

(2010) 07 JH CK 0018

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 191 of 2002

SK. Nayeem and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2010) 07 JH CK 0018

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : A.K. Kashyap and Sarita Gupta, for the Appellant; Tapas Roy, APP, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 0905.2002 passed by 1st Additional Sessions Judge, Godda in Sessions Case No. 125 of 1993/245 of 1998 whereby and whereunder Appellants were convicted under Sections 307/149 of the IPC and sentenced to undergo R.I. for 10 years each and pay fine of Rs. 5000/- each. It is further ordered that on the failure of payment of fine, they will further undergo R.I. for 5 years each. The Appellant Nos. 1, 2, 3 and 4 further convicted u/s 27 of the Arms Act and sentenced to undergo R.I. for 3 years each.

2. The case of prosecution, in short, is that on 28.6.1992 the informant Sk. Karu along with his brother Md. Abdul and co-villager Hakim, Md. Bechu was ploughing his field pertaining to Jamabandi No. 36, Khesra No. 252. It is further alleged that at about 11 a.m, Appellants came at that place armed with lethal weapons. It is further alleged that on the instigation of Md. Nayeem (Appellant No. 1), Md. Islam (Appellant No. 4), Sk. Kaleem fired from 303 rifle due to that Sk. Nasir received injury on his hand. It is further alleged that thereafter Nayeem fired which again struck Nasir on his hand. It is further alleged that thereafter

aforesaid three persons assaulted Nasir with the butt of gun due to that he fell down. It is further alleged that Razzaque and Haleem assaulted informant with the butt of rifle of 303 which caused injuries to the informant. It is further alleged that Mazhar, Ishaque, Rustam, Yusuf, Sabbir assaulted Abdul Mazid and Bibi Jabudan and caused injuries to them. It is further alleged that the Appellants took away 5 ploughs and 25 kg of paddy seeds. It is further stated that the occurrence witnessed by Md. Bechu, Hakim, Md. Abdul and Hamid. It is further stated that the occurrence took place due to land dispute.

3. On the basis of aforesaid fard beyan, Pathargama P.S. Case No. 54 of 1992 under Sections 147, 148, 149, 323, 342, 379, 307 of the IPC and 27 of the Arms Act instituted and police took up investigation. After completing investigation, police submitted charge sheet u/s 147, 148, 149, 323, 324, 325, 341, 307 and 379 of the IPC and 27 of the Arms Act. It appears that learned CJM, Godda took cognizance of the offence as mentioned in the charge sheet and committed the case to the court of sessions as the offence u/s 307 of the IPC is exclusively triable by a court of sessions.

4. After appearance of the Appellants, learned 1st Additional Sessions Judge, Goda vide his order dated 14.9.1999 framed charges against the Appellants u/s 307/149 and 379 of the IPC and also u/s 27 of the Arms Act. Thereafter prosecution examined altogether 8 witnesses in support of its case. After close of the case of prosecution, statement of Appellants recorded u/s 313 of the Code of Criminal Procedure in which their defence is of total denial. It further appears that defence also adduced documentary evidence by way of Ext.-A and A/1, certified copy of judgment and decree passed in Title Partition Suit No. 13 of 1999. It appears that after considering the evidence available on record, learned 1st Additional Sessions Judge, convicted and sentenced the Appellants as stated above, against that present appeal filed.

5. It is submitted by Sri. A.K. Kashyap, Sr. Advocate that in the instant case, it is an admitted position that there is land dispute between the parties from before. It is then submitted that there is inconsistency in the statements of witnesses which make them unreliable. Their evidence also did not find support from the medical evidence. Accordingly, he submits that on the basis of their evidence, Appellants cannot be convicted.

6. On the other hand, Sri. Tapas Roy, learned Additional P.P. submits that in the instant case, witnesses categorically stated that the Appellants formed an unlawful assembly and in prosecution of the said unlawful assembly they inflicted injuries on the prosecution party. Therefore, learned court below rightly convicted Appellants for the said offences. Accordingly, he submits that no interference require by this Court.

7. Having heard the submission, I have gone through the record of the case. In the instant case altogether 6 witnesses of fact, namely, Bibi Jabudan (P.W. 1), Sk. Karu (P.W. 2 informant), Abdul Mazid (P.W. 4) and S.K. Nasir (P.W. 6), Md.

Hakim (P.W. 3), Md. Abdul Hamid (P.W. 5) examined by the prosecution. Out of whom P.W. 1, 2, 4 and 6 are injured witnesses. It is not out of place to mention that P.W. 7 is the I.O. whereas P.W. 8 is the doctor who examined the injured person. From perusal of evidence of the witnesses of fact, I find that there are numbers of contradictions with respect to manner of occurrence. I further find that their evidence does not find corroboration from the evidence of P.W. 8.

8. P.W. 2 Sk. Karu is the informant of this case. He stated in his fard beyan that he has been assaulted by Appellant No. 3 and 9, namely, Sk. Razzaque and Sk. Haleem with the butt of 303 rifle, but in court he stated that he received fire arm injuries all over his body and those injuries were caused by Appellant No. 2 Sk. Kaleem. In the cross examination at paragraph No. 19, he deposed that about 28 to 29 pellets hit him and he received 28 to 29 pellets injuries, but the doctor who examined Sk. Karu had found only four pellets injuries on his body. Thus it is manifestly clear that P.W. 2 has made different statements at different stages with regard to his assailants and also with regard to the weapon used by the Appellants for causing injuries to him. In this connection, it is worth mentioning that other witnesses of fact, namely, P.W. 1, 4, 5, and 7 also contradicted themselves with respect to the name of assailants of informant. P.W. 1 Bibi Jabudan had stated that P.W. 2 was assaulted by Appellant No. 1, 2, 3, 6, 7 and 8. P.W. 4 stated that Appellant No. 3 caused injuries on P.W. 2 by firing from rifle of 303. P.W. 5 said that Appellant No. 4 fired and caused pellets injuries to P.W. 2. Thus, the evidences of witnesses regarding the injuries sustained by P.W. 1 are inconsistent and contradictory to each other.

