
(2011) 02 JH CK 0086

In the Jharkhand High Court

Case No : Criminal App. (S.J.) No. 102 of 2003

Gunadhar Majhi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27

Penal Code, 1860 (IPC) — Section 307, 323, 341, 376, 452

Citation : (2011) CriLJ 2536 : (2011) 8 RCR(Criminal) 2067

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This criminal appeal is directed against the judgment of conviction and order of sentence passed by the learned Sessions Judge, Seraikella-Kharsawan in Sessions Trial No. 27 of 2002 by which the Appellant was convicted under Sections 452/323 Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and again rigorous imprisonment for six months on each count respectively with the observation that both the sentences would run concurrently.

2. Prosecution story in short was that in the night of 30.9.2001, while the informant Dipak Kalindi was sleeping in his house, he heard the cry of his wife at about 11:30 p.m., who was shouting that someone was trying to outrage her modesty. Upon such alarm, he rushed to the room of his wife where he noticed a man, who was attempting to commit rape on his wife. Informant tried to catch hold that person with the help of his wife Baisakhi Kalindi but he charged with the butt of the pistol causing injury on the head of the informant and even after sustaining such injury, the scuffle continued and the accused tried to escape. In the meantime, villagers arrived on hearing hulla whereupon the accused fired from his pistol to scare the villagers; however, he was overpowered by the villagers and assaulted by some of them. In the scuffle, he also sustained some

injuries but it could not be ascertained by the informant as to by whom that culprit was assaulted in the night. The accused was identified when the light was brought near him and he was found holding a pistol in his hand and on query he disclosed his name as Gunadhar Majhi i.e. the Appellant herein. The informant took the pistol from his hand and in the same night, the accused Gunadhar Majhi was brought to Sini Police Camp with the witnesses where the statement of the informant was recorded. The case was instituted under Sections 458/341/323/307/376/511 Indian Penal Code as also under Sections 25(1-B)/26/27 of the Arms Act against the accused-Appellant Gunadhar Majhi of village Ulidih. Production-cum seizure list of the country made pistol with the loaded cartridge was prepared at the police camp. The informant was sent to the Medical Officer, Sub Divisional Hospital, Seraikella and his injury report was obtained. Police after investigation, submitted charge-sheet under Sections 458/341/323/307/376/511 Indian Penal Code as also under Sections 25(1-B)A/26/27 of the Arms Act against the accused-Appellant. Accused was sent to jail. After commitment of the case, the learned Sessions Judge, Seraikella-Kharsawan put the accused Gunadhar Majhi on trial after framing charge under Sections 452/376/511/307 Indian Penal Code against him besides separate charge u/s 25(1-B)A of the Arms Act to which the accused-Appellant denied his guilt and claimed his trial.

3. Learned Counsel for the Appellant, at the outset, submitted that though the charges were framed against the Appellant for the alleged offence including under Sections 376/511/307 Indian Penal Code but he was convicted only under Sections 452/323 Indian Penal Code and other allegations were disbelieved by the Trial Judge. The very genesis of the case that the Appellant had attempted to commit rape on the wife of the informant and in the same sequence, the informant arrived there to prevent the accused was disbelieved and therefore, it could be well presumed that the occurrence did not take place in the manner presented by the prosecution and the false implication of the Appellant could not be ruled out. No appeal has been preferred by the State-Respondent against the acquittal of the Appellant from the charge under Sections 307, 376/511 Indian Penal Code. As many as seven witnesses were produced and examined on behalf of the prosecution, including the independent witnesses, who were the villagers, but none except the informant has supported the case and the other witnesses viz. P.W. -3 Banmali Sardar, P.W.-4 Parmeshwar Sardar and P.W.-5 Anand Sardar were unfavorable to the prosecution and hence, they were declared hostile. Left out witnesses were P.W.-1 Prakash Singh, who was the Investigating Officer of the case; P.W.-2 Dipak Kalindi-Informant; P.W.-6 Baishaki Kalindi, who was the wife of the informant also turned hostile and P.W.-7 Dr. Rajendra Nath Soren supported the injuries on the informant, simple in nature and in that manner; the left out witness was the informant whose testimony could not be believed wholly by the Trial Judge. It would be relevant to mention that the wife of the informant P.W.-6 Baishaki Kalindi did not support the prosecution case much less the allegation against the Appellant that he attempted to commit rape on her and

that the informant intervened which resulted into scuffle between the two. On the other hand, she testified that on the night of alleged occurrence while she was sleeping inside her house, she woke up at 11:00 p.m. on hearing alarm to which she came out from the house and found a person quarreling with her husband. She did not identify the person, as such, she raised alarm whereupon the other witnesses arrived at the place of occurrence. She did not support the allegation that the Appellant attempted to ravish her nor did she corroborate that any shot was fired by the Appellant by his pistol to attract the charge u/s 307 Indian Penal Code. The statements of the informant-husband did not find support from the statement of his wife P.W.-6 Baishaki Kalindi and therefore, prosecution story was liable to be thrown out as cannot be relied upon. Admittedly, certain injuries were found on the person of the informant when he was examined by P.W.-7 Dr. Rajendra Nath Soren on 1.10.2001 and the Doctor found the following injuries:

I) Lacerated wound on the left parietal bone of the skull 1"x 1/8" x skin deep.

