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Court : Jharkhand

Decided On : Nov-29-2006

Reported in : [2007(2)JCR48(Jhr)]

Judge : D.P. Singh, J.

Appellant : indo Singh and ors.

Respondent : The State of Bihar

Judgement :

D.P. Singh, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 10.7.2002 passed in Sessions Trial No. 242 of 1987, whereby and whereunder the learned Additional Sessions Judge-Ist-cum Fast Track Court, Giridih held appellant Indo Singh guilty and sentenced him to undergo RI for five years under Section 307 IPC and one year under Section 148 IPC and appellants Ganesh Sao, Nago Singh, Madan Hazam, Budhan Hazam, Butan Singh, Jagdish Hazam @ Beni Hazam and Raj Kishore Hajra are sentenced to undergo RI for six months under Section 147 and two years under Section 325 and five yeas under Section 307 read with Section 149 IPC. However, sentenced were directed to run concurrently.

2. The brief facts leading to this appeal are that the informant and appellant Ganesh Sao are son and father, who have got dispute regarding the share in the properties. As further stated, appellant No. 1 married second time after the death of the mother of the informant fifteen years ago and thereafter he started ill-treating him. According to the informant Bundo Sao, appellant did not want to share the ancestral properties with him in spite of his demand. It is further stated that Bithal Sao and others persuaded the appellant No. 1 to share the property but still he was adamant not to provide any share to the informant. On 8th July, 85 at 9 AM the informant again requested the appellant No. 1 to allot him his share, on which he became angry and went out side saying that he will finish him today. Thereafter within ten minutes appellant No. 1 returned with other appellants and at the instance of appellant No. 1 he was assaulted with fists, slaps, kicks etc. The informant raised alarm, upon which PW 3 arrived there and tried to save him. It is further stated that appellant No. 1 asked other appellants to kill him. It is stated that appellant Indo Singh @ Indo Sao gave a sword blow on his left knee, after which PW 3 fell down and others started assaulting him. However, when they found that PW 3 has become senseless, they fled away. The occurrence was seen by witnesses examined in the trial court. The injured were taken to Bengabad hospital for their treatments where police arrived and recorded the statement of Bundo Sao. Police registered Jamua P.S. Case No. 71/85 under Sections 147, 148, 149, 323, 324, 325, 307 IPC. Thereafter, police investigated the case and finally submitted chargesheet against nine persons, out of which one Dhokal Singh is dead. Therefore, only above named appellants were charged for the offences under Sections 307, 325/149 IPC jointly. Appellant Indo Singh was further charged under Sections 147/307 IPC separately. The appellants pleaded not guilty and claimed false prosecution. However trial court found and held all of them guilty for various offences and sentenced them as aforesaid.

3. This appeal has been preferred on the ground that the learned trial court has not considered the contradictions in the statement of prosecution witnesses. It is also submitted that in absence of IO material contradictions could not be brought on record. It is also submitted that even if the prosecution version is believed, the manner in which assault took place is not supported by eye witnesses and medical evidence. Learned Counsel for the appellants stressed before me that the injuries

found on PWs 2 and 3 do not support the prosecution version that the assault was made with intention to cause death. It is also submitted that injuries found on PW 3 was not dangerous and grievous in nature except fracture of bone, which is not supported by any x-ray report. It is also submitted that previous enmity for share was going on between the informant and appellant No. 2, for which this false case has been instituted. Therefore conviction of the appellants under Sections 307/325 IPC deserves to be set aside.

4. To appreciate the submissions of the learned Counsel for the appellants, I propose to deal with the evidence available on record. The prosecution in the present case has examined altogether 11 witnesses, out of which PW 11 is formal, who proves his fardbeyan recorded by SI Dharam Ojha as Ext.3. PW 10 has been tendered by the prosecution. PW 9 arrived at the PO to find the injured Bithal Sao and informant Bundo Sao in injured condition. He is a witness on the fard beyan also. He is not a witness of assault. PW 5 -Dilo Sao was also tendered PW 8 is the doctor, who examined the injured persons on 3.7.85 as Medical Officer, Bengabad Primary Health Centre. He proved the injuries of these two witnesses, vide Ext.2 and 2/A. According to him, PW 2 Bundo Sao has got two bruises on left hand and left knee while PW 3 has got three bruises as well as one incised wound of left Tibia and one facture with swelling on the knee joint. He has admitted that he is not mentioned the number of x-ray plates in his report, on the basis of which facture was mentioned at injury No. 2 of PW 3.

