

Ehtesamuddin @ Tasmuddin @ Md. Ehtesamuddin Vs. the State of Bihar

Ehtesamuddin @ Tasmuddin @ Md. Ehtesamuddin Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/1152036

Court : Patna

Decided On : Jan-10-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 473 of 2012

Appellant : Ehtesamuddin @ Tasmuddin @ Md. Ehtesamuddin

Respondent : The State of Bihar

Judgement :

1. Appellant Ehtesamuddin @ Tasmuddin @ Md. Ehtesamuddin, who has been found guilty for an offence punishable under Section 341 IPC and directed to undergo S.I. for one month, under Section 324 IPC and directed to undergo R.I. for two years, under Section 307 IPC and directed to undergo R.I. for 5 years as well as also fined Rs.15,000/- in default thereof to undergo R.I. for six months additionally vide judgment dated 18.05.2012 and sentence dated 22.05.2012 by First Additional Sessions Judge, Patna City in Sessions Trial No.385 of 2001 has challenged the same preferring instant appeal.

2. It has been submitted on behalf of appellant that the conviction and sentence recorded by the learned trial court happens to be bad, illegal, capricious, arbitrary and on account thereof is fit to be set aside. It has further been submitted that the occurrence so alleged was neither premeditated nor preplanned and even accepting the version of the prosecution, neither appellant carried an intention to

commit murder nor had knowledge that by such action there happens to be every likelihood of death of informant, consequent thereupon the conviction so recorded under Section 307 of the Indian Penal Code happens to be contrary to the evidence available on the record.

3. In likewise manner, it has been submitted that prosecution failed to prove the genesis as well as manner of occurrence. Not only this, prosecution also failed to substantiate the exact place of occurrence which is itself evident from inconsistent version of the injured in consonance with the objective finding of the Investigating Officer.

4. Putting much stress on these issues, it has been submitted that virtually prosecution party happens to be the aggressor who brutally assaulted the appellant and for that on the fardbeyan of appellant a case was instituted wherein informant had gone under judicial custody which the informant himself had admitted apart from the fact that from the order sheet of the learned lower court, it is evident that after having been discharged from the Patna Medical College Hospital appellant was taken into custody by the police and then was remanded to judicial custody. By suppressing the aforesaid theme, it has been submitted that the prosecution had suppressed the genesis as well as manner of occurrence and so, prosecution version is fit to be disarrayed. Then, it has been submitted that although due to lapse on the part of the appellant the relevant document have not been produced and exhibited but in the background of admission of the informant as well as from the order sheet of the lower court being part and parcel of record, prima facie a case of right of private defence is made out and so again the appellant deserves acquittal on that very score.

5. Now, coming to the material so adduced on behalf of prosecution during course of trial, it has been submitted that the prosecution case is suffering from so many lapses and it further suggest that the prosecution case has been launched after taking the police in their collusion because of the fact that in the fardbeyan the informant had not disclosed that he was ever shifted to State Dispensary, Fatuha nor he had stated like so during course of his evidence. None of the PWs deposed like so in spite of the fact that PW-5 is the doctor who on the alleged date and time

of occurrence was posted at State Dispensary, Fatuha and in that capacity, had examined the informant on police requisition who was subsequently referred to P.M.C.H. but had gone to Rajeshwar Hospital where his fardbeyan was recorded. It is also evident from the evidence of PW-5 that he had examined the injured and issued injury report on the requisition furnished by the police official. That means to say presence of police official at the Fatuha State Dispensary is admitted one. Then in that circumstance having no FIR at Fatuha State Dispensary is a circumstance which has got a bearing in the background of the fact that in the fardbeyan itself the informant had disclosed some sort of animosity with the appellant since before the occurrence. It has also been submitted that save and except informant, none had supported the case of the prosecution. So, the evidence of the informant happens to be uncorroborated and on account of persisting infirmities, as referred above, the prosecution case is fit to be disbelieved and the appellant deserves acquittal.

