons also came there, who were also to go to the house of Avtar Singh. In the meantime, one car bearing No. DEA-2544 came there and five persons alighted from it. The informant asked Nirmal Mehto as to who they were, whereupon he told that two of them were Pandit and Pappu, who were brothers of Birendra Singh. Pandit went inside the guest house and came out along with his brother Birendra Singh and they started talking amongst themselves. In the meantime, Birendra Singh fired from firearm upon Nirmal Mehto, which hit him and he fell down. Pandit also assaulted Nirmal Mehto by firearm from behind and he again fired firearm injuring the informant also. The case was registered against the accused for the offences punishable under Sections 302/307/34 IPC and Section 27 of the Arms Act. On the basis of the *Fardbeyan* given by the informant, the FIR was registered. The investigation was subsequently taken up by the CBI and upon investigation the CBI submitted the

charge-sheet against the apprehended accused Birendra Singh, showing the appellant and others to be absconders. That Birendra Singh came to be tried in a separate sessions' trial and he came to be convicted and sentenced for the offences under Sections 302/34 IPC. Subsequently, he died during the pendency of his appeal in the High Court. After a period of 13 to 15 years, the appellant and one another surrendered/were arrested. Therefore, a supplementary charge-sheet was filed against the appellant and one another. As the case was triable by the learned Court of Session, the case was committed to the learned Sessions Court. The appellant and one another came to be tried by the learned Sessions Court for the offences under Sections 302/34 IPC and Section 27 of the Arms Act, as they pleaded not guilty.

3. To prove the case against the accused, the prosecution examined 35 witnesses and also brought on record several documentary evidences through the aforesaid witnesses. Suraj Mandal-informant who was an injured eye-witness came to be examined as P.W.27. One Md. Akhtar Hussain and Nirmal Bhattacharya, who were also the eye-witnesses to the incident, came to be examined as P.W.7 and P.W.8 respectively. The prosecution also examined the doctor who performed the post-mortem on the dead body of the deceased as well as who examined the injured Suraj Mandal. On conclusion of the trial, learned Trial Court convicted the accused for the offences punishable under Section 302

read with Section 34 IPC and Section 27 of the Arms Act and sentenced him to undergo life imprisonment.

3.1 Feeling aggrieved and dissatisfied with the judgment and order of conviction passed by the learned Trial Court, the appellant herein preferred an appeal before the High Court. By the impugned judgment and order dated 28.02.2017, the High Court has dismissed the said appeal. Hence, the present appeal.

4. Shri Cinmoy, learned Advocate appearing on behalf of the appellant Dhirendra Singh @ Pappu has vehemently submitted that as such there are material contradictions in the depositions of P.W.7, P.W.8 and P.W.27 with respect to the role attributed to the appellant and/or the overt act by the appellant–accused. It is submitted that as such it is not proved beyond doubt that the appellant–accused was responsible for the death of Nirmal Mehto and/or he fired on the deceased and/or on the informant.

4.1 It is further submitted by the learned Advocate appearing on behalf of the appellant that as per the prosecution there were five eye-witnesses. However, the prosecution examined only three eye-witnesses. It is submitted that as material contradictions were coming out from the depositions of P.W.7 and P.W.8 and therefore the prosecution dropped other two witnesses. It is submitted by the learned Advocate appearing on behalf of the appellant that both, learned Trial Court as well as the High Court, have materially erred in relying upon the

depositions of P.W.7, P.W.8 and P.W.27, who named the appellant. It is submitted that their evidence is full of contradictions. It is further submitted that in the FIR there is no allegation of assault on the appellant and as such the presence of the appellant at the place of incident is absolutely doubtful. It is further submitted by the learned Advocate appearing on behalf of the appellant that as such there is no recovery/seizure of any firearm from the appellant. It is submitted that though P.W.7 named the appellant, but he clearly stated that he could not say as to by whose assault the deceased was injured. It is submitted that therefore in view of the vital contradictions in the evidence of the eye-witnesses, the appellant is entitled at least to the benefit of doubt.