II) Right knee joint abrasion 1" x 1".

III) Right wrist joint swelling 1" x 1/2".

All the above injuries were simple, appeared to be caused by hard and blunt object might be by the butt of the pistol and the injury report was proved Ext.6, yet, the expert witness P.W.-7 admitted that the injuries were possible even by fall during course of running. The learned Counsel explained that none of the witnesses supported the seizure list of any pistol from the possession of the accused-Appellant except the informant and it was nowhere stated by the wife of the informant Baishaki Kalindi that she had seen any firearm in the hand of the accused-Appellant when scuffle was going on in the midnight of the alleged occurrence in front of her door. Investigating Officer admitted that a country made loaded pistol was produced before him with the accused, to which a production-cum-seizure list was prepared but the seizure list has got no bearing of the signature or thumb impression of the accused-Appellant therefore, such seizure list is of no avail.

4. Finally, the learned Counsel assailed the observation made by the learned Sessions Judge who while recording the judgment of conviction of the Appellant observed that the Investigating Officer P.W.-1 Prakash Singh had corroborated the occurrence and testified that the accused was brought before him by the informant with the large number of villagers. He had noticed injuries on the person of the informant. A loaded pistol was produced before him and he found certain injuries on the person of the accused. Relying upon the testimony of the Investigating Officer, the learned Sessions Judge erroneously held that the evidence of P.W.-2 Dipak Kalindi-Informant was corroborated by the evidence of P.W.-1 Prakash Singh, who was the Investigating Officer of the case, on material particulars and hence, accused-Appellant was held guilty under Sections 452/323 Indian Penal Code, which cannot be sustained under law. The Appellant was

innocent, the learned Counsel concluded, who has been falsely implicated in this case on account of previous enmity. During course of his examination u/s 313 Code of Criminal Procedure, the Appellant had expressed his innocence and declined to adduce evidence but the fact remains that the burden was always upon the prosecution to prove the alleged charge.

5. However, the learned Counsel submitted that even the charge u/s 452 Indian Penal Code could not be proved in view of the statement of the wife of the informant, who claimed having seen the accused-Appellant outside her house while he was scuffling with her husband and that no scuffle held in her house to prevent the Appellant from attempting to commit rape and therefore, the entire prosecution case could be held to be a cock and bull story.

6. Mr. Sahay, the learned A.P.P., appearing for the Respondent-State, submitted that the learned Sessions Judge has categorically discussed the evidence of the prosecution witnesses. On finding consistency in the evidence of the informant-P.W.-2 with that of the Investigating Officer-P.W.-1, convicted the Appellant under Sections 452/323 Indian Penal Code and in view of the medical evidence which entail injuries on the person of the informant, the Appellant was convicted by a reasoned judgment which did not call for interference and hence, this appeal may be dismissed.

7. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, I find substance that the learned Sessions Judge partly believed the prosecution case and wholly disbelieved the genesis of the case. Allegation of the informant in his statement recorded at Police Outpost, Sini was that the accused-Appellant when attempted to commit rape on his wife in the alleged night of occurrence, he rushed on alarm and tried to prevent him, to which there held scuffle between him and the accused-Appellant and the accused-Appellant in order to get rid of, assaulted on his head with the butt of the pistol and escaped, but the accused was overpowered by the villagers. The accused Appellant was assaulted and brought to the Police Outpost with the country made loaded pistol. Neither the charge under Sections 376/511, 307 Indian Penal Code could be proved nor under the Arms Act. The conviction of the Appellant u/s 452 cannot be sustained under law in view of the contradictory statement of the wife P.W.-6 Baishaki Kalindi, who did not support the allegation that the Appellant had attempted to ravish her except she claimed having seen the Appellant for the first time outside her house when he was scuffling with her husband and therefore, there was no required element to constitute the offence u/s 452 Indian Penal Code, so, his conviction under such Section would tantamount to miscarriage of justice. Similarly, injuries, which were found on the knee and wrist joint of the Appellant and superficial lacerated wound on the left parietal bone with small dimension were, in the opinion of the Doctor, caused by hard and blunt object, might be by the butt of the pistol, but, at the same time, the Doctor testified that such injuries were possible by fall on the earth. I do not understand how the swelling could be possible in the right wrist and right knee with the butt

of a pistol when it was alleged that the injury was inflicted only on the head. The use of pistol in any manner by the Appellant has been disbelieved and hence there is no corroborative evidence that the injuries found on the person of the informant was caused none other than by the Appellant and in the opinion of the expert P.W.-7 Dr. Rajendra Nath Soren such injuries were possible by falling on the earth. In the circumstances, Section 323 Indian Penal Code could not be proved beyond doubt. There appears substance in the argument advanced on behalf of the Appellant that the occurrence did not take place in the manner presented by the prosecution. I find merit in this appeal and the learned A.P.P. failed to controvert the merit of the appeal, accordingly, the Appellant Gunadhar Majhi is acquitted from his conviction under Sections 452/323 Indian Penal Code in Sessions Trial No. 27 of 2002 recorded by the learned Sessions Judge, Seraikella-Kharsawan and his bail bond stands discharged and this appeal is allowed.