
(2019) 12 JH CK 0285

In the Jharkhand High Court

Case No : Criminal Review No. 1059 Of 2019

Bharat Kumar And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 323, 325, 334, 341, 504
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 12 JH CK 0285

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : B.M. Tripathy, Naveen Kumar Jaiswal, Naveen Kr. Ganjhu

Final Decision : Disposed Of

Judgement

1. In this revision application the petitioners are Challenging the Judgment dated 14th day of May, 2019 passed in Criminal Appeal No. 117 of 2018 by

the learned Additional Sessions Judge-VIII, Dhanbad whereby the appeal preferred by the petitioners against the judgment of conviction and sentence

in G.R Case No. 622 of 2008 passed by the Judicial Magistrate Ist Class has been dismissed. Further the judgment of conviction and sentence passed

in G.R Case No. 622 of 2008 by the Judicial Magistrate, Ist Class Dhanbad is also under challenge.

2. F.I.R was lodged being Baghmara (Barora)P.S Case No. 60 of 2008 by the informant, Dhananjay Kumhar alleging that he was digging earth for

taking water connection through pipe, but the petitioners and another obstructed him, assaulted him resulting in his injuries. It is alleged that Anup

Kumhar, i.e petitioner no. 2 was armed with a rod who assaulted him and Bharat Kumhar i.e petitioner no. 1 assaulted him with lathi. F.I.R was

instituted under sections 341/323/307/504/34 of the Indian Penal Code. The informant, thereafter, died during his treatment resulting in addition of

Section 302 of the Indian Penal Code.

A discharge petition of the accused persons was dismissed resulting in filing the Cr.Revision application before the Honâ??ble High Court. Vide

order dated 5.1.2010 the Honâ??ble High Court allowed the Cr.Revision No. 113 of 2009 and held that the ingredients of the offence under sections

302/ 307 of the Indian Penal Code is not made out but the offence under section 325 of the Indian Penal Code is made out. Thus, on the basis of the

judgment of the Honâ??ble High Court, charge was framed under section 325/34 of the Indian Penal Code against the petitioners and the petitioners

were put on trial. Altogether 14 witnesses were examined on behalf of the prosecution. Documents were also exhibited. Four documents were

exhibited on behalf of the defence which includes FIR of Baghmara(Barora) P.S Case No. 59 of 2008 and chargesheet.

3. Out of the 14 witnesses, who were examined,7 witnesses i.e P.W5,P.W6,,P.W7,P.W 8,P.W9, P.W11 and P.W.12 did not support the prosecution

case, rather they were declared hostile. P.W 13 is the Medical Officer, who examined Dhananjay Kumhar and found one lacerated injury in the right

perital region on scalp and small abrasion over left index finger. He stated that the injuries are simple in nature which may be caused by falling on

rocky place.P.W.14 conducted the postmortem examination on the dead body of Dhananjay Kumhar and found abrasion behind the left elbow and

stitched wound on back portion of the head and abrasion on the left shoulder. He stated that the external injuries were caused by hard and blunt

substance which was not sufficient to cause death. P.W 4 stated about the occurrence and supported the prosecution version that deceased was given

a blow by the accused persons when he was digging earth to take water connection, but in cross-examination, he stated that accused persons

assaulted the informant continuously for 20 minutes. P.W3 also supported the prosecution case who stated that for the self same occurrence Rupa

Devi had lodged a criminal case against his father (informant of the present case) and other family members. P.W.2 stated that Rupa Devi and

accused person prevented Dhananjay Kumhar from digging earth for taking water connection but at the instigation of the mother of Anup Kumbhar

an assault was committed.

4. On the basis of the aforesaid evidence and after recording the statement of the accused under section 313 Cr.P.C and admitting the document as

evidence, the trial court convicted the petitioners for committing the offence under section 323 of the Indian Penal Code as the courts below found

that the prosecution has failed to prove the offence punishable under section 325 of the Indian Penal Code. On the point of sentence, the courts below

held that since the petitioners are facing rigor of criminal prosecution since last 10 years, it would be appropriate to sentence them to undergo R.I for

one year for committing offence under section 323 of the Indian Penal Code. The appellate court after hearing the appeal sustained the order of the

conviction and sentence and accordingly, the appeal was dismissed.

