

Jairani Devi Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Apr-27-2016

Appellant : Jairani Devi

Respondent : The State of Jharkhand and Ors

Judgement :

Criminal Appeal (S.J.) No. 67 of 2015 Against the judgment of acquittal dated 05.01.2015, passed by Civil Judge, J.D. Dhanbad (learned Judicial Magistrate, 1st Class, Dhanbad) in connection with G.R. Case No. 3797 of 2008. Jairani Devi @ Jarani Devi, wife of Kara Paswan Resident of Ekra Work Shop, PO- Bans Jora, PS Loyabad, District- Dhanbad . . . Appellant --Versus-- 1. The State of Jharkhand 2. Rajender Paswan, son of Latte Balkishun Paswan 3. Bhola Paswan, son of Late Paran Paswan 4. Bholi Paswan, son of late Parmeshwar Paswan 5. Vicky Paswan, son of Rajender Paswan 6. Urmila Devi, wife of Rajender Paswan 7. Keshri Devi, wife of Bholi Paswan All residents of Ekra, PO Bans Jora, PS- Loyabad, District- Dhanbad . . . Respondents For the Appellant : M/s. Vijay Shankar Prasad, Khagesh Thakur & Nanda Kumari, Advocates For the State: : Mr. Sanjay Kumar Srivastava, A.P.P. PRESENT HONBLE MR. JUSTICE RAVI NATH VERMA -----

JUDGMENT

The 27th April, 2016 The appellant by filing this appeal under Section 372 of the Code of Criminal Procedure (in short the Code) questioned the legality of the judgment of acquittal dated 05.01.2015 passed by Judicial Magistrate, 1st Class,

Dhanbad in G.R. Case no. 3797 of 2008 arising out of Jogta P.S. case no. 140 of 2008.

2. In short, the case of prosecution is based on the complaint filed by the informant Jairani Devi bearing C.P. Case no. 768 of 2008, which was subsequently forwarded to the police station and registered as the aforesaid case with the allegation that accused Rajender Paswan took her husband Karu Paswan on 26.04.2008 at 8.00 a.m. but when her husband did not return till the noon, she went to the house of the accused and asked about her husband and at that 2 time, Bholi Paswan was also present there and both abused her and compelled her to leave the place and also asked her to go and inform the police. At about 1.00 P.M., the said accused Rajender Paswan and Bholi Paswan came to her house and again abused her. Rajender Paswan caught her from behind and Bholi Paswan tried to pull her down with some wrong intention and in altercation, her blouse and saari got torn. Accused Rajender Paswan assaulted her on head and caused injury with fists on other parts of the body. She went to the police station to lodge the case but the accused persons tried to settle the matter. However, again on the next day, the accused persons abused her and threw stones on her house whereafter the aforesaid case was instituted under Section 448, 376/511, 326 and 504 I.P.C.

3. After completion of the investigation, the police submitted the charge-sheet. Accordingly, cognizance of offence was taken under the aforesaid sections. Subsequently, the case was committed to the court of sessions but as no case under Section 376/511 of I.P.C. was made out, the case record was returned to the Chief Judicial Magistrate for framing of charge. Thereafter, charge was framed against the accused persons under Section 354/324/448/504 of I.P.C. The trial court after examination of the witnesses and considering the submissions of the counsels acquitted the accused persons of the charges by impugned judgment dated 05.01.2015 and discharged them from the liabilities of their respective bail bonds. Hence, this appeal by the informant.

4. Learned counsel appearing for the appellant assailing the impugned judgment of acquittal as bad in law and perverse seriously contended that the court below

failed to consider the prosecution witnesses in right perspective and without applying judicial mind in a mechanical manner acquitted the accused persons. It was also submitted that there is sufficient evidence available on record to show the complicity of the accused persons and to prove the ingredients responsible to constitute the offences as alleged but the court below without relying upon the evidences of this prosecutrix 3 and merely relying upon the evidence of other witnesses passed the impugned judgment, which is not sustainable in the eye of law. The court below further failed to appreciate the medical evidence available on record.

