
(2020) 01 JH CK 0297

In the Jharkhand High Court

Case No : Criminal Appeal(S.J) No. 362 of 2010

Md. Firdos @ Md. Firdos Ansari

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 323, 324, 341, 447, 504

Arms Act, 1959 — Section 27

Evidence Act, 1872 — Section 114(g)

Citation : (2020) 01 JH CK 0297

Hon'ble Judges : Ratnaker Bhengra, J

Bench : Single Bench

Advocate : Rajesh Kumar, M.K.Sinha, Arun Kr.Pandey

Final Decision : Allowed

Judgement

1. Heard Mr. Rajesh Kumar the learned counsel for the appellant and Mr.Arun Kr.Pandey, learned A.P.P for the State.

2. The present Cr. Appeal is directed against the Judgment of conviction and order of sentence dated 7.4.2010 passed by the Sessions Judge,Godda, in S.C No. 102 of 2009 whereby the learned Trial court convicted the appellant under section 307 of the Indian Penal Code and sentence him to suffer rigorous imprisonment for a period of four years and to pay a fine of Rs. 3,000/-, in default to undergo simple imprisonment for two months for the offence punishable under section 307 of the Indian Penal Code. The learned court below further ordered that the period, if any, he has undergone in custody during trial be set off.

PROSECUTION STORY.

3. The prosecution case in short is that on 23.6.2007 at about 7 p.m when the informant Anand Kumar @ Guddu was sitting in the ticket counter at Godda Bus stand of his brother Rakesh Kumar, the accused Md Firdos, Md Mahatab and Md

Tarjan arrived from the south. They were accompanied by 20-25 persons and were leading them. The accused persons directed the informant and his brother not to work as agent for bus at Godda Bus stand and further directed that as they were the local persons, they would work at the Bus stand. They came near the informant and directed that he was the person and said "Maaro" at this, Firdos (appellant) with an intention to murder put the pistol on the temple of the informant. When the informant tried to remove the pistol, Firdos fired a shot of which the right hand of the informant was injured. At this, the brother of the informant Rakesh Kumar and and their other associates of the Bus stand came there, Mahtab fired a shot at the brother of the informant with an intention to kill him. On hearing the hue and cry others accused also came running. Thereafter, the accused persons fled towards Asanbani.

4. On the basis of the written report submitted by the informant, Anand Kumar @ Guddu, Godda (T) P.S Case No. 174 of 2007 was registered and the investigation of the case was taken up and at the conclusion of the investigation, charge sheet was submitted against the accused person namely, Md. Firdos for committing the offences punishable under sections 341/ 323/ 324/ 307/ 447, 504/34 of the Indian Penal Code and section 27 of the Arms Act. Cognizance of the offence was taken by the Chief Judicial Magistrate, Godda on 8.9.2008 and thereafter the case was committed to the court of Sessions. Based on the materials available on the record, the trial court framed the charge for the offences punishable under section 307 of the Indian Penal Code and under section 27 of the Arms Act, 1959 against the appellant Md. Firdos on 23.6.2009. The charges were read over and explained in Hindi to the accused person to which he pleaded not guilty and claimed to be tried. Accordingly, the trial was initiated and witnesses were examined. At the conclusion of the trial, the appellant was convicted and sentenced as aforesaid.

5. P.W.15, Anand Kumar @ Guddu Yadav, who is the informant and victim of the case and also is injured witness. He deposed that he sustained bullet injury at about 7 p.m. but, he does not know who had shot at him. He was declared hostile. In his cross-examination, he deposed that after sustaining bullet injury he had gone to the Doctor for treatment.

6. P.W.10 is Rakesh Kumar Yadav, who is also said to be the one of the victim of the case on whom the accused Md Mahtab had fired. He deposed that the occurrence took place two years. Mahtab fired at him and Md Firdos fired at his brother Anand Kumar at 7.30 p.m. He deposed that the bullet hit on the right hand of Anand and Anand sustained injury on his right hand. He identified the appellant Firdos who was present in the court on the date of his examination. In his cross examination, he deposed that the accused had a Pathology laboratory known as Bhagalpur Pathology and he never visited Asanbani. The accused persons came through the gali from the eastern side. He further deposed that he does not know the persons who came with Mahtab, Firdos and Tarjan. Firdos started hot exchange of words with him and fired a shot on him and fired two

shots. In para-6 of his cross examination, he deposed that he had not informed the police that Firods had fired a shot on his brother Anand Kumar @ Guddu.

