
(2023) 05 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 1388 Of 2003

Akshyay Ghosh And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-05-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 387
Code Of Criminal Procedure, 1973 — Section 162

Citation : (2023) 05 JH CK 0030

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : M.B.Lal, Jitendra Pandey

Final Decision : Disposed Of

Judgement

Deepak Roshan, J

1. Heard learned counsel for the parties.
2. This appeal is directed against the judgment of conviction and order of sentence dated 12.09.2003 and 15.09.2003, respectively passed by the learned 12th Additional Sessions Judge, Dhanbad in Sessions Trial No. 35 of 1999, whereby the appellants were convicted under sections 307 and 387/34 IPC and sentenced to undergo R.I. for 7 years with fine of Rs. 500/- under section 307 IPC and further sentenced to one year and fine of Rs. 250/- under section 387 IPC and in default of payment of fine the appellants were directed undergo R.I. of one month each and further ordered to run the sentences concurrently.
3. The prosecution case in short is that on 8-9/9/1998 when son of the informant did not return from his beetle leaf shop he got anxious and started searching for him. He found him under a bale tree and with a cut on his neck and blood on his shirt. On asking the victim told that he was assaulted by the appellants.
4. Mr. M.B.Lal, learned counsel for the appellants made submissions to assail the

impugned judgment on following grounds.

(i) The appellants has been falsely implicated in the case as victim was not in a condition to speak anything and the fardbeyan lodged on the very next date by father of victim appears to be fabricated and doubtful.

(ii) There are two fardbeyan and the statement of the victim is hit by Section 162 of the Cr.P.C.

(iii) The three defence witnesses have clearly stated about the false implication in this regard.

(iv) There were no eye witness.

Learned Counsel, after the aforesaid argument made an alternative prayer on the question of sentence and submits that the incident is of the year 1998 and the appellants have suffered the mental agony due to ongoing litigation and looking to the overall facts and circumstances of the case, this Court may kindly, at least, modify the sentence for the period already undergone as appellants is aged about 53 and 63 years and they remained in custody for about 515 and 502 days respectively and they never misused the privilege of bail and further the appellants are having no criminal antecedents.

5. Learned Addl. P.P. opposes the prayer of the appellant for acquittal and submits that no error has been committed by the learned trial court, as such no interference is required. However, as per the available record there is no criminal antecedent of the appellants.

6. Heard learned counsel for the parties. So far as ground no.1 is concerned; the learned Trial Court in paragraph 20 of the impugned judgment has given a categorical finding that in the very fardbeyan it has been stated by the informant that his son spoke haltingly at a very low voice. This is earliest version leaving no chance of embroidery and explains the manner of speech. To speak somehow briefly and giving full account by way of statement to the police are two different things. In capacity of giving full account of the incident to the police while undergoing treatment is tenable and I am therefore not inclined to accept this argument.

So far as ground no.2 is concerned; the learned Trial Court in paragraph 15 of the impugned judgment has given a finding that in the eye of law two fardbeyan are not recognized, in these circumstances the fardbeyan of informant recorded earlier in point of time can be treated as FIR whereas the statement of victim will be statement under 161 Cr.P.C. The sequence of events as unfolded in the fardbeyan of Sanjhi Lal Mandal the father of injured is the core of the prosecution and has been fully supported by other witnesses. Hence from the evidence adduced on behalf of prosecution the disappearance of Mantu Mandal in the night of 8.9.98 and subsequently being found in the morning in an injured and unconscious condition is amply supported by evidence.

So far as ground no.3 is concerned; the learned trial Court has given a categorical finding in paragraph 18 of the impugned judgment that cross-examination of the defence is not consistent but is shifting and faltering.

So far as ground no. 4 is concerned; the learned trial Court in paragraph 13 of the impugned judgment has given finding that the account deposed by victim regarding the manner of incidence is consistent with the injury report and the deposition remains undemolished even after cross examination, as such this court is not inclined to interfere with the judgment of conviction.

7. Now coming to the alternative argument of learned counsel for the appellants with regard to sentence awarded to them; this Court is of the view that at this stage remitting the appellants to the rigors of imprisonment at this juncture of their life would not serve the ends of justice since no motive or element of planning has been proved in the instant case and admittedly the appellants remained in custody for about 515 and 502 days respectively.

8. Thus, on point of sentence, looking to the entire facts and circumstances of the case and also the fact that the alleged incident took place in the year 1998 and about 25 years have passed and that period is sufficient to exhaust anybody mentally, physically and economically and the appellants were in jail for a considerable period and they have never misused the privilege of bail and now they are not involved in any criminal activities; thus, they have a chance to reform.

9. Taking into consideration of mitigating circumstances, I am of considered view that without interfering with the judgment of conviction, the sentence ought be modified to the extent that the appellants shall be released for the period already undergone but subject to payment of fine of Rs. 30,000/-each.

10. As a result, the sentence as ordered by the learned trial court is hereby modified to the extent that the appellants are sentenced for the period already undergone subject to payment of fine of Rs.30,000/-each.

11. It is made clear that the appellant shall pay the aforesaid fine of Rs. 30,000/- each, within a period of 4 months from the date of receipt of copy of this order before the D.L.S.A., Dhanbad; failing which they shall serve rest of the sentence as ordered by the learned trial court.

12. With the aforesaid observations, directions and modification in sentence only, the instant criminal appeal stands disposed of.

13. The appellants shall be discharged from the liabilities of their bail bonds, subject to fulfillment of aforesaid condition.

14. Let a copy of this order be communicated to the trial court, Secretary, D.L.S.A., Dhanbad and also to the appellants through the officer-in-charge of concerned police station.

15. Let the lower court record be sent to the court concerned forthwith.