

(2006) 12 JH CK 0015

Jharkhand High Court

Case No: None

Qayum Ansari @ Abdul Qayum
Ansari, Tayaib Ansari and Md.
Tahir Ansari

APPELLANT

Vs

The State of Bihar (now
Jharkhand) and Md. Anwar

RESPONDENT

Date of Decision: Dec. 4, 2006**Acts Referred:**

- Arms Act, 1959 - Section 27
- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2007) 2 JCR 93**Hon'ble Judges:** Dhananjay Prasad Singh, J; Amareshwar Sahay, J**Bench:** Division Bench**Final Decision:** Dismissed

Judgement

D.P. Singh, J.

The appellants {in Criminal Appeal No. 237 of 1999(R) and Criminal Appeal No. 238 of 1999(R)} on being tried together, have been found and held guilty for the offence u/s 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and appellant Md. Tahir Ansari in Criminal No. 238 of 1999(R) has been further found and held guilty for the offence u/s 27 of the Arms Act and sentenced to undergo rigorous imprisonment for three years, by the 2nd Additional Sessions Judge, Chatra by common judgment dated 10.6.1999 and 16.6.1999 in Sessions Trial No. 277 of 1997 | 222 of 1997. However, all the sentences passed against appellant Md. Tahir Ansari were ordered to run concurrently. As all the appeals arise out of the same judgment, they have been heard together and are being disposed of by this common judgment.

2. Factual matrix leading to these appeals is that long-standing dispute between the deceased and the appellants has resulted the present occurrence. According to informant Md. Anwar, in the morning of 20.7.1996 appellant Qayum Ansari approached his father late Abdul Rahman to settle the disputes by filing appropriate petitions in the Court. As further stated, in the morning, appellant Qayum Ansari arrived at his house and requested the deceased to go along with him to Chatra Civil Court for needful. Further stated, his father started for Chatra Civil Court carrying documents with appellant Qayum Ansari. The informant also followed him. Further stated, when they reached on the pitch road at about 6.30 A.M., another appellant Tayaib Ansari joined them. However, when they reached fifty yards east of Chaukhra More (Datami), appellant Md. Tahir Ansari reached on a bicycle in front of them. According to the informant, as soon as appellant Md. Tahir Ansari got down from the bicycle, both the appellants asked him to kill his father. After which, appellant Md. Tahir Ansari took out a country made pistol from his waist and shot Abdul Rahman twice hitting on his chest and right temporal region resulting in his instantaneous death. The informant raised alarms on which witnesses arrived there, named in the fardbeyan. In the meantime, the appellants fled away.

3. Huterganj Police arrived at the place of occurrence by 8.30 A.M., recorded the fardbeyan of the informant, prepared inquest report, seized the empty cartridge and bloodstained bag as well as soil from the place of occurrence. The police further registered a case u/s 302/34 of the Indian Penal Code and Section 27 of the Arms Act against the appellants to submit charge sheet after investigation. Their cases were committed to the Court of Sessions for trial where they were charged jointly u/s 302/34 of the Indian Penal Code and appellant Md. Tahir Ansari further u/s 27 of the Arms Act on 26.7.1997 to which they pleaded not guilty, they further claimed false implication due to previous enmity. However, the learned trial court after examining the witnesses found and held all of them guilty u/s 302/34 of the Indian Penal Code and appellant Md. Tahir Ansari further found and held (SIC) u/s 27 of the Arms Act and sentenced to serve rigorous imprisonment as mentioned aforesaid.

4. The present appeals have been preferred mainly on the grounds that the appellants have been implicated in this case without any basis. It is further submitted that all the eyewitnesses are tutored, related and improbable. It is also asserted that the informant himself could not be an eyewitness of the occurrence. According to this memo of appeal, the learned trial court has not considered the circumstances in right perspective and ignored the vital contradictions or the prosecution case. Mr. Singh, learned Counsel for the appellants further stressed before us that on proper scrutiny, the falsity of the prosecution version may be available. It was also stressed that the weapon of assault was neither recovered nor produced before the trial court. Further much stress was laid on the changing version of P.W. 3 Ram Brikch Yadav and hostile witnesses, P.W.1, P.W.2, P.W.7 and P.W.13.