4.2 Learned Advocate appearing on behalf of the appellant has further submitted that it is not possible that *Fardbeyan* was given by the informant. It is submitted that the *Fardbeyan* is stated to be in writing of the informant, however, as per the case of the prosecution and even P.W.27, the informant sustained the injury on hand by firearm. It is submitted that therefore it was not possible for the informant to give the *Fardbeyan* in writing.

5. The present appeal is opposed by Shri Arunabh Chowdhury, AAG for the State of Jharkhand. He has supported the judgment and order passed by the learned Trial Court as well as the High Court. It is submitted that as such there are no material contradictions in the depositions of P.W.7, P.W.8 and P.W.27 so far as

the presence of the appellant-accused and his active participation in the commission of the offence. It is submitted that as such the appellant absconded for 13 to 15 years after the date of the incident and the depositions and the evidence were recorded after 15 years and therefore as rightly observed by the High Court there are bound to be some variations and/or contradictions. It is submitted that therefore such minor contradiction/contradictions shall not be to the benefit of the accused. It is submitted that so far as the informant P.W.27 is concerned, he is an injured eye-witness and he also suffered an injury by an firearm, which has been established and proved from the medical evidence and the deposition of the doctor who treated the informant.

5.1 It is submitted that therefore when the accused has been convicted with the aid of Section 34 IPC and his presence and participation has been established and proved, no error has committed by the High Court in confirming the conviction of the accused.

6. Heard learned counsel appearing on behalf of the respective parties at length. We have gone through the judgment and order of conviction passed by the learned Trial Court and confirmed by the High Court. We have also re-appreciated the entire evidence on record, though not required at this stage.

6.1 The case of the prosecution rests on the depositions of P.W.7, P.W.8 and P.W.27. The aforesaid witnesses can be said to be the star witnesses. P.W.27 is the informant-injured eye-witness whose presence at the time of incident is established and proved. There is no reason to doubt his presence at the time of incident. He also sustained the injuries by a firearm which has been established and proved by the prosecution by leading medical evidence. The same is supported by the deposition of the medical officer P.W.21 – Dr. Braj Kishore Prasad Singh. The injuries sustained by the said witness P.W.27 by the firearm, as per the doctor, were, abrasion wound on right-hand elbow joint; several wounds of pellets on right hand and wound on little finger of right hand. As the injury sustained by him on little finger was simple in nature, it was possible for P.W.27 to give complaint/*Fardbeyan* in writing. There is no reason to doubt his presence at the time of incident as well as his deposition. The presence of appellant at the time of incident and his active participation has been established and proved by the prosecution by examining other two witnesses P.W.7 and P.W.8 also, along with P.W.27. There may be some contradiction/contradictions with respect to the role attributable to the appellant-accused and/or overt act by the appellant-accused. However, as rightly observed by the High Court, the deposition was recorded after

a period of approximately 15 years, there are bound to be some minor contradiction/contradictions. However, it is also required to be noted that the appellant has been convicted for the offences punishable under Section 302 with the aid of Section 34 IPC. Therefore, when the presence of the appellant-accused at the time of incident and his active participation has been established and proved, it cannot be said that both, the learned Trial Court as well as the High Court, have committed any error in convicting the appellant-accused under Section 302 read with Section 34 IPC.

6.2 At this stage, it is required to be noted that the appellant ran away and he absconded for approximately 15 years. His trial was separated. He surrendered/was arrested after the conclusion of the trial of another accused and after another accused was convicted. Learned counsel appearing on behalf of the appellant is not in a position to seriously dispute the finding recorded by both the Courts below with respect to the presence of the appellant-accused at the time of incident. The use of firearm by the appellant-accused has also been established and proved. Merely because the weapon is not seized cannot be a ground to acquit the accused when his presence and his active participation and using firearm by him has been established and proved. We are of the opinion that both, the learned Trial Court and the High Court, have rightly convicted the appellant-accused for

the offences punishable under Section 302 read with Section 34 IPC. No interference of this Court is called for.

6.3 In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

.....J.
[Dr. Dhananjaya Y. Chandrachud]

.....J.
[M. R. Shah]

New Delhi,
March 1, 2021