HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1108 of 2001

- Mohammad Anik @ Pampa

---- Appellant

Versus

State of Chhattisgarh

---- **Respondent**

Post for pronouncement of judgment on 10/10/2018

JUDGE
10/10/2018

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgement Reserved on : 20.07.2018

Judgment delivered on : 10.10.2018

CRA No. 1108 of 2001

- Deleted (Taj Mohammad) As Per Honble Court Dated 05-01-2018
- Mohammad Anik @ Pampa S/o Taj Mohammad Aged About 36 Years R/o Village Rewtipur, P. S. Ramchandrapur, District Surguja Ambikapur Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through P. S. Ramchandrapur, District Surguja Ambikapur Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Respondent

For Appellant : Shri Sunil Tripathi, Advocate
For Respondent/State : Shri R.K.Mishra, Dy.AG

Hon'ble Smt. Justice Rajani Dubey

C A V Judgment

10/10/2018

This appeal arises out of judgment and order dated 15.10.2001 passed by the Third Additional Sessions Judge, Ambikapur district Surguja in S.T. No. 10/1996 convicting the accused/appellant under Section 353 IPC and sentencing him with fine of Rs. 2,000/- with default stipulation.

2. As per prosecution case, on 28.02.1995 when complainant R.K.S.Jaisindhu, (S.I.) had gone to the village for investigation of some offence and while he was recording the statements of some witnesses

in the village, he heard the sound of gun fire. On being asked to the villagers as to who had shot the gun fire, it was informed that it is Taj Mohammed who is having the gun and he might have shot the same. On this information, complainant sent one of his subordinate to the house of appellant No.1 and called him to show his gun and the license. Appellant after showing the gun and license abused the complainant. Thereafter he pointed the gun towards the complainant saying that it is his property and he will do whatever he can. After a while, his son Mohammed Aneek also came there and attacked the complainant. Written complaint was filed by the complainant vide Ex.P-10 against the accused/appellants. After investigation, charge sheet was filed against them under Sections 186,294,506(B), 352 and 307/34 IPC.

2. In support of its case, prosecution has examined 12 witnesses. Statement of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court by judgment impugned, has convicted and sentenced the accused/appellants as mentioned in paragraph 1 of the judgment. Hence the present appeal.

5. Counsel for the appellants submits that the accused/appellants have been falsely implicated in the crime in question. He submits that the trial court has failed to consider that there was hardly any reliable evidence on record to warrant conviction of the appellants. He submits that the court below ought to have considered that complainant had called the appellant and tried to impress upon him as a police officer and when he resisted the same, case was registered against him He

submits that the conviction of the appellants under Section 353 IPC is also based on wrong finding as the case of the prosecution that the appellant himself came to the spot and intervened in the process of investigation which was convened by the complainant in some case whereas the case of the prosecution is that appellant No.1 was called by the complainant at the spot without any basis and the incident had taken place and therefore, the impugned judgment be set aside and the the appellant be acquitted of the charges levelled against him.

6. On the other hand State counsel supports the impugned judgment and submits that the conviction of the accused/appellant is in accordance with law and there is no infirmity in the same. He submits that there is no reason for the complainant to falsely implicate the appellant.

7. Heard counsel for the parties and perused the material available on record.

8. Bhulan Singh (PW-1) has stated that on the date of incident, at about 10-11 a.m. complainant Jaisindhu came to the village and statements were being recorded. At that moment, sound of gun fire was heard and when it was asked by the complainant to the watchman as to who shot the gun, it was informed that Taj Mohammed had fired and then he was called by the police officer Jaisindhu (complainant) , he brought the gun and gave it, which was full loaded. Similar statement has been made by Kasmuddin (PW-2), Ram Vriksh (PW-3) as has been stated by Bhulan Singh (PW-1). Jaleel Ansari (pW-4) has not stated anything specific against the appellant. Harshram Kushwaha (PW-5) is the patwari who has prepared the spot map. Samarendra Singh (PW-7)

has stated that on the date of incident when the firing of gun was heard the complainant who had come to the village in connection with some investigation, that person was called and then Taj Mohammed came with his gun and license. He has stated that some altercation took place between them, son of Taj Mohammed came there and he also abused the complainant and ran away. Ramnath Bhagat (PW-8) is the Head Constable who has investigated the matter and arrested the accused/appellants, seized the gun from the possession of the appellant. R.K.S. Jaisindu (PW-9) is the police officer and complainant has stated that on the date of incident when he had gone to the village Revatipur on some investigation and was recording the statement of witnesses, he heard the gun firing and on being asked, he came to know that it is Taj Mohammed who had fired the gun. He has further stated that when he asked him as to why he shot gun fire and to show the license, he brought the license and showed it to him. Thereafter, accused/appellant started abusing him and his son Mohd. Aneek @ Pampa attempted to assault him. Kayeel Miyan (PW-10) has narrated the same as has been stated by PW-1 and 2. Rajjuram (PW-11) is the Constable who has recorded the *dehati nalishi* Ex.P-10. Gulma Jilani (PW-12) has not stated anything and has been declared hostile.

9. Close scrutiny of the evidence makes it clear that on the date of incident, when the complainant had gone to the village Revatipur for recording the statement of the witnesses, he heard the sound of gun fire and on being asked from the appellant as to why he had shot the gun, some altercation took place between them and it is said that accused/appellants abused the complainant and also attempted to assault, thereafter report was lodged at the police station. Moreover, none of the witnesses has given statement against Mohd. Annek, son of

Taj Mohammed except the complainant. Even though, Taj Mohammed (died) had pointed the gun and abused the complainant and his son had come in the later hour.

10. Considering the facts and circumstances of the case, I am of the opinion that the trial court has erred in law in convicting the accused/appellant relying upon the evidence of complainant which cannot be termed as correct in any manner. The prosecution has not been successful in proving the involvement of the accused/appellant in the crime in question. Further there is no evidence against the accused/appellant to connect him with the offence, his conviction under Section 353 IPC is set aside and he is acquitted of the said charge.

11. Appeal is thus allowed. Appellant is in jail. He be set free forthwith if not required in any other case.

Sd/-

(Rajani Dubey)
Judge

suguna