

Santosh Gosain Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Feb. 11, 2025

Acts Referred: Indian Penal Code, 1860 " Section 34, 307
Arms Act, 1959 " Section 27, 33, 35

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: Naveen Kr. Jaiswal, Pankaj Kr. Mishra

Final Decision: Allowed

Judgement

Pradeep Kumar Srivastava, J

1. Heard learned counsel for the parties.

2. The instant criminal appeal is directed against the judgment of conviction dated 06.03.2006 and order of sentence dated 07.03.2006 passed by

learned Additional Sessions Judge, FTC, Latehar in Sessions Case No. 147 of 2005, whereby and whereunder the appellant has been held guilty for

the offence under Section 307/34 of the I.P.C. and Sections 27/33 of the Arms Act and sentenced to undergo R.I. for 05 years along with fine of Rs.

2,000/- for the offence under Sections 307/34 of the I.P.C. and R.I. of 02 years along with fine of Rs. 2,000/- for the offence under Sections 27 / 35

of the Arms Act with default stipulation. Both the sentences were directed to run concurrently.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal, as depicted in the F.I.R., is that on 07.04.2005 at about 8:30 P.M. the informant, after closing his fair

price shop, proceeded towards his home and when the informant was behind 50 steps of his home, the appellant along with other accused person

intercepted him on the point of firearm and opened the firearm causing injury on his buttock. The informant raised alarm and ran towards his house,

but the miscreants managed to fled away.

4. On the basis of aforesaid information, FIR being Latehar P.S. Case No. 31 of 2005 for the offence under Sections 307/34 of the I.P.C. and Section

27 Arms Act was registered.

5. After completion of investigation, the police submitted charge sheet against the accused persons for the aforesaid offences, who have denied the

charges levelled against them and claimed to be tried.

6. After conclusion of trial, impugned judgment of conviction and order of sentence has been passed, which has been assailed in this appeal.

7. Learned counsel for the appellant has vehemently argued that there is no iota of reliable evidence laid by prosecution. The witnesses have given

self-contradictory statement not confirming the prosecution story as alleged in the FIR.

8. It is further submitted that the injured-cum-informant Ramesh Kumar Gupta (P.W.-1) in his evidence has shifted the absolute liability against the

appellant Santosh Gosain stating the reason for assault that the appellant always used to take goods from the shop of the informant on credit and

always demanded extortion money from him.

In his cross-examination, the informant has turned the gear in saving co-accused Guddu Buxla by stating that he could not say as to how the name of

Guddu Buxla appeared in this case. Therefore, the informant himself has a tendency to involve some accused giving inculpatory statement with motive

to absolve the other accused from commission of offence. Therefore, his testimony cannot be said to be wholly reliable.

9. It is further submitted that out of nine witnesses examined in this case, P.W.-2 to P.W.-6 have been declared hostile by the prosecution and not

supported the prosecution story at all.

10. P.W.-5 Sanni Ram After declaring hostile was cross-examined by learned APP and disclosed that he has not said before the police that

he had seen the appellant assaulting the informant causing bullet injuries.

11. P.W.-8 Udit Manjhi is a Village Chowkidar and formal witness.

12. P.W.-9 Doctor Dilip Kumar, who medically treated the informant, has found the nature of injury to be simple, caused by firearm, which was

neither fatal nor dangerous to life.

On that basis, the conviction and sentence for the offence under Section 307 of the I.P.C. cannot be said to be proved inasmuch as the necessary

ingredients regarding intention and knowledge is lacking in this case.

13. It is further submitted that no firearm was recovered from the possession of the appellant and one of the co-accused has been given benefit of

doubt. Hence, conviction of the appellant for the offence under Section 27 of the Arms Act with aid of Section 35 of the Arms Act cannot be

sustained. The informant and other witnesses have a tendency to provide clean chit to the real culprit and falsely implicated the appellant. Therefore,

the impugned judgment of conviction and order of sentence is liable to be set aside, by allowing this appeal.

14. On the other hand, learned APP for State has controverted the aforesaid contentions raised on behalf of the appellant and submitted that the

learned trial court has very wisely and aptly taken into consideration the over all aspects of the case and undisputed testimony of the informant, which

has got corroboration from the evidence of Doctor Dilip Kumar (P.W. - 9), who has examined the injured and found bullet shot injury, although

simple in nature, but intended to kill the informant. There is no legal substance in the contentions raised on behalf of the appellant and there is no merit

in this appeal, which is fit to be dismissed.

15. I have gone through the record of the case along with impugned judgment and order in the light of the contentions raised on behalf of both side.

16. It appears that altogether 09 witnesses were examined out of which P.W.-2 to P.W.-6 have been declared hostile. It further appears that sole

injured of this case has previous enmity with the appellant in connection with supply of goods on credit and non-payment for the same by the appellant,

the informant in his earliest version has clearly stated that there were two accused persons and the firearm was opened against him by the accused

persons. Admittedly, it was dark night at the time of incident and, if the informant claims that he could not identify the co-accused Guddu Baxla and

cannot tell the reason as to how he was implicated in this case, then his testimony against the sole appellant with direct allegation that he shot upon the

informant cannot be believed and acted upon. The testimony of the injured shows to escape one of the co-accused and implicate the other. There is no

doubt that the injured-cum-informant has sustained firearm injury, but his testimony that it was solely caused by the present appellant, is not free from

doubt. Other witnesses examined in this case have been turned hostile and not supported the prosecution story showing the involvement of the present

appellant in the alleged occurrence.

17. In view of above discussions and reasons, I find and hold that the learned trial court has miserably failed to properly appreciate the testimony of

sole eye-witness-cum-injured taking into totality of circumstances disclosed by him. The testimony of witness can be categorized in following manner:-

(i) Wholly reliable.

(ii) Wholly unreliable.

(iii) Partly reliable and partly unreliable.

18. In the instant case, the injured informant has given colourable statement regarding complicity of the appellant exonerating the other co-accused.

Therefore, he cannot be said to be wholly reliable witness. His testimony may be partially true as regard the happening of the occurrence, but as

regards involvement of the present appellant, he himself has given doubtful version before the Court. Therefore, partial truthful testimony of this

witness also cannot be acted upon in relation to the present appellant.

19. In view of above discussions and reasons, I find merit in this appeal and legal substance on the points of argument raised on behalf of the

appellant. The impugned judgment of conviction dated 06.03.2006 and order of sentence dated 07.03.2006 of the appellant passed by the learned

Additional Sessions Judge, F.T.C., Latehar in Sessions Case No. 147 of 2005 is hereby set aside.

20. Accordingly, this appeal is allowed.

21. Appellant is on bail, as such he is discharged from the liability of bail bond. Sureties are also discharged.

22. Pending I.A., if any, stand disposed of.

23. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.