

(2019) 12 JH CK 0026

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 547, 550 Of 2006

Ajit Kumar Dan @ Ajit Dan And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 324, 326, 341, 342, 452
Probation Of Offenders Act, 1958 — Section 4
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 12 JH CK 0026

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Ranjan Kumar Singh, Manoj Kumar, Vandana Bharati, Laxmi Murmu

Final Decision : Allowed

Judgement

Rajesh Kumar, J

1. Both these Criminal Appeals are being heard together and disposed of by this common judgment as both these appeals are arising out from the same order of judgment and conviction.
2. Heard learned counsel for the appellants and learned APP for the State.
3. These appeals are directed against the judgment of conviction and order of sentence dated 06.03.2006 passed by Shri Kamalesh Mishra, Addl. Sessions Judge, Fast Track Court, Sahibganj in Sessions Case No. 181 of 2004/ S.T. No. 102 of 2005 whereby and whereunder the accused Saroj Dan @ Saroj Kumar Dan has been convicted for the offence under Sections 324/452 of the Indian Penal Code and the accused namely Ajit Kumar Dan @ Ajit Dan and Prabir Kumar Dan @ Prabir Dan have been convicted for the offence under Section 342 of the Indian Penal Code and the accused Saroj Dan @ Saroj Kumar Dan has been sentenced to undergo R.I. for three and half years and for the offence under Section 452 of the Indian Penal Code and R.I. for six months for the offence

under Section 324 of the Indian Penal Code. Both the sentences shall run concurrently. The accused namely Ajit Kumar Dan @ Ajit Dan and Prabir Kumar Dan @ Prabir Dan convicted for the offence under Section 342 of the Indian Penal Code and have been given benefit of Section 4 of the Probation of Offenders Act.

4. Barhait P. S. Case No. 58 of 2003 has been registered under Section 452/341/342/324/326/307/34 of the Indian Penal Code against these appellants on the fardbeyan of the informant namely Shivnandan Swarnkar, (P. W. 6). As per the FIR at about 11.30 P.M. on 23.08.2003 while the informant/victim was sleeping in his shop, the accused namely Saroj Dan @ Saroj Kumar Dan has entered the shop and has caused sharp cutting injury to him by using Dab. On raising hulla, he has fled away. Thereafter accused Ajit Kumar Dan @ Ajit Dan and Prabir Kumar Dan @ Prabir Dan, father and uncle of the accused Saroj Dan @ Saroj Kumar Dan came to the shop and locked the informant and treated him. The dispute is regarding love triangle as the same girl is being loved by the informant as well as Saroj Dan @ Saroj Kumar Dan.

5. On completion of investigation, charge sheet was submitted against the accused persons and after cognizance was taken, the case was committed to the Court of Sessions. Charges were framed under Sections 341/342/324/307/452 of the Indian Penal Code against all these accused persons, to which the accused pleaded not guilty and claimed to be tried.

6. On conclusion of the prosecution case, statement of the accused persons under Section 313 of the Cr. P. C. was recorded, to which they pleaded not guilty.

7. Being aggrieved, the present appeals have been filed.

8. To substantiate the charges, altogether seven witnesses have been examined by the prosecution. P. W. -1, Birbal Turi, P. W. -2, Subhash Rudge, P. W. -3, Bishwanath Sen, P. W. -4, Nizamuddin have been declared hostile. P. W. 5-Dr. Anil Kumar Marandi, who has testified the injury. Injury report is Ext. 2 which is as follows:-

"He has found four sharp cut injuries (i) at his left chick (ii) at the back of his neck (iii) multiple sharp cut wound on his head and (iv) sharp cut injury at his left ear. This witness has further accepted that all the injuries are simple in nature and were caused by sharp cut weapons like dab and prepared the injury report of Shivnandan Swarnkar in his pen and signature and has exhibited it as Ext. 2."

Length and breadth have not been disclosed.

P. W. 6- is the informant-Shivnandan Swarnkar, who has supported the story as disclosed in the FIR, but in his cross-examination, he has changed the motive and has deposed that there is no dispute regarding love triangle.

P. W. 7, John Martin Ekka, is the Investigating Officer, who has supported the investigation.

9. Learned counsel for the appellants has submitted that there is only one witness i.e. the informant-P.W. -6, who has deposed in his cross-examination that there is no love triangle and as such, there is a material contradiction in the information given in the FIR and the testimony before the Court below and further the injuries are simple in nature. The informant is the tenant of the accused persons and there is a chance of false implication of these appellants and as such the testimony of the informant has to be considered with caution. Prosecution story is full of doubt. It is settled law that benefit of doubt has to be extended in favour of the appellants.

10. Learned APP has submitted that testimony of injured witness P. W. 6 is enough to record evidence of guilt.

11. Heard learned counsel for the parties. It appears that all the witness have been declared hostile except P. W. -6, the informant, who deposed in his cross-examination that cause of dispute is not love triangle. Nature of injury has been testified by the P. W. -5 and injury report has been marked as Ext.- 2. Injury report is dated 23.08.2003 while the FIR is dated 24.08.2003. Injury report and version of the informant are full of doubt and it is well settled law that the benefit of doubt has to be extended to the appellants.

12. Considering the entire materials available on record and in view of the discussion made hereinabove, this Court finds that the prosecution has failed to substantiate the charges under Sections 324/452 of the Indian Penal Code against Saroj Dan @ Saroj Kumar Dan and under Section 342 of the Indian Penal Code against Ajit Kumar Dan @ Ajit Dan and Prabir Kumar Dan @ Prabir Dan for which they have been convicted. Consequently, the appellants are acquitted from the aforesaid charges.

13. Accordingly, the judgment of conviction and order of sentence dated 06.03.2006 passed by Shri Kamalesh Mishra, Addl. Sessions Judge, Fast Track Court, Sahibganj in Sessions Case No. 181 of 2004/ S.T. No. 102 of 2005 is, hereby, set aside. The appeals stand allowed.

14. Since the appellants are already on bail, they are discharged from the liability of their bail bonds.