7. P.W.11 is Kapil Dev Yadav. He deposed that the alleged occurrence took place two years ago and he heard about shots being fired from fire arms. He was also declared hostile.

8. P.W.12 is Dharmendra Yadav. He deposed that about one and a half to two months ago he had heard the sound of firing from the date of giving evidence in court. He deposed that Firdos fired a shot at Guddu Yadav due to which he sustained injury on his hand. He identified accused Firdos in court. In his cross examination he deposed that he could not say the name of the person from whom he heard about the firing of gun shot.

9. P.W.14 Dr. Shovan Murmu is the Doctor who examined the victim Anand Kumar @ Guddu. He found one lacerated wound 3/4"x1/4x skin deep with charring and blood over the finger folds between index finger and thumb of right hand. The injury was simple in nature caused by fire arm within six hours. On being proved by him, the injury report has been marked as Ext.4. In retaliation he revealed that he examined the Anand Kumar @ Guddu Yadav.

10. P.W.8 Manik Nath Pandey is the part Investigating Officer of the present case. He deposed that he investigated the case and after perusing the case diary he found the charges against the appellant true and submitted the charge sheet against the accused persons. He proved the formal FIR which has been marked as Ext.1. In his cross examination, he deposed that all the witnesses, whose statements have been appearing in the case diary, have stated the name of Firdos, Mahtab and Tarjan. He further stated that he has not investigated the place of occurrence.

11. P.W 9 Naresh Kumar Yadav is the main Investigating Officer of the case. He deposed regarding investigation done by him in this case including recording of statements of the witnesses and described the place of occurrence. The requisition was proved by him on which he had sent the injured for medical examination, which is marked as Ext.3. He deposed in para-6 of his cross-examination that there is no evidence of bullet being shot at the place of occurrence. He further deposed in para-12 that there is a contradiction between the supervision note and evidence of the witnesses. He further deposed from para-8 of re-statement of the informant that Md. Firod was working at Bhagalpur Pathology and he has nothing to do with the bus stand.

ARGUMENTS OF THE APPELLANT

12. Mr. Rajesh Kumar, the learned counsel for the appellant submitted that this is a case in which the evidence of the prosecution witnesses particularly the main witness ie informant, who is said to be the injured, along with his brother one Rakesh Kumar Yadav (P.W.10), though the injury of the Rakesh is not on record. Apart from that, the other witnesses such as P.W 11 and P.W 13 have not

supported the prosecution case. He submitted that from the evidence of the P.W 8 it reveals that no evidence of the gun fired was found at the place of occurrence. From the evidence of the P.W 10 it appears that Md. Firods fired at his brother and the bullet hit on the right hand of Anand and Anand sustained injury on his right hand. He further submitted from the evidence of P.W.14 who is the Doctor and examined the victim that the injury sustained by the victim is simple in nature. Thereafter, from the evidence of the victim he submitted that the victim does not know who had shot at him. Even in the evidence of his brother i.e P.W.10 specially in paragraph-6 it revealed that he had not told about firing on his brother. He further argued that the main witness who is said to be injured witness whose one of the injury has been proved and so both the witnesses have not supported the prosecution case, then the guilty of the accused cannot be proved and established. The learned counsel for the appellant has further stated that if the court is not inclined to disbelieve the prosecution case then the benefit of doubt at least should be extended to appellant. The learned counsel for the appellant further stated that out of 15 witnesses, 8 witnesses turned hostile and did not support the prosecution case and on this ground alone all the important prosecution witnesses including the victim have not supported the prosecution case. He further submitted that the court below has failed to appreciate the evidence of P.W11 as he supported the prosecution case because he had seen the occurrence and he was declared hostile and on this ground also the conviction and sentence cannot be established.

ARGUMENTS OF THE STATE.