6. At the other hand, the learned Additional Public Prosecutor while refuting the argument raised on behalf of appellant submitted that it is not a prudent approach in getting the evidence of the injured rejected merely because some sort of infirmities / lapses are found. The evidence in its totality is to be taken into account. It has also been submitted that in terms of Section 134 of the Evidence Act, it is the quality not quantity which matters in a criminal trial.

7. Furthermore, as stated by learned Additional Public Prosecutor the version of the informant is found fully corroborated with the medical evidence as well as objective finding of the I.O. Consequent thereupon, the judgments of conviction and sentence recorded by the learned trial court happens to be just, legal and proper and is fit to be confirmed.

8. PW-2, Ramugrah Prasad gave his fardbeyan on 07-04-2000 at 11:45 P.M. at Rajeshwar Nursing Home before ASI, Fatuha Police Station disclosing therein that on 06-04-2000 at about 02:30 P.M. while he was at his house, his cow ran amuck. He rushed to catch and during course thereof, Salluddin @ Sahlu Mian and his three sons, namely, Tasamuddin and two others who were sitting in his tomato field since before caught hold him and began to assault with leg and fist on

account of which he fell down. Thereafter, Salluddin @ Sahlu Mian and his two other sons caught hold his leg and hand while Tasamuddin pierced sickle in his stomach with an intention to kill. On his alarm so many persons ran seeing whom the accused persons took their heels. It has also been submitted that at an earlier occasion his domestic animal had fallen in the field of accused for which an altercation, had taken place and during course thereof, they have threatened to assault him. It has further been disclosed that this occurrence had taken place near the shop of a blacksmith. On the basis of the aforesaid fardbeyan Fatuha P.S. Case No. 50 of 2000 was registered under Section 341, 323, 324, 307/34 of the IPC and after completing investigation only appellant was sent for trial while remaining were exonerated and on account thereof, the trial commenced concluded with regard to appellant only in a manner as indicated above the subject matter of instant appeal.

9. After perusal of lower court record, it is evident that altogether seven PWs have been examined out of whom PW-1, PW-3, PW-4 have not supported prosecution case as such were declared hostile. Informant has been examined as PW-2 while doctor is PW-5 and I.O. is PW-6. PW-7 is Shailendra Kumar, a formal witness. The prosecution had also exhibited some document as Exhibit-1, signature of informant over fardbeyan, Exhibit-2, Injury report granted by doctor (PW-5), Exhibit-3, Fardbeyan and Exhibit-4 forwarding letter in the pen of PW-6, the I.O. That means to say only PW-2 is the material witness in support of his assault corroborated by PW-5, the doctor as well as PW-6 the I.O.

10. PW-2 during his evidence had stated that the occurrence is of dated 06.04.2000 at about 02:30 P.M. His cow, after breaking rope ran amuck and gone inside the tomato field of Sahlu Mian where his three sons Tasamuddin, Rustan and Salluddin were watching since before, began to assault him. Then thereafter they threw him on the ground. Tasamuddin pierced sickle in his stomach with an intention to kill on account of which he became unconscious. He was lifted to Rajeshwar Nursing Home where he regained sense on the following day. Police had come on 07-04-2000 before whom he had given his fardbeyan and exhibited. He had also shown the scar mark over his stomach. During cross-examination he had stated in para-2 that he was at his house before the alleged occurrence along

with Ramanand, Ram Naresh as well as other family members. He had further stated that the potato field lies 1- 1 K.M. south to his village. The other agricultural plots are also there in the boundary of the aforesaid tomato field. Then he had given topography of land of appellant. The alleged P.O. shop of blacksmith found untraceable there from. He had further stated that first of all the three accused threw him on the ground and then they assaulted with fist and slap indiscriminately. In para-3 of his cross-examination he had disclosed that they were not on litigating term since before the occurrence. The accused has also instituted a case of assault wherein he got bail and for that, he has got an annoyance. In para-4, he had stated that he had fallen down over middle of culvert. It happens to be pucca road. He is unable to say how much time he remained unconscious because he regained sense at hospital. He further disclosed that I.O. had seen the place of occurrence as well as the blood having fallen from his injury at the place of occurrence.