5. The learned Sr. Counsel for the petitioners has argued that by no stretch of imagination the petitioners could have been convicted for committing

offence under section 323 of the Indian Penal Code. He submits that the said sentence is too harsh. He further submitted that both the courts below

did not even consider or discuss the defence documents, which are FIR of Baghmara (Barora) P.S Case No. 59 of 2008 and chargesheet, which

suggests that there was an altercation between the parties and the informant in this case is the aggressor. He submits that both the courts below were

duty bound to look into the defence evidences, which are FIR and chargesheet but by not doing so both the courts below have committed grave

illegally. He further submits that non examination of the I.O is also fatal in this case as the complicity of the informant in this case could not be brought

into light. He submits that from exhibits A and B it would be quite clear that the instant case will not fall within the provision of Section 323 of the

Indian Penal Code but can it be best under section 334 of the Indian Penal Code where hurt was caused on provocation. He further submits that the

witnesses had categorically stated that some hue and cry were going on and the informant was forbidden by the petitioners when the informant was

going to dig the earth to take water connection and when he did not accede to the request, the entire occurrence had taken place. He further submits

that Exts.A and B would suggest that the informant is the aggressor and because of aggression, an altercation had taken place which will come within

the purview of section 334 of the Indian Penal Code.

6. The learned counsel for the State submitted that admittedly the petitioners assaulted the informant who died later on. Thus the courts below have

rightly convicted the petitioners under section 323 of the Indian Penal Code taking a lenient view, not convicted under section 325 of the Indian Penal

Code. He submits that no prejudice has been caused to the petitioners for non-examining the I.O.

7. After hearing the learned counsel for the parties I find that the petitioners have been convicted under section 323 of the Indian Penal Code. Section

323 provides that whoever ,except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either

description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. From the aforesaid section

it is clear that if the instant case comes within the ambit of section 334 of the Indian Penal Code, no conviction under section 323 of the Indian Penal

Code can be sustained. Section 334 of the Indian Penal Code provides for voluntarily causing hurt on provocation. In this case I find that there is a

case and counter case filed by both the parties. The allegation made by the informant in this case is that the petitioners assaulted the informant when

he was digging earth to take water connection .The prosecution witnesses stated that informant was forbidden for digging earth, as he did not then the

assault had taken place. Ext A is FIR of Baghmara (Barora) P.S Case No. 59 of 2008 which has been lodged at the instance of the accused persons.

From perusal of the Ext A, I see that there is an allegation that the informant in this case and another entered into the house of the petitioners and the

mother of the petitioners had forbidden him for digging earth and thereafter he and others assaulted the informant's father and others.

Chargesheet was also submitted in that case. Thus I find that there was an overtact from both sides. Thus, the contention of the petitioners that they

were provoked from side of the informant cannot be ruled out. Further more, non-examination of the I.O has not brought forward the status and

progress of Baghmara (Barora) P.S Case No. 59 of 2008. I find that Ext.A has not been discussed or even taken note of by the trial court and the

appellate court, when it should have been. Thus I find that the courts below have committed grave illegality by not taking into consideration the

aforesaid document. No doubt, the informant was assaulted but from Ext.A there can be a possibility that there was sudden provocation from the side

of the informant resulting in the entire occurrence when there is a provocation section 323 IPC will not be attracted.

8. In view of the aforesaid fact, the conviction of the petitioners under section 323 of the Indian Penal Code and sentence for one year punishment

cannot be sustained. This court feels that this case comes within the purview of Section 334 of the Indian Penal Code. Thus this court set aside the

judgment passed by the trial court as well as the appellate court and convict the petitioners for committing the offence punishable under section 334 of

the Indian Penal Code and sentence them to under R.I for one month.

9. It has been submitted that the petitioner no. 1 has already remained in custody for more than three and half months and the petitioner no. 2 has

remained in custody for more than seven months. In that view of the matter, if the petitioners have already remained in custody for more than one

month (modified sentence) they should be released forthwith.

10. This Cr.Rev. application is disposed with the above modification.