

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL NO. 160 OF 2018Judgment Reserved on 27/01/2020Judgment delivered on 19/05/2020

Gajendra Singh S/o Singeshwar Singh, aged about 55 years R/o Muktiyarpur, Thana-Khudwa Distt. Aurangabad, Maharashtra, At present R/o Santi Nagar, Thana Bakimogara, Distt. Korba (C.G.)

....Appellant

Versus

State of Chhattisgarh: through P.S. Kusmunda, Distt. Korba (C.G.)

...Respondent

For Appellant: Mr. Sanjay Agrawal, Advocate

For Respondent: Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**CAV JUDGMENT**

1. This appeal has been preferred against the judgment dated 18/01/2018 passed in Sessions Trial No. 14/2017 by the Additional Sessions Judge, Katghora to the Court of Additional Sessions Judge, Katghora, District Korba (C.G.), whereby the Appellant has been convicted under Sections 307 and 451 of the IPC and Section 27 of the Arms Act and sentenced to undergo RI for 10 years with fine of Rs. 2000/-, RI for 2 years with fine of Rs. 1000/- and RI for 10 years with fine of Rs. 2000/-, respectively with default stipulations.
2. Facts of the case are that Injured B.K. Singh (not examined) was the

supervisor of one private company. The Appellant was working as guard in the same company. Complainant Rajkumar Singh (PW1) was the cook of Injured B.K. Singh (henceforth 'the Injured'). On 20/10/2016 at about 4:00 pm, Rajkumar (PW1) was cooking food in the barrack of the Injured. At that time, the Appellant came there. According to the prosecution, a talk was going on between the Injured and the Appellant regarding marriage of daughter of the Appellant and son of the Injured, and when the Injured refused for marriage, then the Appellant fired a gunshop on him and fled away from the spot. The Injured was taken to the hospital and was medically examined by Dr. Satdal Nath (PW8) who found two injuries on his body. First one was lacerated wound size 10X12 cms on right hip and second one was fracture of right hip. During course of treatment right hip of the Injured was operated and 15 'Charre' of one bullet were removed. His report is Ex.P-15. During course of investigation, one 12 bore gun and four numbers of bullets were seized from the Appellant vide Ex.P-3. One cartridge of bullet was also seized vide Ex.P-7. Later on, statement of the Injured and other witnesses were recorded under Section 161 of the Cr.P.C. After completion of investigation, a charge-sheet was filed. Trial court framed the charges. To prove the guilt of the Appellant, the prosecution has examined as many as 9 witnesses. Statement of the Appellant under Section 313 of the Cr.P.C has been recorded wherein he has pleaded his innocence and false implication in the matter. No defence witness has been examined.

3. After trial, the trial Court has acquitted the Appellant from the charge framed under Section 25 of the Arms Act, however, he has been convicted and sentenced as mentioned in paragraph one of this judgment. Hence,

this appeal.

4. Learned counsel appearing on behalf of the Appellant has submitted that the Appellant has been wrongly convicted without there being any clinching evidence available on record. It has been submitted that Injured B.K. Singh has not been examined by the prosecution before the trial court and the case of the prosecution is based only on the statement of Rajkumar (PW1) who was cook of the Injured. Rajkumar (PW1) has not supported the entire case of the prosecution and has turned hostile, inspite thereof the trial Court has convicted the Appellant. According to this witness, the Injured had called the Appellant for checking his gun. In discussion a dispute arose between them on the matter of marriage and the Injured pointed the gun towards the Appellant. While snatching the gun by the Appellant, a gun shot got fired. Thus from the statement of this witness, it is clear that the Injured himself pointed out the gun towards the Appellant while he was checking the gun and the gun shot got fired in dispute, therefore, it is not established that the gun was fired by the Appellant. The conviction of the Appellant is based only on the statement of Rajkumar (PW1) made under Section 161 of the Cr.P.C, which is not sustainable.
5. Counsel appearing on behalf of the State supported the impugned judgment.
6. I have heard counsel for the parties and perused the record minutely.
7. In this case, the prosecution has failed to examine B.K. Singh (Injured). I have gone through the entire evidence led by the prosecution in this case. The trial Court has convicted the Appellant only on the basis of statement

of Rajkumar (PW1).

8. In his court statement, Rajkumar (PW1) has deposed that at the time of incident, he had gone to the house of the Injured for cooking food. At that time, the Appellant came there and told that B.K. Singh had called him for checking the gun. According to this witness, the Injured had taken the gun of the Appellant for checking. At that time some dispute arose on the matter of marriage of daughter of the Appellant and son of the Injured and the Injured pointed the gun towards the Appellant saying he should not talk more. According to this witness, while snatching the gun, the gun got fired and the Injured sustained injuries in his leg. According to this witness, he went to the kitchen and after listening the voice, he came and saw that the Injured was lying on floor. Thereafter, he lodged the report. This witness has not further supported the case of the prosecution in any manner and has turned hostile. During cross-examination, this witness in para 11 has categorically admitted that the Injured pointed the gun towards the Appellant saying he will kill him, then the Appellant tried to snatch the gun and accidentally the gun shot fired. The Injured got injury due to gun shot. He further deposed that the gun was lying on the floor and after the incident the Appellant fled away from there.
9. Injured B.K. Singh was medically examined by Dr. Satdal Nath (PW8) who found two injuries on his body. First one was lacerated wound size 10X12 cms on right hip and second one was fracture of right hip. During course of treatment right hip of the Injured was operated and 15 'Charre' of one bullet were removed. His report is Ex.P-15.
10. On minute examination of above evidence, it makes clear that Injured B.K.

Singh was not examined by the prosecution in this case. Though Rajkumar (PW1) had lodged FIR (Ex.P-1) and has deposed that at the time of incident the Appellant and B.k.Singh had some dispute and a gun shot was fired, this witness has not stated that the gun shot was fired by the Appellant. According to this witness, the Appellant had come there for checking his gun from B.K. Singh. At the time of incident, B.K. Singh was holding the gun. Thereafter, on the matter of marriage, B.K. Singh pointed the gun towards the Appellant, and the Appellant tried to down the gun, then B.K. Singh himself fired the gun shot. The trial Court has convicted the Appellant only on the ground that as stated by Rajkumar (PW1), B.K. Singh got injury in his leg and the 'Charre' of gun were found from the leg of the Injured, therefore, the Appellant had fired the gun shot from behind and fled away from the spot. But, this finding of the trial Court is contrary to the evidence available on record. There is nothing on record, which establishes that the gun shot was fired by the Appellant. None of the witness has seen the Appellant firing the gun shot. The sole eye-witness Rajkumar (PW1) has deposed that B.K. Singh was holding the gun and he himself fired the gun. Though after the incident the Appellant fled away from the spot, only on this basis it cannot be said that the Appellant had fired the gun shot. In this case, virtually who fired the gun shot and how the Injured got injuries, for this purpose B.K. Singh was to be examined. His non-examination in this case is fatal for the case of the prosecution.

11. Considering the entire evidence available on record, it is well established that trial Court without there being any evidence has convicted the Appellant in this case for the above mentioned offence. Therefore, in my considered view, the finding of the trial Court is not in accordance with the

evidence available on record.

12. In the result, the appeal is allowed. The judgment of conviction passed by the trial Court is set-aside. The Appellant is acquitted from the charges framed against him. He be released forthwith, if not, required in any other case.
13. Records of the Court below be sent back along with copy of this Judgment for necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge

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