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(2019) 12 JH CK 0110

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 182 Of 2006

Betka Besra And Ors — APPELLANT

Vs

State Of Jharkhand — RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:
Indian Penal Code, 1860 — Section 34, 147, 148, 149, 307, 323, 324, 380, 452

Citation : (2019) 12 JH CK 0110

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Pankaj Kumar, P.K.Appu

Final Decision : Disposed Of

Judgement

Heard Mr. Pankaj Kumar, learned counsel for the appellants and Mr. P. K. Appu, learned A.P.P., appearing for the State.

This appeal is directed against the judgment of conviction dated 31.01.2006 and order of sentence dated 01.02.2006 passed by Sri Binay Kumar

Sahay, Additional Sessions Judge-I, Rajmahal in Sessions Case No. 158/1998 and Sessions Trial No.109/2002 whereby and whereunder the appellants

have been sentenced to undergo R.I. for six months u/s 323/34, R.I. for two years u/s 324/34, R.I. for five years with a fine of Rs.1000/- each u/s

307/34, R.I. for three years u/s 380/34 and R.I. for three years u/s 452 of the Indian Penal Code. In default of payment of fine each shall further

undergo R.I. for three months. All the sentences were directed to run concurrently.

F.I.R. has been lodged on the information given by the informant, namely, Lukhi Ram Tudu, (P.W.-3) on 08.11.1996 that when he was sleeping at

verandah, these appellants alongwith two other unknown persons armed with

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lathi and knife had entered into his house and demanded paper of

disputed land which originally belongs to Late Sabri Murmu and on refusal he had been assaulted. Betka Besra had given dagger blow and other

accused has given lathi blow. Motka Besra has assaulted his wife, who intervened during the incident. They have taken away some cash, document of

the land and gold ornaments after breaking a box in a room belonging to the informant. On alarm raised by the son and son-in-law of the informant, the

accused fled away and villagers had assembled and helped them. In the morning, they have approached the police station and on information given by

the informant, F.I.R. has been lodged being Taljhari P.S. Case No. 63/1996 on 09.11.1996.

After completion of investigation, charge-sheet has been submitted against the appellants under Sections 147, 148, 149, 324, 452, 307 and 380 of the

IPC. Thereafter, cognizance has been taken. Case has been committed to the court of sessions and ultimately, charge has been framed under

Sections 307/34, 452/34 and 380/34 to which appellants pleaded not guilty. Accordingly, trial has been commenced.

To substantiate the prosecution story altogether ten witnesses have been examined.

P.W-1, Rison Tudu is not an eye witness rather he has been called by P.W. 2 to show the blood stain and he has seen the injury of P.W. 3 and P.W.

6.

P.W.-2, Sunil Tudu is the son of the informant. He has supported the incident but he is not a witness to the assault.

P.W. 3, Lukhi Ram Tudu has supported the incident. At this stage, argument has been advanced that the informant has now changed the place of

occurrence and the entire incident. As per the testimony before the court, the appellants have first entered in the room of the son (P.W.2) and had tied

him. The room is situated in the north portion, thereafter they came to the room of the informant and has demanded documents of the disputed land

originally belonging to Late Sabri Murmu. He was in the room alongwith his wife. He has been assaulted with knife by Betka Besra and lathi by

Sunder Besra. His wife has sustained injury by Motka Besra and Late Sabri Murmu by other appellants. In his cross-examination, it has been testified

that 20 bighas of land belonging to Late Sabri Murmu which is the bone of

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contention between the parties. Betka Besra claims on that land, however

there is a civil dispute going on between the parties. The paper of the said land has been demanded and that is the reason for entering into the house

of the informant.

P.W. 4 Madhusudan Thakur is the hearsay witness and has supported the incident.

P.W. 5 Fulchand Thakur is not an eye witness and has been declared hostile.

P.W. 6 Barki Marandi (wife of the informant) has supported the incident. As per the testimony of this witness, the place of occurrence is the room of

the informant where both informant and this witness were sleeping. The incident has occurred at about 11 P.M. and the reason for the incident has

been assigned is that there is dispute between the parties regarding the land belonging to Late Sabri Murmu and for obtaining the paper of the said

land, the accused persons had entered into the house and the incident had taken place.

P.W. 7 Barki Besra (daughter-in-law of the informant and wife of P.W. 2) has supported the incident but she is not a eye witness to the assault. She

has further testified that some articles had been taken away from her room after breaking the box.

P.W. 8 Suresh Thakur has been declared hostile.

P.W. 9 is a formal witness, who has proved the F.I.R. (Ext.-1) and endorsement F.I.R. i.e. Ext. 2

P.W. 10 Dr. Vijay Kumar, who has been examined the injury of the informant (P.W. 3) and wife (P.W.6).

As per the injury report and testimony of the P.W. 10 following injuries have been found:-

Lukhi Ram Tudu:-

i. Lacerated wound Â½â??x Â¼â??x skin deep over outer side of right eye.

ii. A swelling of 2â??x1â?? over left maxillary process.

iii. Lacerated wound of 1â?? x Â¼â?? in scalp deep over occipital region of scalp.

iv. Two incised wounds of 1â??x Â¼â?? depth not ascertained and Â¾â??x Â¾ â?? depth not ascertained over left side of abdomen

Barki Marandi:-

i. Incised wound Â½â??xÂ½â?? over left ear lobe.

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ii. Tenderness over right interior chest wall.

The injury Nos. 1, 2 and 3 of Lukhi Ram Tudu has been found simple in nature and regarding injury No.4, neither any opinion has been given nor any

material has been brought on record. Injuries of Barki Marandi (P.W. 6) are simple in nature. On analyzing the testimony of the witnesses and

material available on record, it transpires that there is land dispute between the parties which originally belongs to Late Sabri Murmu. The informant

has possession over the said land.

Appellants are claiming right title over the said land and a civil dispute was going on between the parties, which has been admitted and testified by the

P.W. 3 and P.W. 6. Although, in the present case, I.O. has not been examined but the place of occurrence and injury has been corroborated by the

other witnesses and injury report as well as evidence of Dr. Bijay Kumar i.e. P.W. 10, the injury itself suggests that there is no attempt to murder

neither there is intention nor the injury inflicted is sufficient in ordinary course of nature to cause death. So ingredient for conviction under Section 307

of the IPC is not made out. So far as charge under Section 380 of the IPC is concerned that has not been established as there is no corroborating

material available on record. So called allegation of taking away certain ornaments and cash appears to be exaggeration. No recovery has been

shown. Further I.O. has not been examined in the present case. Thus, the material evidence available on record only proves the allegation under

Section 323, 324 and 452 read with section 34 of the IPC.

The incident is of the year 1996. The trial has been completed in the year 2006 and the appeal is being heard in 2019. Considering the entire

circumstance and evidence available on record, the appellants are discharged from the charged under Sections 307 and 380 of the IPC. They stand

convicted under Sections 323, 324 and 452 read with section 34 of the IPC. So far as sentence is concerned, since there is a land dispute between the

parties and the incident is of the year 1996, sentence is reduced to the period already undergone by these appellants as they have remained in custody

for about eight months.

The judgment of conviction dated 31.01.2006 and order of sentence dated 01.02.2006 passed by Sri Binay Kumar Sahay, Additional Sessions Judge-I,

Rajmahal in Sessions Case No. 158/1998 and Sessions Trial No.109/2002 is

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modified to the extent indicated hereinabove. Accordingly, the appeal stands disposed of with above modification.

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