
(2009) 02 JH CK 0107

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 313 of 2001

Kartik Singh Munda

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 17-02-2009

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 324, 34, 448

Citation : (2009) 57 BLJR 1691

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Advocate : A.K. Mehta and Rupesh Singh, for the Appellant; Anita Sinha, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Dilip Kumar Sinha, J.—This appeal is directed against the judgment of conviction u/s 324 I.P.C. recorded by the Additional Judicial Commissioner-II, Khunti in Sessions Trial No. 616 of 1996 whereby the sole appellant Kartik Singh Munda was directed to be released on execution of probation bond of Rs. 3,000/- with two sureties of like amount each and to maintain good conduct for a period of one year since the date of the order.

2. The prosecution story in short as it stands narrated in the written report of the informant P.W. 7 Smt. Devi was that on 21.08.1995 while she was returning from the field after serving food to her father at about 8.30 a.m. and no sooner did she arrive near her house she found her father coming running behind her followed by three accused persons including the appellant, armed with guns and she alleged that the appellant Kartik Singh Munda fired shot from his gun upon his father but it missed the target and hit the informant. The villagers arrived at the scene on the sound of gun fire but all the three culprits escaped by firing shots in the air. The motive behind such attack was that the culprits wanted to restrain her father from ploughing his own field. On the written report submitted

by the informant the police instituted Tamar P.S. Case No. 66 of 1995 for the offence under Sections 448/307/324/34 I.P.C. and after investigation charge-sheet was submitted against all the three accused but showing the appellant absconder. The case was committed to the court of sessions and the appellant also joined the Trial in the sessions court where all the three accused were put on trial on framing of charge under Sections 324/307 I.P.C. as also u/s 27 of the Arms Act.

3. The Counsel for the appellant assailed the impugned judgment on the ground that the learned Trial Judge failed to take into consideration that the injuries sustained by the informant according to the medical evidence was not in consonance with the statement of the informant what she projected in her written statement. The Doctor P.W. 8 examined the injury on the informant and found a small punctured wound at the base of index finger of her right hand. The admitted land dispute between the parties was ignored by the Trial Court as they were contesting their title over the disputed land. The learned Counsel urged that the Trial Court ignored the stand of the defence that the informant's party wanted to dislodge one Kalicharan Singh Munda from the village Headmanship who was none other than the father of the appellant herein. Though the prosecution witnesses were consistent that the shots were fired from guns indiscriminately with the intention to commit murder of the father of the informant P.W. 2 Bharat Mahto but it missed the target not once but twice, thrice and so on at all the occasions. The informant P.W. 7 narrated in the manner as if she stood as shield of her father but without any shot injury alleged to be caused on her person as stated in the written report. The learned Counsel exhorted that about 40/50 villagers assembled at the alleged place of occurrence after hearing the sound of firing shots but only interested witnesses were produced at the behest of the informant's-party and the independent witnesses were withheld from the witness box without any explanation.

4. Finally, learned Counsel submitted that the appellant was highly prejudiced for non-examination of the Investigating Officer in this case being denied of the opportunity to cross-examine about his objective finding as to whether he found any evidence of firing of shots at the place of occurrence or that he had referred the informant to the Doctor for the examination of her injury or as to whether he had received any pillet from the custody of the doctor P.W. 8 and sent it to the Forensic Science Laboratory for test or recovered any fire arms from the appellant. The Doctor examined the informant and admitted in his testimony that he did find injury on the base of the index finger of her right hand but admitted having not delivered the pillet which he had recovered to the police officer. He fairly admitted that the victim was not examined on the requisition of the police. The Counsel, therefore, drew an inference that the injury report was procured by influencing the P.W. 8 with the desired fictitious injury on the informant alleged to be caused by firearm but without corroboration. The learned Counsel pointed out that the informant P.W. 7 testified in the Court that she sustained three injuries caused by gun fire including on her back and the pillet caused

penetrating hole in her blouse and back but the Doctor did not find any injury on her back nor did she produce the said blouse before the police either during investigation in the Court therefore the prosecution failed to establish that the injury found at the base of the index finger of her right hand was caused by firearms and for want of such evidence the appellant should not have been convicted for the alleged charge u/s 307 I.P.C. against the appellant and two other co-accused. The prosecution further failed to prove that on the given facts and circumstance offence u/s 324 Indian Penal Code was attracted against the appellant but he was convicted without appreciating the material required for the offence u/s 324 I.P.C. on erroneous consideration and therefore, the appellant is liable to be acquitted and exempted from executing bond.

