

(2010) 02 JH CK 0040
In the Jharkhand High Court

Ajay Kumar Singh, Sanjay Kumar Singh and Nagendra Thakur
Vs
The State of Jharkhand

APPELLANT
RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 324, 34, 341

Citation : (2010) 02 JH CK 0040

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the appellants and learned Counsel for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 18.03.2002 passed by Shri Basant Kumar Goswami, learned 2nd Additional District and Sessions Judge, Seraikella in Sessions Trial Case No. 288 of 1994, by which judgment, he found the appellants guilty for the offence u/s 324 of the Indian Penal Code and sentenced to undergo simple imprisonment for one year to appellant No. 1, Ajay Kumar Singh and appellant No. 2, Sanjay Kumar Singh and o undergo nine months simple imprisonment to appellant No. 3, Nagendra Thakur.

3. It is submitted by learned Counsel for the appellants that it will appear from the evidences as well as from the medical evidences, that only simple injuries were caused to the injured P.W.1, Ramsurat Shukla, the informant from some hard and blunt substance. In that view of the matter, the conviction and sentence u/s 324 of the Indian Penal Code is bad in law and only fit to be set aside.

4. On the other hand, learned Counsel for the State has opposed the prayer and submitted that all the witnesses have proved the fact that with the intention to cause death, the Accused persons, three in numbers, assaulted the informant,

and as such, they have rightly been convicted, although no case u/s 307 of the Indian Penal Code was found.

5. After hearing both the parties and after going through the evidences on record, I find that the prosecution case was started on the basis of F.I.R. given by Ramsurat Shukla, P.W.1 to the A.S.I. of Kandra O.P. on 26.11.1993 stating therein that on the same day i.e. on 26.11.1993 at about 3 P.M. in the afternoon, when he was returning from his duty and was rebuking his children, then, the accused Sanjay Kumar Singh, Ajay Kumar Singh and Nagendra Thakur, who were sitting at a distance and playing cards, suddenly became enraged and came with "lathi" and sword and thereafter Sanjay Kumar Singh charged his sword on him, which he caught hold and then, in the meanwhile Ajay Kumar Singh and Nagendra Thakur gave "lathi" blows repeatedly on his head. He got injuries and fell down. The occurrence was seen by neighbours and his wife.

6. On the basis of said fardbeyan, police registered a case for the offence under Sections 323/341/307/34 of the Indian Penal Code and after investigation submitted charge sheet against the accused under the aforesaid sections.

7. Since Section 307 of the Indian Penal Code was exclusively triable by the court of Sessions, learned C.J.M. After taking cognizance, committed the case to the court of Sessions and lastly the case was tried by 2nd Additional District and Sessions Judge, Seraikella, who after framing the charge under Sections 307/341/34 of the Indian Penal Code and after trial, the court acquitted the appellants u/s 307 of the Indian Penal Code. However, he found the appellants guilty u/s 324 of the Indian Penal Code and convicted them as aforesaid.

8. It appears that in course of trial, the prosecution has examined four witnesses.

P.W.1 is Ramsurat Shukla, who is the informant in the case.

P.W.2 is Dr. Ranju Jha, who has examined the informant.

P.W.3 is Kartik Kumar Mahant, a formal witness, who has proved the fardbeyan as Ext.3.

P.W.4 is Raghunath Daroga, who is the advocates clerk, who has identified the signature of the I.O. in the formal F.I.R. and proved the same as Ext.4.

9. From the evidences of P.W.1, Ramsura Shukla and P.W.2, Dr. Ranju Jha, it appears that the appellants assaulted the informant with "danda" and they have no motive to cause him death. It was only because the informant was rebuking his own children, it enraged them. The doctor, Dr. Ranju Jha, who has examined the informant, stated that he received two lacerated injuries on the Vertex and other injuries on his finger and knee. All the injuries were simple in nature. There was no intention to cause death of the informant nor any weapon, which may cause serious injury, was used. There were no other witnesses also to corroborate the prosecution case.

10. In that view of the matter, in my opinion, the conviction of the appellants u/s

324 of the Indian Penal Code is converted into Section 323 of the Indian Penal Code and the sentence of one year and nine months simple imprisonment is also altered to the period already undergone by them during trial and rigors of trial from 1993 and appeal till date.

11. With the aforesaid alteration in the appeal, this appeal is dismissed.