5. We have anxiously considered the submissions along with the materials available on record. Previous enmity and litigations between the parties are admitted on record. According to prosecution version, the deceased was requested to accompany appellant Qayum Ansari for getting the disputes settled in Chatra Civil Court. The informant, son of the deceased, followed them, who witnessed the entire occurrence alleging the participation of Md. Taiyab Ansari and Md. Tahir Ansari, both brothers of Qayum Ansari. The death of Abdul Rahman with firearms injuries has been supported by witnesses beyond doubts. P.W. 9 Dr. N.K.P. Jaiswal, who conducted the postmortem examination, on the dead body of the deceased on 20.7.1.996 itself has found firearms injuries on chest and right side of face. These injuries have caused death. According to this witness, the death has occurred within 10.00 hours, which confirms the time of occurrence between 6.00 A.M; to 7.00 A.M. He has proved the postmortem examination as Ext.2. P.W. 3 Ram Briksh Yadav has supported the prosecution version as he claimed to be present near the place of occurrence, sitting for latrine by the side of the road. He has been cross-examined at length. Learned Counsel for the appellants pointed out vide paragraphs 8 and 10 that this witness has admitted that he gave the statement before the court and police on pressure of informant Md. Anwar. According to the learned Counsel, therefore, the testimony of this witness does not deserve to be accepted. This witness has admitted that he has been examined by a Judicial Magistrate vide Ext.1 in which he has supported the informant. The admission of this witness shows that he is a person of weak wills and he can be moulded under pressure. Therefore, even if he admits that he was under pressure of the informant, it may be possible that he was under pressure from the side of accused person when he was being examined in the trial court. Apart from this, P.W.4, P.W.5, P.W.6, P.W.8 and P.W.11 have supported the prosecution version.

6. P.W.11 is the informant who supports his earlier statement in details. He has been cross-examined at length regarding the dispute between his lather and the appellants as well as his involvement in a case of murder vide Ext. A. He asserted that he raised alarms on which witnesses arrived there. According to him, the police was informed by Chowkidar Moin Mian, but nothing material has come on record that it may be a ground to discard him as an eyewitness. The informant has been supported by P.W. 4 Naim Mian, P.W.5 Abdul Qayum, P.W. 6 Mohan Yadav and P.W. 8 Md. Nizamuddin. These witnesses have stated specifically that they were present near the place of occurrence and they saw the occurrence. According to P.W.4, he was present on his paddy field situated near the place of occurrence and saw the entire occurrence. P.W. 5 was going to ease himself and has occasion to see the occurrence. P.W. 6 Mohan Yadav was present on his field and on hearing the sound of fire reached at the place of occurrence to find the deceased lying with firearms injuries by the side of the road. He was informed about the occurrence by P.W. 11. P.W. 8 also arrives at the place of occurrence after hearing the sound of fire and found the deceased with firearm injuries on his chest and head. He was narrated

about the involvement of the appellants by the informant immediately. All these witnesses were cross-examined regarding their presence near the place of occurrence. They have stood with the test examination. P.W. 5 further gave the details of the occurrence and the manner in which appellant Md. Tahir Ansari fired upon the deceased. P.W. 6 and P.W. 8 have also supported the factum that the police examined them immediately when they arrived at the place of occurrence. They are hearsay witnesses but they arrived at the place of occurrence immediately after the deceased, was fired upon. Therefore, their statements deserve credit. Learned Counsel for the appellants has criticized their testimony, on the ground that their statements are afterthought and tutored. However, this assertion cannot be sustained, as their statements stand supported by other circumstances on record.

