

Sunil Kumar and Vs. State of Jharkhand

Sunil Kumar and Vs. State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/523115

Court : Jharkhand

Decided On : Aug-14-2006

Reported in : [2007(1)JCR528(Jhr)]

Judge : Amareshwar Sahay, J.

Appellant : Sunil Kumar and ;vishal Kumar Singh and anr.

Respondent : State of Jharkhand

Disposition : Appeal allowed

Judgement :

Amareshwar Sahay, J.

1. These two appeals arise out of the same impugned judgment and, therefore, they were heard together and are being disposed of by this common judgment.

2. The appellant Sunil Kumar in Cr. Appeal No. 442/2004 and the appellant Vishal Kumar Singh @ Dharmendra Singh in Cr. Appeal No. 432/2004, were tried together for the charges under Sections 307/34 and 323 of the Indian Penal Code and by the impugned judgment dated 26.2.2004 in Sessions Trial No. 176/1999, the learned Additional Judicial Commissioner, Fast Track Court, Ranchi convicted both these appellants for the said offences and sentenced them to undergo RI for a period of seven years each for the offence under Sections 307/34, IPC and also

to pay a fine of Rs. 1000/- each in default to undergo RI for a further period of six months and RI for a period of three years each for the offence under Section 323, IPC.

3. The case of the prosecution in short is that the informant PW 5 Jitendra Kumar gave his fardbeyan (Ext. 1) on 5.9.1997 in the Plant Project Hospital, Dhurwa, where he was admitted for treatment for the injuries received by him on the alleged occurrence, which took place on 4.7.1997 at 7.00 a.m. According to the informant, on the date and time of the occurrence when he was proceeding towards Paradise Saloon, which was situated in Sector-II market, for his hair cut, in the meantime on the way in front of Panchmukhi Mandir near a cycle shop, Vishal @ Nunu of Sector-I called him and asked him to stop. Thereafter, the said Vishal assaulted him on his face by his fists due to which the informant fell down off the ground but he stood up again. The accused Vishal again wanted to assault him but the informant caught hold of his hand. In the meantime, the appellant Sunil Kumar of Section-II came there and then both the accused started assaulting him. The informant however, alleged that then Vishal who was a residue of side 4 of adjacent block of Rajesh Betal shop and two unknown boys also came there. Thereafter, Vishal @ Nunu and Sunil Kumar, i.e. the appellants, attacked, and assaulted the informant by means of 'Ashtura', the informant tried to ward off the assault due to which he received 'Ashtura' injury on his left hand. Thereafter, Sunil Kumar, the appellant again assaulted the informant by means of Ashtura causing injury on his waist due to which the informant fell down on the ground thereafter, all the accused persons started assaulting the informant. Vishal @ Nunu, in order to kill the informant, placed 'Ashtura' on the neck of the informant but since the informant raised hua due to which several persons assembled, there and then the accused persons fled away. The informant alleged in the F.I.R. that he became unconscious and subsequently, some scooter rider brought him to the hospital where he was admitted for treatment. The cause of occurrence, according to the informant, was that a day prior to the date of occurrence, there was some scuffle in between him and Vishal @ Nunu in connection with a gas cylinder due to which the accused persons assaulted him and tried to kill him.

4. The defence of the appellants is total denial of the occurrence and of false implication.

5. In order to establish the charges, altogether seven prosecution witnesses were examined on behalf of the prosecution. There is only one eye-witness to the occurrence, i.e. the injured, i.e. PW 5 Jitendra Kumar himself. PW 1 Devendra Kumar is the brother of the informant and is a hear say witness. He has stated that he came to know about the assault on his brother from Binod Kumar Paswan one of his neighbour. This Binod Kumar Paswan has not been examined by the prosecution. PW 2 Rewa @ Thakur has been declared hostile. PW 3 has been tendered. PW 4 Saryug Prasad is the father of the informant and is also a hearsay witness. He has stated that he did not see the occurrence himself rather he came to know about the occurrence. PW 5 is the informant. PW 6 is the Doctor, who has examined the injuries on the informant in the hospital and according to the Doctor he found the following injuries on the person of the injured informant:

(1) Sharp cut injury left forearm muscle deep 3' x 1- 1/2'.

(2) Sharp cut injury muscle deep 3' x 1-1/2' with long tail skin deep on the left abdominal flank part.

According to the Doctor, the injuries were simple in nature and caused by sharp cutting weapon like knife, Ashtura or razor. PW 7 is the Investigating Officer.

6. Mr. Chaturvedi, the learned Counsel appearing for the appellants has submitted that the conviction of the appellants for the aforesaid offences is absolutely illegal as the prosecution absolutely failed to establish the charges against the appellants beyond all reasonable doubts. Elaborating his argument he has submitted that apart from the informant, the most important witness was Binod Kumar Paswan, who according to the prosecution, was an eye-witness to the occurrence and he informed the brother as well as the father of the informant about the alleged assault but this important witness Binod Kumar Paswan has not been examined by the prosecution and has been withheld by the prosecution, which makes the prosecution story, doubtful.

It was next contended that according to the informant himself, he received bleeding injuries at the place of occurrence due to the assault made by the accused persons and blood fell on the ground also. He further stated that after he became unconscious, he was taken to the hospital by the scooter rider and in the hospital itself he regained senses. This version of the informant becomes doubtful, since the Investigating Officer, i.e. PW 7, did not state that at the place of occurrence any blood stains were found. The version of the informant also becomes doubtful because of the fact that the doctor, i.e. PW 6 has stated in his evidence that the injured himself came to him for his treatment along with his friend Raj Kishore Singh and he was conscious at that time, therefore, the story of the informant that he became unconscious at the place of occurrence and he regained senses in the hospital is contradicted by the Doctor PW 6, The prosecution has also not examined the said Raj Kishore Singh, who, according to the prosecution, brought the injured to the hospital for his treatment.

7. The submission of the learned Counsel for the appellants appears to be convincing. The story, which has been advanced by the informant, is full of contradictions. It is not known as to why the most important witness Binod Kumar Paswan who was an eye-witness to the occurrence has not been examined by the prosecution, who could have stated the real story. Non-examination of the said Binod Kumar Paswan and Raj Kishore Singh, who, according to the prosecution, brought the injured to the hospital, makes the prosecution case doubtful and the statement of the informant to be not reliable. Therefore, I find that the prosecution has not been able to prove its case beyond all reasonable doubts.

8. In view of my above discussions and findings, I hold that the learned trial Court committed error in convicting the appellants for the charges.

9. Accordingly, both these appeals are allowed and the conviction and sentence passed by the trial Court in Sessions Trial No. 176/1999 against these two appellants are hereby set aside. The appellants, who are on bail, are discharged from the liabilities of their bail bonds.