

(2019) 12 JH CK 0061

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 180 Of 2011

Prem Singh @ Prem Kr. Singh

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 04-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 326
Arms Act, 1959 — Section 27
Code Of Criminal Procedure, 1973 — Section 162 (1)
Evidence Act, 1872 — Section 145

Citation : (2019) 12 JH CK 0061

Hon'ble Judges : Shree Chandrashekhar, J;Ratnaker Bhengra, J

Bench : Divison Bench

Advocate : Hemant Kumar Shikarwar, Sidhant Sinha, Shaurya, Sanjay Kumar Srivastava

Final Decision : Allowed

Judgement

Chandrashekhar, J

1. Two persons, namely, Prem Singh and Ranu Singh were named as accused by the informant, namely, Amit Kumar in his fard-beyan which was

recorded on 24.10.2008 at 19:30 hrs at Nahar Chowk, Mohamadganj, on the basis of which Mohamadganj P.S Case No.24 of 2008 was lodged under

section 307 and section 326 r/w section 34 of the Indian Penal Code. Later on, offence under section 302 of the Indian Penal Code was added in the report.

2. After the investigation, a charge-sheet was filed against Prem Singh, Ranu Singh @ Rajnish Kumar Singh and Vijay Kumar Sharma. A common

charge under section 302/34 of the Indian Penal Code and section 27 of the Arms Act was framed against them and vide order dated 18.11.2009

similar charges were framed against Panu Singh.

3. A common judgment of conviction has been delivered on 27.01.2011 against Prem Kumar Singh, Ranu Singh @ Rajnish Kumar Singh and Panu

Singh in Sessions Trial No.208 of 2009/304 of 2009.

4. In Sessions Trial No.208(A)/2009, the accused-Vijay Sharma has suffered judgment of conviction under section 302/34 of the Indian Penal Code

and section 27 of the Arms Act. He has been sentenced to R.I for life and fine of Rs.25,000/- for the said offence.

5. In Sessions Trial No.208 of 2009, the prosecution has examined 12 witnesses; the informant, namely, Amit Kumar is P.W 2. Another prosecution

witness, namely, Gurdhan Prasad-P.W 3 has also been projected as an eye-witness.

6. Dr. Vijay Kumar Singh-P.W 6, who has conducted the post-mortem examination on 25.10. 2008 at about 9:00 a.m. has found lacerated wound of

entry and exit wound on the person of deceased-Manoj Kumar. According to the doctor, the injuries were ante-mortem in nature; injuries nos.(i) and

(ii) were communicating each other and caused by fire arm.

7. In his fard-beyan the informant has stated that on 24.10.2008 at about 6:30 p.m. his maternal uncle, namely, Manoj Kumar started for home from

the shop and just when his uncle has moved 5-7 steps ahead, he has seen Prem Singh and Ranu Singh approaching his uncle. Prem Singh called his

uncle and when he moved towards him, he whipped a pistol and fired a shot on the left side of his chest. On receiving the fire shot his maternal uncle

fell down on the earth and thereafter he was shifted to hospital by his family members. An old enmity between the accused and the deceased was the

cause for the occurrence.

8. However, in the court the informant takes a somersault. He says that Ranu Singh fired a shot on his maternal uncle. In his cross-examination, he

says that whatever was written by the police was not read over to him and he has not read the written report. He further says that he has stated

before the police that Ranu Singh whipped a pistol and fired a shot on his maternal uncle. He confirms that no second shot was fired (para-12). In his

cross-examination, the investigating officer-P.W 12 has stated that the informant has not stated before him that Ranu Singh whipped a pistol and fired

a shot on Manoj Kumar(para-21). Through cross-examination of the investigating

officer, the defence has proved that the informant has not stated before him that Ranu Singh has fired a pistol shot at Manoj Kumar.

9. Section 162 (1) of the Code of Criminal Procedure provides that when any witness is called for the prosecution in any inquiry or trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict the witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872). The law on the subject has been discussed by the Supreme Court in *V.K. Mishra Vs. State of Uttarakhand* reported in (2015) 9 SCC 588, as under:

19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted....

10. According to the prosecution, the incident has happened at 18:45 p.m. and fard-beyan of Amit Kumar was recorded at 19:30 hrs. on 24.10.2008.

The deceased was taken to the hospital but on the way he has died; his post-mortem was conducted at 9:00 a.m on 25.10.2009. These events would

reveal that at the time when his fard-beyan was recorded, the informant was sure about the shot fired by Prem Singh on his maternal uncle, however,

in the court he has asserted that Ranu Singh has shot dead his maternal uncle. But, he has not stated before the investigating officer that Ranu Singh

has fired a shot on his maternal uncle and this is proved by the defence through cross-examination of the investigating officer.