9. All the prosecution witnesses of fact also contradicted themselves with regard to the injuries sustained by P.W. 1 Bibi Jabudan. In the FIR, it is alleged that Appellant No. 4, 5, 6, 7, 10, 11 and 12 assaulted P.W. 1 Bibi Jabudan. The nature of weapon has not been disclosed. P.W. 1 Bibi Jabudan herself stated that she was assaulted by Appellant No. 3 with a dagger due to that she received injury on her arm and chick. P.W. 2 (informant) deposed in court that Bibi Jabudan received injuries on her chick and arm but he did not disclose the name of her assailants. P.W. 3 stated that she was assaulted by Appellant No. 3, 4, 5, 7, 8, 9, 10, 11 and 12 with fire arm. P.W. 4 stated that Appellant No. 8 assaulted Bibi Jabudan with lathi whereas Appellant No. 5 assaulted her with Chura. P.W. 5 had stated that she was assaulted by Chura but he did not disclose the name of the assailant. Thus, there is no consistency in evidence of prosecution regarding the name of the assailant of P.W. 1.

10. Now coming to the injuries on P.W. 4, it is worth mentioning that in the FIR it is stated that P.W. 4 (Abdul Mazid) was assaulted by Appellant Nos. 4, 5, 6, 7, 10, 11 and 12. Whereas, P.W. 1 stated that Abdul Mazid was assaulted by Appellant No. 1, 2, 3, 6, 7, 8. P.W. 2 (informant) stated that only Appellant No. 3 inflicted fire arm injuries on P.W. 4. P.W. 3 stated that Appellant No. 1, 3, 4, 5, 7, 8, 9, 10, 11 and 12 assaulted Abdul Mazid (P.W. 4). P.W. 4 Abdul Mazid stated that Appellant No. 3 had fired upon him with 303 rifle. P.W. 5 stated that

Appellant No. 1 fired from his gun which hit P.W. 4. It is also not out of place to mention that the doctor did not find any bullet injury on the person of P.W. 4. He found only pellet injuries on the back of P.W. 4 which is simple in nature. Thus the prosecution witnesses are not consistent regarding the name of assailant of Abdul Mazid and also weapon used for inflicting injuries on him.

11. So far injuries on Sk. Nasir, it is worth mentioning that in the FIR it is alleged that Appellant No. 2 and 4 inflicted fire arm injuries on the person of Sk. Nasir (P.W. 6) with 303 rifle and thereafter he was assaulted by Appellant Nos. 1, 2 and 4 with butt of rifle, but the informant (P.W. 2) in court stated that Appellant No. 1 inflicted fire arm injury on P.W. 6. P.W. 3 had stated that Appellant No. 1, 3, 4, 5, 7, 8, 9, 10, 11 and 12 assaulted Sk. Nasir (P.W. 6). P.W. 4 stated that Appellant No. 1 caused fire arm injury on Sk. Nasir (P.W. 6). P.W. 5 stated that Appellant No. 4 inflicted fire arm injury on P.W. 6. P.W. 6 himself stated that Appellant No. 4 assaulted him with gun and Appellant No. 1 assaulted him with Farsa, but doctor found only one fire arm injury on the right arm and two injuries caused by hard and blunt substance on the person of P.W. 6. Thus, the witnesses contradicted themselves as to how P.W. 6 received injuries.

12. In Prabhakar Shankar Sawant and Others Vs. State of Maharashtra, , their Lordship of Supreme Court held that it is well settled that "where the witnesses make two inconsistent statement in their evidence either at one stage or two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstance, no conviction can be based on the evidence of such witness". It was also held by their Lordships of Supreme Court in C. Magesh and Others etc. Vs. State of Karnataka, at paragraph 46 that "in a criminal trial, evidence of eye witnesses requires careful assessment and must be evaluated for its credibility. Since the fundamental aspect of criminal jurisprudence rest upon the stated principle that " no man is guilty until proven so, hence utmost caution is required to be exercised in dealing with situation where there are multiple testimony and equally large number of witnesses testifying before the court, there must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses".

13. As noticed above, in the instant case, I find that the witnesses of fact are inconsistent with regard to the nature of injuries caused to the injured person, also with respect to the weapon used for inflicting such injuries, their statements also inconsistent regarding the name of the Appellant who caused such injuries. Taking the said inconsistency in the background that there is prior enmity between the parties due to land dispute, I conclude that said inconsistencies are vital and make the witnesses unreliable. Thus, it is not safe to convict the Appellants on the basis of aforesaid inconsistent and unreliable evidence.

14. Accordingly, I find that the prosecution has not been able to bring home the charges leveled against the Appellants beyond the shadow of all reasonable doubt. Hence, impugned judgment and order can not be sustained in this appeal.

15. In this result, this appeal is allowed. The judgment of conviction and order of sentence are set aside. The Appellants are acquitted from the charge levelled against them. The Appellants are on bail, thus they are discharged from the liabilities of their bail bonds.