

Rasul Mian and Ors Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-17-2017

Appellant : Rasul Mian and Ors

Respondent : State of Jharkhand

Advocate for Pet/Ap. : Mrs. Supriya Dayal

Judgement :

Criminal Revision No. 195 of 2004 Against the judgment dated 24.01.2004 passed by the 4th Additional Sessions Judge, Palamau at Daltonganj in Criminal Appeal No. 107 of 2000. --- 1.Rasul Mian son of late Sardar Mian 2.Rashidan Bibi wife of Rasul Mian 3.Mohammad Ansar son of Rasul Mian 4.Mohammad Anwar son of Rasul Mian 5.Nuresah @ Rabani Khatoon wife of Mohammad Ansar, all residents of village Haidarnagar, PS Haidaranagar, District Palamau Petitioners Versus The State of Jharkhand Opposite Party --- For the Petitioners : Mrs. Supriya Dayal, Advocate For the Opposite Party : Mr. Ram Prakash Singh, A.P.P. --- Present: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- 17.07.2017 Heard Mrs. Supriya Dayal, learned counsel for the petitioners and Mr. Ram Prakash Singh, learned A.P.P. for the State.

2. This application is directed against the judgment dated 24.01.2004 passed by the 4th Additional Sessions Judge, Palamau at Daltonganj in Criminal Appeal No. 107 of 2000 whereby and whereunder the judgment dated 18.08.2000 passed by the learned Judicial Magistrate 1st class, Daltonganj in Haidarnagar P. S. Case

No. 28 of 1993 corresponding to G. R. No. 917 of 1993 convicting the petitioners for the offence under Sections 147/323/149 of I.P.C. and sentencing him to undergo S.I. for 6 months and R.I. for one year respectively has been affirmed.

3. The prosecution story in brief is that a case was going on between Rasidan Bibi (P.W.

3) and the informant on one side and Rasul Mian (P.W.

1) on the other. It is alleged that a title suit was also pending. Further allegation has been levelled that on 22.03.1993, the accused persons had come to the land of the informant and had started installing compressor machine. On a protest being made, the informant and his brother were assaulted with lathi and rod and when -2- P.W. 3 had rushed to rescue them, she was also assaulted. Based on the aforesaid allegations, Haidarnagar P. S. Case No. 28 of 1993 was instituted in which after investigation charge-sheet was submitted and after cognizance was taken, charges were framed under Sections 147/323/149 and 324/149 of I.P.C. and trial proceeded.

4. In course of trial, 6 witnesses were examined on behalf of the prosecution. P.W. 1 - Chhakan Mian is the own brother of the informant who has stated about a title suit pending. He has further stated that the accused persons were claiming the lands in question and on the date of occurrence while installing a machine in the field which was protested to resulting in the informant being assaulted with a lathi and this witness was also assaulted. He has stated that the petitioner no. 1 is also his brother. P.W. 2 - Gani Mia is the informant who has deposed that on 23.02.1993, petitioner no. 1 was installing compressor machine in the field of this witness at which an altercation took place resulting in the accused persons started assaulting upon this witness and his brothers with lathi and rod. This witness has further stated that the field belongs to him as well as his two brothers. He has also stated that a proceeding under Section 145 of Cr.P.C. was initiated which however was decided in favour of this witness. He has also stated that a title suit was filed by the informant. P.W. 3 - Rasidan Bibi is the wife of P.W. 1, who has stated about the assault committed by the accused persons on the protest being made by the informant and her husband when the accused persons were trying to install a

compressor machine in the field. She has further stated that both her husband and P.W. 2 had suffered injuries. P.W. 4 - Shamim Mia is the son of the informant who had also stated on similar terms. This witness has further stated that he was also assaulted. P.W. 5 - Dr. Manoranjan Prasad Singh is the doctor who had treated the injured persons and injury report has been marked as Exhibit 1, Exhibit 1/1 and Exhibit 1 /2 which was duly proved by him. P.W. 6 - Lalmani Ram is a formal witness.

5. It has been stated by the learned counsel for the petitioners that there has been a delay in instituting the FIR and no plausible explanation has been given with respect to the said delay. Learned counsel further submits that the petitioners have been implicated on account of previous enmity and in fact the petitioners had also -3- instituted a case against the informant and others. Learned counsel submits that false implication of the petitioners cannot be ruled out in view of the admitted land dispute existing between the parties. Learned counsel further submits that the Investigating Officer of the case has not been examined which has caused prejudice to the prosecution case.

6. Leaned A.P.P. has opposed the prayer made by the petitioners.

7. It appears from the evidence on record that the version of the informant - P.W. 2 has been categorically supported by P.W. 1 as well as by P.W. 3 and P.W.

4. All the four witnesses are eye-witnesses and P.W. Nos. 1, 2 and 3 are the injured witnesses. These witnesses have stated in very categorical terms about the altercation which had taken place, when the accused persons were trying to install a compressor machine in their field. They have also stated about the assault committed by the petitioners upon them and the injuries suffered by them have been corroborated by the injury report marked as Exhibit 1, Exhibit 1/1 and Exhibit 1 /2. Merely because P.W. Nos. 1, 2, 3 & 4 are related to each other, the same by itself would not dilute the prosecution case as their evidences are natural, untainted and having a vivid description of the occurrence. The non-examination of the I.O. of the case has not proved fatal to the prosecution case in view of the corroborative evidence of the other witnesses. So far as the delay in institution of the FIR is concerned, a reasonable explanation has been given by the informant to

the effect that the accused had also lodged a case pursuant to which the informant was taken into custody and only after he being released on bail, the case was filed. The previous enmity which has much been harped upon by the learned counsel for the petitioners cuts both ways as the incident might have taken place due to the enmity existing between the parties. In fact, a counter case has also been filed by the accused persons which virtually proves that the incident had taken place. The evidence of the prosecution thus is clear, cogent and no material contradictions appears in the same. Such circumstances having rightly been considered by the learned trial court, the petitioners were convicted under Sections 147/323/149 of I.P.C. The learned appellate court also based on the materials available on record dismissed the appeal preferred by the petitioners. -4-8. There being no reason to conclude otherwise, this application stands dismissed so far as the challenge which has been made to the judgment of conviction is concerned.

9. However, with respect to the sentence imposed upon the petitioners are concerned, it appears that the petitioners are facing the rigors of prosecution case since the year 1993. The injuries which were found on the person of the P.W. 1, 2 and 3 were found to be simple in nature. The petitioners and the informant - party seems to be related to each other. Such circumstances definitely entitles the petitioners for reconsideration of the sentence imposed upon them. Accordingly, the period of sentence awarded to the petitioners is reduced to the period already undergone in custody.

10. This application stands dismissed with the aforesaid modification in sentence. (Rongon Mukhopadhyay, J) Jharkhand High Court at Ranchi The 17th day of July, 2017 R.Shekhar/NAFR/Cp.3

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