7. P.W. 10 Md. Kasim and P.W. 12 Sayed Akhtar are witnesses on the seizure list prepared by police. They have proved their signatures on the seizure list (Ext.3 and 3/1). These witnesses were also cross-examined at length as to what happened of the bag seized from the place of occurrence contained. They have supported the seizure of empty cartridge and one plate as well as a bag by the police from the place of occurrence. P.W. 14, Gopi Nath Tiwary, the Investigating Officer of this case, has proved the fardbeyan recorded by him as Ext.5, first information report prepared by him as Ext 6, the carbon copy of the inquest report as Ext. 7 and seizure list as Ext. 8. He has described the place of occurrence and the statements of the witnesses recorded by him. According to him, he arrived at the place of occurrence at 8.30. A.M. His statement has been criticized because of not mentioning to which side of the dead body he found the plate and bag etc. and further for not preparing the sketch map of place of occurrence. He has stated that P.W.4, and P.W. 5 have admitted before him that the informant has stated about the incident to them. Some minor contradictions in the statement of P.W.4, P.W.5, P.W.6, P.W.8 and P.W. 11 were drawn from his cross-examination. These minor contradictions pointed out by the appellants regarding the position at which the deceased was fired upon does not make much difference. It is possible that after lapse of time witnesses may not be able to project the entire incident in details. The minor contradiction without affecting the veracity of the witnesses on the main occurrence is of no importance. Death of Abdul Rahman with firearms injuries is supported with postmortem report (Ext.2). According to P.W.11, the informant, P.W.3, P.W.4, P.W.5, they saw the deceased was fired upon by appellant Md. Tahir Ansari resulting in his death. The informant has specifically mentioned that appellants Qayum Ansari and Taiyab Ansari were accompanying the deceased when appellant Md. Tahir Ansari arrived and on their command, appellant Tahir Ansari fired upon the deceased. The fact there was enmity between the parties since long gives the motive of the occurrence.

8. Learned Counsel for the appellants has stressed that due to previous enmity false implication was possible. In the present facts where eyewitnesses are asserting that the deceased was fired upon and killed by appellant Md. Tahir Ansari on the command of appellants Qayum Ansari and Taiyab Ansari, has been proved beyond

doubts. It is asserted that non-production of weapon or the seized articles before the trial court materially prejudiced the defence. We have gone through the statements of the appellants recorded by the trial court on 9.9.1998 u/s 313 of the Code of Criminal Procedure, we find that the evidence in details have been explained to the appellants by the trial court. Accordingly, we hold that no prejudice was caused to them due to non-production of those items seized vide Ext. 8 and 9, the bloodstained soil as well as plate etc. as the appellants were explained properly all these things in detail. Learned Counsel for the appellants has relied upon a decision reported in the case of Padmawati Devi v. The State of Jharkhand 2004(3) J.L.J.R. 561. The Division Bench of this Court has allowed the appeal in absence of Investigating Officer and the independent witness and also non-production of the weapon of assault as well as the identification of the place of occurrence. The facts in the present case are otherwise. The place of occurrence is not disputed and the eyewitnesses of the occurrence have been found and held probable and consistent as discussed above.

9. Having regards to the above mentioned facts and circumstances, we are of the view that the prosecution in the present case has been able to prove the charges against the appellants beyond reasonable doubts. Accordingly, we find and hold that the impugned judgment of conviction and sentence are fit to be affirmed.

10. In the result, the conviction of the appellants along with sentences passed by the learned trial court against them is hereby affirmed and the appeals are dismissed. Appellants, Qayum Ansari @ Abdul Qayum Ansari and Tayaib Ansari {in Criminal Appeal No. 237 of 1999(R)}, who are on bail, their bail bonds are hereby cancelled and they are directed to surrender forthwith before the court below for serving out the sentence. The learned court below is also directed to take all coercive steps in accordance with law for the apprehension of appellants to serve out the sentence.

Amareshwar Sahay, J.

11. I agree.