

Criminal Appeal (D.B.) No. 1351 of 2016

[Arising out of judgment of conviction dated 27.09.2016 and order of sentence dated 03.10.2016 passed by learned Additional Sessions Judge-II, Chatra in Sessions Trial No. 235 of 2014]

Jay Prakash Yadav son of Sheo Nath Yadav, resident of Deoriya,
P.O. Hasulahi, P.S. Kopa, District Chapra **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. Soumitra Borai, Advocate

For the State : Ms. Priya Shrestha, Special P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on:18.09.2024

Pronounced On: 23.09.2024

Per Gautam Kumar Choudhary, J. Appellant is before this Court against the judgment of conviction under Section 302 of the IPC and under Section 27 of the Arms Act.

2. As per the prosecution case, the appellant- Jai Prakash Yadav was serving as a Constable in Indian Reserve Battalion and was on sentry duty on 18.05.2014 to 19.05.2014 at Piparwar Armory (IRB- 3 Camp), along with the informant- Umesh Kumar (Hawaldar) and three other Constables. He was allotted INSAS Rifle bearing butt no.351 with 100 round cartridge and 05 magazines. At around 7.30 p.m., informant heard the sound of firing on which he came out and found that appellant was missing from the picket and saw him coming out from the room of Sunil Soren, S.I. (Deceased). On being enquired, he disclosed to the informant that he had gunned down Sunil Soren as he was not giving him leave. When the informant entered into the room, he saw deceased lying dead in a pool of blood and 11 empty cartridges were scattered on the ground. Although, INSAS rifle bearing butt no.329 was issued to the appellant, but he was on duty bearing INSAS rifle no.351.

3. On the basis of the fardbeyan, Piparwar P.S. Case No.33/14 was registered under Section 302 of the IPC and Section 27 of the Arms Act. After investigation, charge sheet was submitted and the appellant was put on trial for offence under Section 302 of the IPC and Section 27 of the Arms Act.

4. Altogether ten witnesses have been examined on behalf of prosecution and three witnesses as court witnesses. Apart from this, relevant documents have been marked into exhibit as Exhibit 1 – 7, which includes post-mortem report, seizure list, fardbeyan, arms and ammunition inspection report. INSAS rifle, cartridges etc. were also produced and marked as material exhibits.

5. It is argued by the learned counsel on behalf of the appellant that there was no direct eye witness of the shooting incidence and the prosecution case rests on circumstantial evidence. P.W. 4 and P.W. 5 were also Constables posted in the same camp and were declared hostile. P.W. 6, P.W. 7, P.W. 8 and P.W. 9 are also police personnel posted in the camp at the relevant time, have not supported the prosecution case and were declared hostile. Rifle that was used in the incidence was admittedly not issued to the appellant.

6. It is argued that the case rests on the testimony of P.W. 3 in which there are material contradictions. He was unable to depose about the butt number of the rifles of the other Constables who were posted on duty in the armory at the relevant time.

7. Learned counsel on behalf of State has defended the judgment of conviction and sentence. It is submitted that it is not a case of circumstantial evidence, but of direct eye witness account of P.W. 2 and P.W. 3 (informant). There was exchange of rifle of Md. Ajmal Hussain (C.W. 2) and he has deposed that by mistake he had taken rifle no.329 which was allotted to the appellant, leaving behind his rifle no.351 and cartridges which was taken by the appellant. He had proceeded with this rifle for training to Musabani. Considering the testimony of C.W. 2, I do not find any merit in the plea of the appellant and no capital can be made out on this count.

8. Having heard both the sides and perusal of materials on record, it is evident that deceased- Sunil Soren died on account of fire arm wounds, has been established by the post-mortem examination report (Exhibit 1) proved by the Doctor (P.W. 1), who conducted autopsy on the dead body on 19.05.2014. As per the post-mortem examination report, six ante-mortem injuries were found on the dead body which were of penetrating wound over chest, entry and exit wounds were also found. Doctor opined that ante-mortem injuries were caused by fire arms.

9. P.W. 3 is the informant of the case. He has deposed that at the time of

incidence he was on duty with other four constables including constable- Jay Prakash Yadav (appellant) at IRB camp Piparwar behind the armory. At around 7.30, he heard the sound of firing on which when he went to picket no.3 he found that Appellant was not present at picket no.3. When he went near the canteen, he saw him coming from the room of Sunil Soren and was holding his INSAS rifle in hand. When he asked what happened, he disclosed that he had killed Sunil Soren for not granting him leave. When he entered into the room of Sunil Soren, he found him drenched in blood lying on the ground whereas empty cartridges were scattered all around. The testimony of this witness has remained undemolished in the cross examination on the factum of incidence and is corroborated under Section 157 of the Evidence Act by his fardbeyan (Exhibit 3/1) recorded by the police on the same day. There is no material to remotely suggest that this witness had any reason to falsely implicate the appellant in the case. In the absence of any contradiction in his account, there can be no reason to disbelieve his account and it can be regarded as wholly reliable evidence.

P.W. 2 has corroborated the testimony of the informant. He has deposed that he was posted at IRB camp at the relevant time of incidence. He was in the barrack at 7.30, when he heard the sound of firing. The people were running helter skelter and when he went near the place of occurrence near the canteen, he saw Sunil Soren in a pool of blood on his chair. Constable 499- Jai Prakash Yadav, had shot him dead by INSAS rifle after entering his room. After a while, Jai Prakash Yadav was arrested and taken to the police station.

10. Informant is a direct eye witness to the incidence and cannot be said to be hearsay, for the reason that he had heard the sound of firing. His testimony is corroborated by the attending circumstance of the appellant being arrested soon after the incidence. Under Section 60 of the Evidence Act, a person who has seen or heard a fact, can be said to be direct evidence. It has been deposed by P.W. 3 that appellant immediately after the incidence stated to him that deceased had refused leave, therefore, he killed him. This will be relevant both under Section 6 of the Evidence Act and will also be extra judicial confession of the appellant. Further, the incidence of firing, immediately followed by arrest of the appellant with the rifle which was used in the shooting, all form part of the same transaction and therefore relevant under Section 6 of the

Evidence Act. Illustration (a) to this Section reads as under: -

A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating or so shortly before or after it, as to form part of same transaction, is a relevant fact.

11. FIR was lodged on the same day of incidence i.e. on 18.05.2014. As per the seizure list prepared on 18.05.2014 (Exhibit 2/12), the blood-stained plaster, eleven fired cartridges of INSAS rifle and one loaded magazine, was seized from the room of deceased- Sunil Soren on 18.05.2014 at 10.30 at night. The Investigating Officer (P.W. 10) has given the description of place of occurrence to be in the room of deceased- Sunil Soren (S.I.) from where 11 round fired cartridges and INSAS rifle loaded magazine were seized. The testimony of Investigating Officer corroborates the testimony of informant (P.W. 3) that incidence took place in the room of the deceased.

12. Under the aforesaid facts and circumstance and in view of the wholly reliable and formidable testimony of P.W. 2 and P.W. 3, I do not find any infirmity in the conviction under Section 302 of the IPC and under Section 27 of the Arms Act. Hence, the conviction and sentence passed by the learned trial Court is affirmed.

Criminal Appeal is dismissed.

Pending Interlocutory Application, if any, is disposed of.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 23rd September, 2024

AFR/Anit