

(2016) 12 JH CK 0040

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 307 of 2003. (Against the judgment of conviction and order of sentence dated 29.1.2003 passed by the Special Judge cum 1st Additional District & Sessions Judge, Bokaro in connection with Sessions Trial Case no. 366 of 1994 arisi

Basawan Sah

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 09-12-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, Section 448
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(x), Section 3(xi)

Citation : (2017) 1 AIRJharR 258 : (2017) 1 ECrC 407

Hon'ble Judges : Mr. Ratnaker Bhengra, J.

Bench : Single Bench

Advocate : Mr. Rajesh Kumar Mahtha, Advocate, for the Appellants; Mr. Azimuddin, A.P.P, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Ratnaker Bhengra, J. - This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 29th January, 2003 passed by the Special Judge cum 1st Additional District & Sessions Judge, Bokaro in connection with Sessions Trial Case no. 366 of 1994 arising out of Bokaro Steel City P.S. Case no. 336 of 1993, whereby appellants have been held guilty for the offence punishable under sections 323/448 of the Indian Penal Code and sentenced to undergo Simple imprisonment for one year each under the sections, to run concurrently.

2. The prosecution case according to the written report of the informant Lalan Prasad, in brief, is that on 27.8.1993 at about 9 p.m. he was eating meal in his quarter. When his younger brother went out of the quarter after taking meal, he was abused including with sister centric abuses by accused Laljee Prasad, Basawan Sah, Anil Kumar and Ramjee Sah and, when his younger brother

protested the accused Laljee Prasad caught hold of collar of his younger brother and started assaulting him. Thereafter, other accused persons Basawan Sah, Anil Kumar and Ramjee Sah entered into his house, and Laljee Prasad started assaulting him with stick. He sustained injuries on his head and blood started oozing out. The others also assaulted him, his brother and his wife due to which they sustained injuries. On alarm, raised by them, people assembled there and then the appellants fled away.

3. The matter was reported to the police and Bokaro Steel City P.S. Case no. 336 of 1993 dated 27.8.1993 U/Ss 323/448/34 I.P.C. and Section 3(x)(xi) S.C. & S.T. Prevention of atrocities Act, 1989 against the appellants was registered. The investigating officer after due investigating submitted charge sheet, accordingly, cognizance was taken and case was committed to the Court of Sessions and registered as Sessions Trial No. 366 of 1994.

4. The prosecution in order to substantiate the charges has examined altogether four witnesses. Trial was held after which the appellants were found guilty of the aforesaid sections and sentenced as aforesaid. Hence, this appeal.

5. PW-4 is Lalan Prasad, informant has deposed that the incident is of 27th August, 1993 about 9 O'clock at night. At that time he was in his house and was having his supper. His younger brother had taken his meal and gone outside. There Laljee Sah, Basawan Prasad, Ramjee and Anil had abused his brother with filthy language. At this his brother said to control their speech, upon which, Laljee Sah caught the collar of his brother and started assaulting him. On hearing alarm he was about to get out of the house but just then the other accused bearing sticks in their hands entered into the house. Laljee Sah assaulted him with stick on his head due to which blood came out. The witness has shown the injury in court on his head. The others also assaulted him and his wife with sticks. He has further deposed that the intentions of the accused was to kill them. After the assault he went to the police station from where he was sent to the hospital for treatment because he had sustained grievous injuries. Before going to the police station, he had already given written complaint. He said that the written complaint was in his writing and he put his signature on it which is marked Ext.1. In his cross-examination he has deposed that when altercation was taking place with his brother then nobody had come from the neighbourhood. He had come up to the door to go out when the accused entered. The accused did not have given time to ask anything but on being assaulted he raised alarm. Many people had come but he is not able to tell the name of any of the people and he said that there was many new faces. In para 10 he has stated that even before this assault there has been another altercation with the accused Laljee Prasad and he had given information in this regard to the police.

