
(2010) 12 JH CK 0046

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 346 of 2001

Amrul Sheikh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 199, 302, 324

Citation : (2010) 12 JH CK 0046

Hon'ble Judges : Sushil Harkauli, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Judgement

D.N. Patel, J.—The present appeal has been preferred by the original accused Nos. 2 to 7 against the judgment and order of conviction and sentence dated 27th July, 2001 and 30th July, 2001 respectively, passed by the Additional Sessions Judge, Pakur in Sessions Trial No. 243 of 1999 44 of 1999, whereby, the present Appellants-accused have been convicted for the offence punishable u/s 302 to be read with Section 149 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life. The present Appellants-accused have further been convicted for the offence u/s 148 IPC and sentenced to undergo rigorous imprisonment for three years. However, both the sentences were directed to run concurrently.

2. If the case of prosecution is unfolded the same is as under:

It is the case of the prosecution that one Saiffuddin Sheikh (P.W.6) has lodged a first information report before Pakur Police Station on 20th March 1999 at 1.30 a.m. to the effect that on 19th March 1990 at about 8.00 p.m. when the informant was at his house with his brothers at Village Navrottampur, at that time accused Sirajul Sheikh (original accused No. 1) along with Dendar Sheikh (original accused No. 7), Mehruddin Sheikh (original accused No. 6) and Khushdil Sheikh (original accused No. 5) came at his house and they were addressing the brother of the informant (P.W.6) i.e. Shri Taimaddin Sheikh in high pitch voice that why he was throwing stones at the house of Jalalluddin Sheikh (original

accused No. 4). In response to this, the informant (P.W.6) told them that his brother Taimuddin Sheikh was not throwing stones at the house of Jalaluddin Sheikh (original accused No. 4). The informant further told them that even if Taimuddin Sheikh had thrown stones at the house of Jalaluddin Sheikh, they are ready to go for Panchqyati, but, accused started beating the brother of the informant. Thereafter Jalaluddin Sheikh (original accused No. 4), Morsalim Sheikh (original accused No. 3) and Amrul Sheikh (original accused No. 2) came there with lathis in their hands and the original accused No. 1 i.e. Sirajul Sheikh, who was having Farsa in his hand caused head injuries to Taimuddin Sheikh, who is the brother of the informant. Thereafter, the accused ran away Taimuddin Sheikh was taken to Pakur Hospital but while going to hospital, he expired.

3. Upon registration of the first information report, investigation was carried out, statements of the witnesses were recorded, charge sheet was filed against the Appellant-accused along with other co-accused and after commitment the case was numbered as Sessions Trial No. 243 of 1999 and after appreciating the evidences on record, the Appellants have been convicted and sentenced for the offence punishable u/s 302 to be read with Section 149 and Section 148 of the Indian Penal Code for commixing murder of Taimuddin Sheikh. Against the said judgment and order of conviction and sentence, the present appeal has been preferred by the original accused Nos. 2 to 7.

4. We have heard learned Counsel for both sides at length and perused the records and proceedings of Sessions Trial No. 243 of 1999. It has been submitted by the counsel for the Appellants-accused that there was no intention on the part of the Appellants-accused to cause murder of the deceased. These Appellants were not sharing any common intention with accused No. 1 i.e. Sirajul Sheikh nor they were the members of unlawful assembly in pursuance of common object to be achieved by the Appellants-accused with the accused No. 1 Sirajul Sheikh. Thus, they have not committed any offence punishable u/s 302 to be read with Section 199 thereof, nor they have committed any offence u/s 148 IPC. It is further submitted by the counsel for the Appellant that initially there was no unlawful assembly at all even as per the informant. It has been stated in the FIR that initially Sirajul Sheikh had gone along with his three brothers, who are Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh on 19th March 1999 at about 8.30 p.m. to the house of informant (P.W.6). Sirajul Sheikh is accused No. 1, who is not a party to this appeal. Three other brothers are original accused No. 5, 6 and 7. They were not carrying any weapon in their hands. In fact, they had gone just to scold Taimuddin Sheikh who had been throwing stones at the house of Jalaluddin Sheikh. Thus, there was no unlawful assembly even as per the FIR and as per the initial version given by the informant (P.W.6). They were less than five in numbers. No injury has been caused by accused No. 5, 6 and 7 upon the deceased, even as per the eyewitnesses and as per the medical evidence given by P.W.7. It is further submitted by the counsel of the Appellant that it is a case of the prosecution that after some hot altercations, Jalaluddin Sheikh (accused No. 4), Morsalim Sheikh (accused No. 3) and Amrul Sheikh