13. The learned counsel for the State has argued that this case is well established against the appellant by ample evidence and pointed out that prosecution witnesses have supported the prosecution case. He further submitted that this is a clear case of their being injured witness who is the informant and his injuries have fully corroborated by the evidence of P.W.14 and therefore, the ocular evidence is fully made by the medical evidence of the Doctor who himself deposed that the injury was caused by fire arm and therefore, it cannot be denied that there is no evidence against the appellant. He further stated from the evidence of the P.W 9 that culpability of the appellant is established and the co-accused may not have given the benefit of doubt .

REASONING AND CONCLUSION.

14. Having heard both counsels and gone through the records of the case and evidences and in the facts and circumstances of the case, it is seen that the main witness who is said to be injured himself i.e. Anand Kumar has not testified as to who the person had shot him was in his examination-in-chief. If the victim does not know who had shot at him. Then a little doubt is raised regarding identity of the shooter. Informant Anand Kumar was also declared hostile. Even the brother of the victim injured, P.W 10 has not indicated about the firing on his brother. Therefore, it seems that the main two witnesses who could have really unerringly pin pointed who the accused person was who had fired on the victim have not

pinpointed identity of the person who shot on him. Taken with the aforesaid, which is the significant aspect in favour of the appellant, it is also seen from the evidence of the Doctor that injury sustained by the victim is simple in nature and therefore, not at all life threatening. As the Doctor is considered as an expert and the opinion of the doctor is not considered as a substantial evidence and requires corroboration by other evidences which the prosecution has failed to do. The Doctor has stated in his deposition that the injury was caused by fire arm, this is not the sole ground to convict the accused unless it corroborated in material particular. The informant's victim brother has stated in his deposition that the appellant fired two shots but on whom it was fired was not mentioned so the prosecution has failed to prove the injury also. It is seen from the evidence of the P.W 8 Manik Nath Pandey that it is not revealed whether gun was fired at the place of occurrence or not. The other witnesses such as P.W 11 and P.W 13 have not supported the prosecution case. Out of 15 witnesses, 10 witnesses have been declared hostile and have not supported the prosecution case. Further as per the story of the prosecution, there was a two gun shots, the doctor has proved in his injury report that the injury was simple in nature and that means the bullet was not penetrated in the body of the victim, but passed through by touching his hand causing him injury. This means that bullets should be present nearby at the place of occurrence, but no recovery of bullets was made, as proved by the I.O in his deposition said that at the place of occurrence no sign of bullets being fired was discovered by him at the time of investigation. Further there is a great inconsistency in the statement of victim-informant in his fardbayan he say that Firdos had fired a shot on him but in his deposition he deposed that he did not know who had fired shot on him, which makes the case of the prosecution doubtful.

15. Further the informant in fardbayan stated that his brother Rakesh Kumar came after the alleged incident which is also corroborated from the testimony of his brother Rakesh Kumar P.W.10 that at the time of occurrence he was sitting in the saloon, so it is proved that Rakesh Kumar was not an eye witness to the occurrence.

16. The informant in his fardbayan stated that after the shooting many persons were gathered at the place of occurrence but none of them were made witnesses. The burden to prove his case is on the prosecution but by non examining any of the witnesses present at the place of occurrence is itself a surprise to this court, that why these witnesses were not examined. So under section 114(g) of the Indian Evidence Act 1872 this Court may presume that the evidence which could be and is not produced would, if produced be unfavorable to the person who withhold it . If the prosecution examined these witnesses then it will go against the prosecution story and so they did not examine them. Nothing contradictory was proved by the prosecution against this presumption.

17. Accordingly based on the aforesaid conclusions, there is a much doubt created in the case against the appellant and at least he should be extended

benefit of doubt.

18. I arrive at the conclusion that the prosecution has failed to prove the case beyond reasonable doubt, so benefit of doubt is extended to the appellant and the appellant is acquitted of the charge under section 307 of the Indian Penal Code. Accordingly, the judgment of conviction and order of sentence dated 7.4.2010 passed by the Sessions Judge, Godda in S.C No. 102 of 2009 is set aside. Appellant Md. Firdos @ Md. Firdos Ansari is discharged from the liability of his bail bonds.

19. Accordingly this appeal is allowed.