6. PW-1 is Sulaxna Devi, in her deposition she has stated that alarm was heard from outside and Laljee Sah was heard abusing by using caste related words. Her brother-in-law rushed into the house, and he was followed by the accused Laljee

Sah, Ramjee Sah, Basawan Sah and Anil Kumar and these persons entered her house armed with stick and assaulted her brother-in-law or "devar" with stick. Her husband advanced then Laljee Sah assaulted her husband with stick on his head due to which his head was fractured. She was also injured on her hand and feet. Her "devar" was also injured in hand and feet. She has deposed that she was assaulted on her stomach by Laljee Sah. On alarm, people from nearby gathered at which the accused fled away. While fleeing the accused were calling to her "devar" Baban "chamar", "siyar" you sleep in the same house. In her cross-examination she has said that at that time she had not gone outside so who had come, she is unable to say, and whether her "devar" was assaulted outside. In para 12 she has stated that the accused had entered the house, and in para 14 she has said that accused Laljee Sah was abusing outside by calling "chamar". She had also deposed that she gave her statement to the police.

7. P.W.-2 Rama Shankar Bharti has deposed that on that day he was sleeping in the verandah. Just then Laljee Prasad, Basawan Sah, Ramji Sah and Anil Kumar came with sticks in their hands. All the four accused started abusing his brother Lalan Prasad and accused Laljee Prasad assaulted his brother Lalan Prasad on his head with stick due to which blood started flowing. His "bhabhi" went forward to save him and she was also assaulted. The accused were abusing by calling "chamar" "siyar" and saying that we will not be allowed to live there.

In his cross-examination, he has deposed that since he was ill, when the accused came and abused and assaulted, he did not raise alarm. That his brother and bhabhi raised alarm at which some neighbours started gathering but just then the accused fled away. He has further deposed in his cross-examination that at the time of the abuse and assault, apart from him, his brother and bhabhi no one else was there. His brother was treated at B.G.H. and he was there for 8 days.

8. P.W.3 is Baban Prasad. He has deposed that he had after supper just stepped outside when Laljee Prasad called him "sala" "siyar" "chamar" and mother centric abuse and said you sleep in one house. He told him to control his speech, at which Laljee Prasad caught his collar and slapped him. In fear he entered his house. His elder brother was eating food and he got up. Following him accused Basawan Sah, Laljee Prasad, Ramji Sah and Anil Kumar also entered. Accused Laljee Prasad assaulted his elder brother, on his head, at this he and his bhabhi tried to save his brother, on which they also received injuries.

In para 7 he has deposed that before this incident there was no dispute with Laljee Prasad. In para 9 he has deposed that he had not been medically treated at any place. That he further said that he had gone to the Police Station and Police had taken his statement. He has also said that the police had not taken statement of his elder brother and bhabhi, because his elder brother was admitted in hospital and his bhabhi was with him.

9. Learned counsel for the appellants has argued that the entire case against the appellants is based on previous or prior enmity and therefore needs to be set-

aside. Counsel has stated that P.W. 4 in his deposition, during his cross-examination at Para-10, deposed that there was prior dispute with Laljee Prasad and matter was informed to the police and therefore, the current case is motivated and manufactured. Further, there are no independent witnesses. All the witnesses are related or known to each other, which would support the defence that the case is a cooked up one against the appellants. It has been said in the written report that some persons had gathered on alarm but they have not been examined. If these persons said to have gathered on alarm had been examined, then the facts would have come out, but they have not been examined. Hence, non-examination of such persons had also highly prejudiced these appellants.

Counsel for the appellants further submitted that no doctor was examined to substantiate whether any injuries was at all inflicted or not. So in the absence of any injury report and the non-examination of the doctor for the same, the entire case and proceedings against the appellants are not believable. It has come from the records that he was admitted for 8 days in hospital, if that was so, then surely there would have been some medical reports, and, hence, injury and doctor would have been examined. In the absence of medical records, injury report and non examination of doctor, case against appellants stands demolished. In the absence of injury report and non examination of doctor, no assault or attack by rod or lathi can be made out.