(accused no.2) came there later on with lathis in their hands. Thus, accused Nos. 2, 3 and 4 have also not caused any injury at any vital part of the deceased. Looking to the medical evidence there were injury Nos. (II), (III) and (IV) corresponding to the injuries caused by hard and blunt substance i.e. by Lathi. These injuries are not fatal in nature even as per the medical evidence given by P.W.7 and therefore, even if the case of the prosecution is taken on its own highest pitch, there is no role played by accused Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh. So far as accused Jalalludin Sheikh, Morsalirn Sheikh and Amril Sheikh are concerned, who are original accused No. 2, 3 and 4, they were not granted bail during trial and therefore, they have remained in jail for approximately more than five years. Therefore, it is alternatively submitted that looking to the nature of injuries, they can be punished for lesser offence u/s 324 IPC and so far as accused Dendar Sheikh, Mehruddin Sheikh and Khosdil Sheidi are concerned, they were granted bail by this Court, as they have not played any role nor there were any weapons in their hands and, therefore, they may be acquitted from the charges. This aspect of the matter has not been properly considered by the learned trial court.

6. We have heard learned A.P.P., who has mainly submitted that Sirajul sSheikh along with his brothers i.e. the present Appellants came at the house of the victim and Sirajul Sheikh caused head injuries by heavy sharp cutting instrument on Taimuddin Sheikh and as per the medical evidence, the deceased has expired mainly causing head injuries. Looking to the injury No. (II), (III) and (IV) in the postmortem examination of Taimuddin Sheikh carried out by P.W.7, it is submitted it is submitted by the learned A.P.P. that these injuries are capable of being caused by hard and blunt substances i.e. by lathis and looking to the evidence of eyewitnesses, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.6, there were lathis in the hands of accused Amrul Sheikh, Morsalim Sheikh and Jalalludin Sheikh, who are original accused No. 2, 3 and 4 respectively. They have caused injuries to the deceased who came later on and joined the original accused No. 1. Thus, no error has been committed by the learned trial Court in convicting the Appellants for the offence punishable u/s 302 to be read with Section 149 IPC as well as Section 148 of the IPC. Therefore, the appeal deserves to be dismissed.

7. Having heard the counsel for both sides and looking to the evidences on record, specially FIR which was registered on 20th March 1999 at Pakur Police Station to be read with the depositions of eyewitnesses, P.W.1, P.W.2, P.W.3, P.W.4 and P.W. 6, it appears that there was a dispute in between the accused side persons and the victim side persons about pelting stones by Taimuddin Sheikh at the house of Jalalluddin Sheikh. Moreover, looking to the evidences on record, it further appears that initially Sirajul Sheikh came with heavy sharp cutting instrument at the house of the victim along with his three brothers i.e. Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh, who are original accused Nos. 5, 6 and 7. It is clear from the depositions of these eyewitnesses that there was no weapons in the hands of Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh. Thus, only Sirajul Sheikh was having heavy sharp cutting instrument.

Initially there was no unlawful assembly as they were less than five in numbers. Moreover, there are no injuries upon the deceased by accused Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh.

8. Looking to the evidences on record, it further appears that thereafter there was some hot altercations between the informant Saifuddin Sheikh (P.W.6) and Sirajul Sheikh (original accused No. 1) and thereafter accused Amrul Sheikh, Morsalim Sheikh and Jalalluddin Sheikh came there with lathi in their hands, who are original accused Nos. 2, 3 and 4.

9. It further appears from the evidences on record that Sirajul Sheikh i.e. the original accused No. 1 caused head injuries to Taimuddin Sheikh, who became unconscious and expired subsequently. As per the medical evidence given by P.W.7 Dr. Ram Jeevan Prasad, it appears that injury No. (I) i.e. head injury was sufficient for causing death of the deceased. Injury No. (I) has been caused by Sirajul Sheikh. None of these Appellants have committed fatal injury to deceased.