5. The informant Bundo sao as PW 2 and injured Bithal Sao as PW 3 have supported the prosecution case. According to them, at the instance of appellant Ganesh Sao other appellants arrived with weapons in their hands. They further stated that appellant Indo Singh was carrying a sword and he gave the sword blow on PW 3. This witness has further stated that all the appellants started assaulting the informant and PW 3. The informant has supported this witness to this extent that on his alarm PW 3 came and tried to save him. On which he was given a sword blow and further assaulted with lathi. However these two witnesses admitted that the assault took place inside the angan and lathi was used by some of the appellants but they did not say who gave lathi blow at whom. PW 2 further admitted vide para 14 that other witnesses arrived at the PO after the assault. He

also admits that appellant Ganesh Sao has lodged a criminal case against him and PW 3. Similarly PW 3 admitted that he was an accused in a criminal case filed by appellant No. 2. This two witnesses are supported by PW 1, Ram Kisun Sao, PW 4 Ramu Mahto, PW 6 Dalu Sao and PW 7 Kutru Sao. They arrived at the PO on halla raised by the informant and PW 3. They asserted that they saw whole occurrence. However, PW 1 has admitted in cross examination that he was not examined by police before his statement in court. He further admits that he was an accused in a case filed by appellant Ganesh Sao. According to him appellant Ganesh Sao has assaulted PW 3. PW 4 has admitted in cross examination that he was not examined by police. PW 6 admitted that he was also an accused in a case filed by appellant Ganesh Sao alongwith PW 3. According to him PW 3 was given 10-12 assaults with lathi. PW 7 has admitted that he reached the PO after 10-15 minutes of halla and saw only four appellants at the PO. From these facts available on record, I find that contradictory versions of assault are coming against appellants Nago Singh and Ganesh Sao from the mouth of these witnesses. The doctor has found only one injury grievous in nature on PW 3 and other injuries simple in nature. However, it has come on record that appellant Ganesh Sao called only appellants Nago Singh, Dhokal and Butan at the PO. Therefore, presence of other appellants namely Raj Kishore Haja, Madan Hazam, Budhan Hazam and Jagdish Hazam are doubtful. Accordingly I find and hold that all the appellants, except appellants Ganesh Sao and Indo Singh, have: not participated in the assault made upon PWs 2 and 3. Therefore all of them, except appellants Ganesh Sao and Indo Singh are found and held not guilty and acquitted of the charges.

6. In the result, the conviction of all the appellants, except appellants Indo Singh and Ganesh Sao, is hereby set aside. So far the conviction of appellants Ganesh Sao and Indo Singh is concerned, I find that the injuries found on PWs 2 and 3 are not sufficient in ordinary course of nature to cause death and the charges under Section 307 IPC cannot be sustained. Further more the injury No. 2 of PW 3 said to be grievous, without any x-ray report or x-ray plate. As such the said injury can not be held to be grievous in nature. Accordingly the conviction under Section 325 IPC is also found not to be maintainable. Therefore, the conviction of the appellants Nos. 1 and 2 under Section 307 and 325 IPC is liable to be set aside.

However, their conviction under Sections 148, 323 and 324 IPC is found proved beyond doubts. As such I found that the learned trial court has rightly convicted both of them for the offence under Section 148/323/324 IPC.

7. Having considered all the facts and circumstances, accordingly this appeal is partly allowed end dismissed with respect to the conviction of appellant Nos. 1 and 2. The sentence passed against these two appellants by the learned lower court is modified to SI for six months and fine of Rs. 1000/- each. In default of payment of fine, these two appellants are further directed to serve SI for three months. In this manner, this appeal stands disposed of.

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