Counsel for the appellant has further submitted that no assault u/s 448 IPC is made out because even if it is accepted that Baban Ram was assaulted, it is admitted that after eating he went outside, so no case of house trespass can be made out. Counsel has also submitted that non-examination of I.O. prejudiced the appellants, because the truthfulness of what has been said under section 161 Cr.P.C. cannot be tested in comparison to what has been deposed by the witnesses. Finally by reading out the depositions of the prosecution witnesses, he said that there are inconsistencies or contradictions in depositions, hence case is not sustainable against appellants and they deserve acquittal.

10. On the other hand learned APP., has submitted that all the witnesses P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have supported the case of the prosecution as said in the written report. The inconsistencies pointed out, or that seem to appear in the depositions are minor in nature and do not subtract from the main action of assault.

The written report of the informant, Lalan Prasad and the main person assaulted is on the record as Ext.-1, and there is no reason why this will be concocted, or at least the written report authenticity has not been challenged. Further, the main story of the event is that the four appellants came to the place of occurrence, abused one brother outside, entered the house, injured the elder brother Lalan Prasad on his head so that blood oozed, and wife of informant Lalan Prasad and another brother also sustained minor injuries. The victims being Scheduled Castes were also targeted by the caste name or called "chamar"

and alternating "siyar" and also abused with mother centric abuse. Such abuses are not a very rare happening, particularly if there is some grudge or enmity and from the deposition of informant, PW-4 it seems a prior incident had also taken place.

Findings:

11. Having gone through the records of the case, evidence and the arguments, it is noted that the conviction is for section 448 and 323 IPC. The offence, under section 3 (x), (xi) of the S.C./S.T. Prevention of Atrocities Act 1989 was not made out. From the evidence, no other witnesses have come forward apart from family members, so may be it was difficult to convict for the offences under the special act.

12. As has been rightly pointed out by the learned APP that the main thrust of the crime, that is assault on the family members at the place of occurrence seems to be well established by the evidences of P.W.-1, P.W.-2, P.W.-3 and P.W.-4. It has been correctly stated that there is no reason why a false, a frivolous case will be instituted against the appellants. In any society allegation by the weak, or lower placed requires courage, even if true, let alone false or frivolous cases. So all these witnesses are consistent in supporting prosecution case and also in supporting the evidence of each other.

13. It has come in the evidence of P.W4, informant that after assault, he had gone to the Police Station, from where he was sent to the hospital, and this has not been contradicted or challenged. He has also identified his written report or Ext.-1.

P.W.-1 and P.W.-3 have both deposed that they had given their statements about the incident to the police and this has not been opposed or contradicted.

14. It is true that the doctor or the I.O. have not been examined, nevertheless, P.W. 4, who was assaulted on his head has indicated or shown his injury or where he received injury on his head to the court during his deposition. Hence, for this reason and the other reasons stated aforesaid, the allegation of P.W.-4 rings true. Since, the offences are for section 323 IPC, the injury may have been less severe or even less visible, particularly on P.W.1 and P.W.3. Offence, under section 448 IPC is most probable, since, the incident took place just outside as well as inside the house. Alarm was made, and persons appeared, and before more serious injuries were inflicted, fortunately for both sides, the appellants fled.

15. One point to be noted is that in this cases the sections charged under the S.C./S.T. (Prevention of Atrocities) Act, 1989, were not sustained because of faulty or defective investigation, since as per law the person assigned the investigation must be an officer not below the rank of Dy.S.P. However, here I am only restricted to the offences under the I.P.C.

16. Based on the aforesaid circumstances indicated and reasoning the conviction under both the sections 323 and 448 IPC are sustained. The case is of the year

1993, almost 25 years have passed, the appellants must be much older and undergone hardships and rigours of trial, hence, sentence is modified to one month S.I. Any period undergone shall be detracted. Appellants are on bail, the bail bonds are cancelled and the concerned or successor court is directed to procure their arrest to serve out the remaining sentence.