11. PW-6 is the I.O. who had stated that he was handed over with the investigation of Fatuha P.S. Case No.50/2000 by the Officer-in-charge. He had exhibited the fardbeyan having in his pen. He had further exhibited the requisition issued by him in favour of Primary Health Centre, Fatuha for examining injured Ramugrah Prasad. He took further statement of informant. Inspected the place of occurrence. He had shown the place of occurrence to be culvert over a road Fatuha to Kewlatar. He had shown the boundary of P.O as West-Md. Jiauddin, East-Jairam Sharma, North-Kewlatar, South-Road. He was transferred hence he handed over the investigation. During cross-examination at para-2 he had stated that he had seen the injured at PHC, Fatuha on 06.04.2000. At that very time injured was unconscious. He had further stated that he had not taken statement of injured at Fatuha Hospital. Then he had stated that he had gone to search the injured at PMCH but he could not met with the injured and then from P.S. he was informed that injured happens to be admitted at Rajeshwar Nursing Home. Thereafter, on 07.04.2000 he had gone there and recorded his fardbeyan. He had further stated that P.O. happens to be culvert. During his inspection he had not found blood at the P.O. He had further stated that there was dispute in between informant and accused on account of grazing of crop by the domestic animal of informant.

12. From the evidence of PW-5 the following injuries have been found over the person of informant whom he had examined on 06.04.2000 at Primary Health Centre, Fatuha being the Incharge thereof. Single penetrating wound left side lower abdomen with multiple coils of small intestine protruding through it. The patient was critical and after first aid was immediately referred to PMCH for needful. M.I. Scar left side forehead age of injury within 6 hours. Nature caused by sharp penetrating object and further opinion for type of injury is reserved till report from PMCH, Patna comes. During his evidence, it is evident that he had not disclosed the nature of the injury however is not required for application of Section 307 IPC.

13. Although from the evidence of PW-2 the institution of the case at the behest of appellant is an admitted one. From the order sheet dated 15.04.2000, it is evident that the appellant was produced by the Investigating Officer after being discharged from PMCH where he was admitted for treatment of injuries. It is apparent from the lower court record that neither I.O. was cross-examined on that very score nor the FIR has been produced. In absence thereof, it is very difficult to consider that appellant had sustained injury during course of same sequence for which the prosecution was accountable to explain.

14. Now coming to the totality of the event, it is apparent from Ext.-4 that injured was firstly taken to Primary Health Centre, Fatuha. It is also evident from the evidence of PW-2 that at the time of running of cow of informant, apart from him Ramanand and Ram Naresh were also there. None of the family members have come forward to say with regard to occurrence or scuffle in between. Having presence of injured at the hospital, though the I.O. had stated during his cross-examination that the injured was unconscious but neither he in his examination-in-chief had deposed like so nor PW-5 the doctor had stated that injured was brought in unconscious state. In likewise manner, in the fardbeyan the informant had not shown his presence inside tomato field of appellant but during course of his evidence he had admitted that his cow had gone inside tomato field of accused as well as he also admitted his presence inside thereof. In para-2 of his cross-examination he had shown the topography of tomato field of appellant however having non-presence of culvert and in likewise manner, the I.O. had not shown the

presence of tomato field of appellant as well as the distance in between tomato field of appellant to the culvert. There happens to be complete absence at the end of prosecution that from tomato field the appellant including his brothers have chased the informant up to culvert where he was assaulted. In absence thereof, it is very difficult to imagine how the informant shifted from the tomato field of appellant to culvert. Again, the evidence of PW-2, informant is found suspicious in the background of his disclosure under para-2 of his cross-examination inspiring place of occurrence of tomato field of appellant. That means to say apart from inconsistency amongst evidence of PW-8 on this very score, the prosecution could not be able to fix specific place of occurrence, and on account thereof probability of occurrence according to appellants tune looks for consideration.

15. In the aforesaid background, even presence of injury over person of PW-2, did not attract conviction of appellant as prosecution has not come with clean hand and is found trying to change manner as well as genesis of occurrence. 16. Consequent thereupon, appeal is allowed. The judgment of conviction and sentence recorded by the trial court is set aside. Appellant is under custody hence is directed to be released forthwith if not wanted in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com