

(2021) 12 JH CK 0026
In the Jharkhand High Court
Case No : IA No. 5772 Of 2021

Bajnath Mahato And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 21-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 325, 341, 504, 506

Citation : (2021) 12 JH CK 0026

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Jitendra Tripathi, V. N. Jha

Final Decision : Disposed Of

Judgement

Rajesh Kumar, J

1. The present revision application has been filed against the judgment dated 14.10.2020, passed by the court of learned District & Additional Sessions

Judge â?" I, Dhanbad in Criminal Appeal No.78 of 2020, whereby the judgment dated 27.07.2020, passed by the court of learned Judicial Magistrate,

1st Class, Dhanbad in Tundi P.S. Case No.51 of 2017, corresponding to G.R. Case No.3447 of 2017 (Tr. No.234 of 2020), has been upheld. The

petitioners have been convicted for the offence under Sections 323 & 325/ 34 of the Indian Penal Code and sentenced to undergo rigorous

imprisonment for three years and fine of Rs.10,000/- for the offence under Section 325 of the I.P.C and rigorous imprisonment of one year and fine of

Rs.1,000/- for the offence under Section 323 of the I.P.C, with the default clause.

2. It has been submitted by the learned counsel for the revisionists that the revisionists have faced the trial for the offence under Sections 341, 323,

325, 504 & 506/34 of the Indian Penal Code. As per allegation on 14.09.2017 when the informant parties were ploughing their field, the altercation

took place between the parties and the informant parties were assaulted by lathi and spade. It has been submitted that upon culmination of the trial, the

petitioners have been convicted for the offence under Sections 323 and 325/34 of the I.P.C and for rest of the offences, they have been acquitted by

the trial court, which has been upheld by the appellate court also. It has further been submitted by the learned counsel for the revisionists that the

order of conviction is bad in law due to the reason that the injuries have not been proved by producing the x-ray report and further it has not been

evidenced that who were the aggressor. It has been submitted that even the place of occurrence has not been proved as the cross-examination of the

I.O. suggests that there was no sign of fight on the place of occurrence. On the above facts, the impugned orders have been assailed.

3. On the other hand, learned counsel for the State has supported the order of conviction stating that there is enough materials to sustain the conviction

under Sections 323 and 325/34 of the I.P.C.

4. Having heard learned counsel for the parties and on perusal of the materials available on record, it appears that the prosecution has proved his story

by examining altogether eight witnesses. P.Ws.-1, 2, 3 and 4, who are the family members, have supported the incident stating that they have been

assaulted. P.W.-5 is the doctor, who has proved the injury without producing the x-ray report stating that there was a fracture Ulna displaced and on

the above basis injury has been declared grievous. P.W.-6, Chiniya Devi, is the injured witness and has supported the incident. P.W.-7 is the informant

and he has also injury and has supported the allegation. P.W.-8 is the investigation officer, who has deposed that he has referred the injured Khub Lal

Mahato and Chiniya Devi for treatment in P.H.C Tundi. In cross-examination he has admitted that he has visited the place of occurrence but he has

not seen uprooted vegetables etc.. Thus, the place of occurrence is doubtful. The I.O has also not seized any instruments of assault. He has further

accepted that he has investigated the cross case being G.R. Case No.3448 of 2017 but he has not investigated regarding the cause of dispute between

the parties.

The defence has also produced one witness namely D.W.-1-Bharat Mahato and

some exhibits showing disability and injury.

5. On close scrutiny of the evidence of the witnesses and the materials brought on record, this Court finds that there is enough material to suggest that

there was fight between the parties and the informant parties have sustained some injuries. The grievous injury has not been proved but injuries have

been proved. Further, the prosecution has failed to prove the place of occurrence and the fact that the revisionists were the aggressors. The grievous

injury has also not been proved. In the absence of any evidence that the injury is grievous in nature and who is the aggressor, the conviction under

Section 325 of the I.P.C cannot be sustained and as such, the revisionists are acquitted from the said charge, but the conviction under Section 323 of

I.P.C is upheld.

6. In view of the above discussions and considering the nature of dispute and injury, the order of conviction is modified and the conviction under

Section 323 of I.P.C is upheld while the conviction under Sections 325/ 34 of the I.P.C is hereby set aside. So far as the sentencing part is concerned,

the revisionists are in custody since 24.09.2021, accordingly, the period of sentence, as imposed by the court below, is hereby, reduced to the period

already undergone by the revisionists. Further, they are directed to pay the fine of Rs.5,000/- (Five thousand) each, which will be paid to the

informant. On non-payment of the fine amount, the revisionists will undergo simple imprisonment of 15 days.

7. The court below shall issue the release order accordingly.

8. With the above modification of the impugned order, the revision application stands disposed of.

9. I.A. No.5772 of 2021 stands disposed of.