5. I find from the impugned judgment that P.W. 1 Bisheshwar Mahto, P.W. 2 Bharat Mahto, P.W. 3 Munshi Mahto, P.W. 5 Charan Mahto and P.W. 7 Srimati Devi (injured informant) claimed to be the eye-witness of the occurrence whereas P.W. 4 Lohara Mahto and P.W. 6 Kedar Mahto were the hearsay witnesses but closely related to P.W. 2 Bharat Mahto and his daughter P.W. 7 who was the informant.

6. P.W. 8 Dr. Mahendra Prasad had examined the informant P.W. 7 Smt. Devi on 21.8.1995 while he was posted as Medical Officer at Additional Primary Health Centre, Sarjamdih, Tamar at about 11 a.m. and found the following injuries:

(i) Punctured wound on base of the right index finger of size 1/4"x 1/8"x 1/8".

(ii) The above injury was caused by gun shot, simple in nature within 24 hours of the examination and he proved the injury report Ext. 1. He admitted having referred the patient to R.M.C.H. In the cross-examination, the Doctor admitted that though the pillet was removed by him but he did not preserve it at the Primary Health Centre nor it was sent to the police. He admitted that the police had not referred the patient/injured to him at the Additional Primary Health Centre and he assessed that the pillet might have come from front side or left side or right side of the patient but could not have from back side of the patient. He further admitted having not mention in the injury report that there was any tattoo mark around the injury and that he had also not mentioned the age of the patient in the report.

7. On careful scrutiny of the prosecution case and its parity with the injury report, I find that the injury report (Ext.1) issued by P.W. 8 Dr. Mahendra Prasad and his testimony were not in consonance with the prosecution case as narrated by the informant P.W. 7. It would be relevant to mention that in the written report presented first point in time before the Tamar Police, the informant Smt. Devi had not disclosed that she had sustained any gun shot injury fired by the appellant or other accused persons. She had not even disclosed that any other witness had sustained injury in the incidence of alleged shooting but in her statement in course of trial she made substantial development by testifying that the appellant fired shot aiming at her father but the shot missed the target and stuck to her causing injuries at three places viz. back, waist and on the base of

the index finger of her right hand. The Doctor did not find any injury on her back and waist alleged to be caused by shot from firearm. The fact as produced on the record is of much relevance that the injury found by P.W. 8 Dr. Mahendra Prasad on the base of the right index finger was of a very small size 1/4"x 1/8"x 1/8" but the witness neither mention the size of pillet so as to co-relate its lodging at the site of injury nor cared to send the same to the nearest police. The prosecution further failed to prove that the manifestation of injury on the index finger was caused by an instrument which, used as weapon of offence, was likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which was deleterious to the human body to inhale, to swallow, or to receive into the blood so as to attract an offence punishable u/s 324 I.P.C. I am conscious to observe that the prosecution witnesses were consistent that shots were fired upon Bharat Mahto P.W. 2 even from behind P.W. 7 Srimati Devi but according to P.W. 8 Dr. Mahendra Prasad shot was fired either from front or left or right side of Smt. Devi. He did not find any tattoo mark on the injury which is an essential feature in case of the injury caused by firing shots. Similarly, there was no evidence on the record in support of the contention that the informant remained as indoor patient for a few days at Ranchi Institute of Medical Science, Ranchi. I have reason to observe that a reasonable doubt is created as to the complicity of the appellant for the alleged charge even u/s 324 I.P.C. in which he was convicted by the Trial Court though initially not framed against him. Conviction under lesser gravity of offence of an accused is permissible if the charge is framed in a graver offence such as u/s 307 I.P.C. but under given situation and major contradiction in the statements of P.W. 7 and P.W. 8 referred to hereinabove, I am constrained to rely upon the testimony of other witnesses such as P.W. 1 Bisheshwar Mahto, P.W. 2 Bharat Mahto, P.W. 3 Munshi Mahto, P.W. 5 Charan Mahto. I further find and observe that the materials produced and adduced on the record on behalf of the prosecution were not sufficient to hold the appellant guilty for the charge u/s 324 I.P.C. which has been recorded by the Trial Court without appreciating the nature and quality of the evidence. The conviction of the appellant Kartik Singh Munda u/s 324 I.P.C. under the facts and circumstances, therefore, cannot sustain. I find substance in the argument advanced on behalf of the appellant that the prosecution failed to prove the charge u/s 324 I.P.C. against the appellant beyond shadow of all reasonable doubts accordingly, conviction of the appellant u/s 324 I.P.C. and the order passed by the A.J.C.-II, Ranchi calling upon the appellant to execute bond in Sessions Trial No. 616/1996 arising out of Tamar P.S. Case No. 66 of 1995 is set aside.

8. This petition is allowed and the appellant Kartik Singh Munda is discharged and exempted from executing any bond in this case.