11. From the aforesaid, we find that the informant has not supported the prosecution. He has stated before the investigating officer that Prem Singh

has fired shot on his maternal uncle and not Ranu Singh, but he has stated in the court that it was Ranu Singh who has fired a shot at his maternal

uncle. The testimony of the informant in the court is not mere exaggeration rather it would amount to contradiction and, therefore, least to say, he is

not a reliable and creditworthy witness.

12. Another witness, namely, Giridhar Prasad-P.W 3, who, according to the prosecution is also an eye-witness, has stated in the court that Prem Singh

has fired a shot at Manoj Kumar.

13. It is well-settled that if the prosecution comes with a definite case, it must establish its case beyond all reasonable doubt. In â??Mohinder Singh

Vs. The Stateâ? reported in AIR 1953 SC 415, the Supreme Court has observed that it is elementary that where the prosecution has a definite or

positive case, it must prove the whole of its case.

14. The other prosecution witnesses, namely, Binod Kumar Soni-P.W 4, Bihari Ram-P.W 5 and Krishna Choudhary-P.W 8 have been declared hostile

at the instance of the prosecution, and Amrita Devi-P.W 9 and Sidharth Kumar-P.W 10 are hearsay witnesses.

15. Smt. Madhvi Devi-P.W 7 and Smt. Geeta Devi-P.W 11 are other prosecution witnesses who have been relied upon by the learned Sessions Judge

to convict the appellants for committing murder of Manoj Kumar. P.W 7 has stated that Ranu Singh had caught hold of Manoj Kumar while Prem

Singh had fired a shot on him. She has stated that Panu Singh and Jay Kumar Vishwakarma were present there and they were also carrying pistols.

However, she says that there was no enmity between the appellants and the deceased. Smt. Geeta Devi-P.W 11 was with Smt. Madhvi Devi-P.W 7

when according to the prosecution Manoj Kumar has suffered a fire shot. P.W 11 says that Ranu Singh and Panu Singh were holding Manoj Kumar and Prem Singh fired a shot on him. Not only the testimony of P.W 7 and P.W 11 is inconsistent on the manner of occurrence, the informant has not spoken about presence of P.W 7 and P.W 11 when the incident has happened. Both P.W 7 and P.W 11 have stated that firing was done from the front, but the medical evidence reveals wound of entry on the back of the deceased. The medical evidence thus belies their claim that they have seen Prem Singh firing at Manoj Kumar.

16. From the evidences led by the prosecution, the case set-up against the appellants has thus become doubtful. The prosecution has projected P.W 2 and P.W 3 as eye-witness, but their testimony on the person who has fired shot at Manoj Kumar does not corroborate each other; P.W 2 says Ranu Singh fired a pistol shot whereas P.W 3 says it was Prem Singh who has fired at Manoj Kumar. And, to make it worse P.W 2 has not been declared hostile. Therefore, it has also to be kept in mind that his evidence would bind the prosecution [refer, *Javed Masood Vs. State of Rajasthan* reported in (2010) 3 SCC 538]. The independent witnesses have turned hostile and P.W 7 and P.W 11 are not reliable witness.

17. In the above state of affairs, we find that the prosecution has failed to establish the charge under section 302/34 of the Indian Penal Code and section 27 of the Arms Act against the appellants, namely, Prem Singh @ Prem Kr. Singh, Ranu Singh @ Rajnish Kumar Singh and Panu Singh.

18. Therefore, the judgment of conviction under section 302/34 of the Indian Penal Code and section 27 of the Arms Act and the order of sentence of R.I for life and a fine of Rs.10,000/-imposed upon each of the appellants under section 302/34 of the Indian Penal Code, both dated 27.01.2011, passed in Sessions Trial No.208 of 2009/304 of 2009 are set-aside.

19. The appellants are acquitted of the charges framed against them.

20. Accordingly, the appellant no.1, namely, Prem Singh @ Prem Kr. Singh, who is in custody, shall be set free forthwith, if not required in connection to any other criminal case. The appellant no.2, namely, Ranu Singh @ Rajnish Kumar Singh and the appellant no.3, namely, Panu Singh, who are on bail, shall stand discharged of liability of the bail-bonds furnished by them.

21. In the result, Criminal Appeal (D.B) No.180 of 2011 is allowed.

22. Let a copy of the judgment be transmitted to the court concerned through 'Fax'.

23. Let lower-court records be sent to the court concerned forthwith.