5. Before I enter into the veils of submissions of the learned counsel for the appellant, the scope of appeal filed under Section 372 of the Code is necessary to be examined. It is well settled that an appeal against an order of acquittal is also an appeal under the Code of Criminal Procedure and an appellate court has every power to re- appreciate, review and reconsider the evidence before it as a whole but undoubtedly there is presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial court. It is for the appellate court to keep in mind the principles of law to re-appreciate and reweigh the evidence as a whole and to come to its own conclusion on such evidence, in consonance with the principles of criminal jurisprudence. A person is presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption, which could not be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the court, either of law or on appreciation of evidence. The legislature in its wisdom had earlier given power to State to file an appeal against the judgment of acquittal but subsequently a power has been given to the informant also under Section 372 of the Code to file appeal with the limitation as provided in proviso inserted by Section 372 of the Code, which gives a limited right to victim to file an appeal in the High Court against any order of criminal court acquitting the accused.

6. In the instant case from the impugned judgment, it would appear that in order to prove its case, the prosecution had examined ten witnesses. Out of them, PW-1 to

PW-6 were declared hostile as they specifically testified that they do not know anything about the 4 occurrence and their statements were never recorded by the police. The husband of the informant i.e. the prosecutrix (PW-9) testified that he has no knowledge that for what his wife has lodged this case against the accused persons but in his further evidence, this witness has stated that when he came to his house, his wife informed him about the assault but he did not see any injury on her person. PW-9 has also confirmed that even the informant had not shown any injury on her body to this witness. The informant as PW-7 in her deposition has testified that on the date of occurrence, she went to the house of the accused to call her husband and asked about her husband then the accused persons uttered filthy languages and asked her to leave the place immediately otherwise they will commit rape and kill her. They also chased her and entered into her house and one of the accused Rajender caught her and tried to pull down and also torn her saari and blouse. She further testified that Rajender assaulted her with iron rod on her head and Vicky assaulted her with hockey stick on her head whereafter, she became unconscious and when regained the consciousness, she went to the police station from where she was sent to the hospital and in the hospital, her statement was taken. Thereafter, she lodged the complaint case. She also testified that she had informed the police in writing but when the police did not take any action, she filed the complaint almost after 20-25 days of incidence.

7. Apparently, there is a complete deviation from the allegation made in the F.I.R. and the doctor, who had examined the informant (PW-7), had found one sharp cut injury on her left upper cheek (lacerated wound approximately 1 x 1/2 c.m.) and one lacerated injury on occipital region approximately 1/4" x 1/4". The doctor in his cross-examination had admitted that the said injury can be caused by fall on stony surface. In the F.I.R., there was no allegation of use of any sharp cut instrument by the accused persons or in the deposition of PW-7 that she ever sustained any injury on her upper cheek. The trial court in the impugned judgment has 5 considered the evidence of the sons and daughters of the informant also, who have not supported the case of the prosecution though the informant had claimed that her children were present in home when the alleged occurrence took place.

8. In the case Lallu Manjhi Vs. State of Jharkhand; (2003) 2 SCC401 the Honble Supreme Court had classified the oral testimony of the witnesses into three categories: (a) wholly reliable; (b) wholly unreliable; and (c) wholly reliable and wholly unreliable. In the third category of witnesses, the court has to be cautious and see if the statement of such witnesses is corroborated, either by the other witnesses or by the documentary or expert evidence. As discussed above, none of the witness has supported the prosecution version of assault and even the evidence of the informant (PW-7) appears to be not at all reliable and trustworthy. It is well settled that if the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. In my opinion, the court below has rightly acquitted the accused persons from the charges.

9. Learned counsel for the appellant has also not pointed out any cogent ground to interfere in the impugned judgment. Hence, this appeal, being devoid of any merit, is, hereby, dismissed. (R.N. Verma, J.) Ritesh.

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