10. Looking to the medical evidence given by Dr. Ram Jeevan Prasad, who is P.W.7, the following injuries were found on the person of Taimuddin Sheikh.

(I) 2" x 1" bone deep at head;

(II) 2"x2" abrasion at right side of chest

(III) ?" x ?" left hand;

(IV) Swelling 1" diameter on the left hand; and

(V) Bleeding from nose.

11. Looking to these injuries injury Nos. (II), (III) and (IV) were caused by lathi i.e. by accused Amrul Sheikh, Morsalim Sheikh and Jalalladin Sheikh whereas no injury was caused by accused Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh. Injury Nos. (II) and (III) were caused by hard and blunt substance. Thus, no role has been played by accused Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh. There was no weapon in their hands nor they have caused any injury to the deceased. Initially, there was no unlawful assembly also as per the evidences of the eyewitnesses. Only four persons were present. This aspect of the matter has not been properly appreciated by the learned trial court. Thus, Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh were not the party of the unlawful assembly and they were not sharing any common object. Thus, these three Appellants-accused had no knowledge that offence of murder is likely to be committed. Therefore, they cannot be held liable for the offence committed by others. The absence of the knowledge that offence is likely to be committed entitles them to be acquitted.

12. Looking to the evidences of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.6 to be read with the evidence of P.W.7 Dr. Ram Jeevan Prasad and the evidence of investigating officer, P.W.11, Ajay Kumar Singh, it appears that fatal injury was

given by accused Sirajul Sheikh, who has been separately dealt with in Criminal Appeal No. 365 of 2001 and whose conviction has been upheld by this Court. So far as the accused Amrul Sheikh, Mofsalim Sheikh and Jalalludin Sheikh, who were the original accused No. 2, 3 and 4, are concerned, they came later on with lathi in their hands. Initially, they were not a party of the unlawful assembly. Thus, they were not sharing any common object of any assembly. Therefore, they are also not guilty for offence u/s 148 of the Indian Penal Code. Injuries Nos. (II), (III) and (IV) are the injuries by lathi upon the deceased, two abrasions and one swelling. Looking to the nature of injuries caused by these three accused, namely, Amrul Sheikh, Morsalim Sheikh and Jalalludin Sheikh, it appears that they have committed offence u/s 324 IPC because these three accused were not the party of the unlawful assembly and because they were not sharing any common object of the assembly. The whole incident has taken place because the deceased Taimuddir Sheikh was throwing stones at the house of Jalalludin Sheikh. Injury No. (V) is consequence of Injury No. (I). Injury No. (II), (III) and (IV) were caused by accused Amrul Sheikh, Morsalim Sheikh and Jalalludin Sheikh. Therefore, they are liable to be held guilty for the offence under Section 324 IPC. This aspect of the matter has not been properly appreciated by the trial court.

13. In view of these evidences on record, we are hereby quashed and set aside the order passed by the Additional Sessions Judge, Pakur dated 27/30th July 2001 in Sessions Trial No. 243 of 1999/44 of 1999 of conviction and sentence of the accused Khushdil Sheikh, Mehruddin Sheikh and Dendar Sheikh. They are acquitted and they are discharged from liabilities of their respective bail bonds.

14. So far as accused Amrul Sheikh, Morsalim Sheikh and Jalalludin Sheikh are concerned, the judgment and order of conviction and sentence passed by Additional Sessions Judge, Pakur dated 27/30th July 2001 in Sessions Trial No. 243 of 1999/44 of 1999 is hereby quashed and set aside. They are convicted for the offence u/s 324 IPC and they are punished to undergo three years of simple imprisonment. It is stated that accused Amrul Sheikh, Morsalim Sheikh and Jalalludin Sheikh have already remained in custody for more than five years. Accordingly, conviction of these appellants u/s 302/149 of the Indian Penal Code as well as u/s 148 of the Indian Penal Code is converted into Section 324 of the Indian Penal Code and the order of sentence awarded to these appellants by the learned trial court is modified to the period already undergone by them. Since all the present appellants, who are six in number, are on bail, they are discharged from liability of their bail bonds.

15. This Criminal Appeal is partly allowed to the aforesaid extent