

(2020) 01 JH CK 0178

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 285 Of 2016

Bhola Sao

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 109, 323, 341, 427, 448, 506

Citation : (2020) 01 JH CK 0178

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Manoj Kumar Sinha, Rakesh Kumar

Final Decision : Disposed Of

Judgement

1. Defect No. 9(ii), as pointed out by the office is ignored.
2. Heard learned counsel appearing for the appellant and learned APP appearing for State.
3. This appeal is directed against the judgment of acquittal dated 08.02.2016 passed by learned Additional Sessions Judge-VI, Dhanbad in Cr. Appeal No. 96 of 2013 by which the judgment and order conviction and sentence dated 29.01.2013 passed by the learned Judicial Magistrate, 1st Class, Dhanbad in C.P. Case No. 1460 of 2005 by which the respondents No. 2 and 3 had been convicted for the offences u/s 341, 109 and 323 of the Indian Penal Code and had been sentenced accordingly, has been set aside and the respondents No. 2 and 3 have been acquitted from the charge levelled against them.
4. In the complaint case instituted by the appellant herein, it had been alleged that he was running grocery shop near the boundary side of Tetulmari

P.S. One Hanuman Yadav used to take grocery item from the shop on credit and the dues went up to Rs. 12,000/-. Since Hanuman Yadav had died without paying the said amount, the respondent No. 3, being the son of Hanuman Yadav had assured the complainant/ appellant that as soon as the dues arising out of the death of Hanuman Yadav is received the amount shall be paid. On such assurance it is said that the respondent No. 3 had managed to take grocery item on credit and finally the dues went up to the tune of Rs. 17,000/-. In order to grab the property of the complainant/ appellant as also to not pay the amount of dues, the respondent No. 3 in connivance with the respondent No. 2 who was the Sub Inspector of Police started pressuring the complainant/ appellant to remove the shop from the boundary wall of the Police Station. It has also been alleged that in spite of threatening given by the respondents No. 2 and 3 when the shop was not vacated on 06.09.2005, the respondent No. 3 and other persons had entered into the shop and damaged food grains and utensils and the respondent No. 2 had locked the premises including the godown.

Upon the complainant case being instituted, the complainant/ appellant was examined on Solemn Affirmation and thereafter cognizance was taken for the offences punishable u/s 323, 341, 427, 448, 506 and 109 of the Indian Penal Code. Substance of accusation was explained to the respondents No. 2 and 3 and thereafter the trial proceeded.

5. Vide judgment and order conviction and sentence dated 29.01.2013, the learned Judicial Magistrate, 1st Class, Dhanbad acquitted the respondents No. 2 and 3 from the offences u/s 427, 448 and 506 of the Indian Penal Code while they were found guilty for the offences u/s 341/ 109, 323/109 and was sentenced accordingly. Being aggrieved by the judgment and order conviction and sentence dated 29.01.2013 passed against the respondents No. 2 and 3, they had preferred Cr. Appeal No. 96 of 2013 in which vide judgment dated 08.02.2016, the learned Additional Sessions Judge-VI, Dhanbad had set aside the judgment and order conviction and sentence dated 29.01.2013 passed by the learned Judicial Magistrate, 1st Class, Dhanbad. The complainant accordingly has filed the present appeal challenging the judgment of acquittal dated 08.02.2016 passed by learned Additional Sessions Judge-VI, Dhanbad in Cr. Appeal No. 96 of 2013.

6. It appears that in course of trial 04 witnesses were examined by the

complainant. C.W. 1, Anil Saw is the brother-in-law of the complainant. C.W.

2, Binod Saw is a chance witness who had gone in the morning of the occurrence to the shop. C.W. 3, Baby Devi is the wife of the complainant while

C.W. 4 is the complainant himself. The brother-in-law who has been examined as C.W. 1 has stated that 10-12 persons had come to the shop and the

complainant was subjected to assault. The complainant has also stated about his neighbours but none of the neighbours have been examined in order

to substantiate the allegations made in the complaint petition. Mohan Yadav, Bilas Thakur are the neighbours of the complainant as per his version but

they never have been examined. Out of the four witnesses of the complainant two witnesses apart from the complainant are related to him and

therefore the learned appellate court has scrutinized their evidence with much circumspection. It also appears that although the shop of the appellant

was adjacent to the Police Station, but no information about the offence had been registered and the complaint case had been filed after about a delay

of 10 days. The learned Magistrate had taken into consideration the fact that the complainant had neither produced any injury report nor had produced

any evidence which would indicate that the articles were damaged or for that matter dues were pending against Hanuman Yadav as well as the

respondent No. 3. The complainant himself has also admitted in his cross examination that the house and shop was situated on the land of BCCL. It

therefore appears that the complainant himself was an encroacher by constructing the house and shop in the land of BCCL.

The circumstances narrated above have been appropriately considered by the learned appellate court while acquitting the respondents No. 2 and 3

from the charges levelled u/s 323/109 and 341/109 of the Indian Penal Code. Learned counsel for the appellant has failed to make a dent in the

impugned judgment dated 08.02.2016 passed by learned Additional Sessions Judge-VI, Dhanbad in Cr. Appeal No. 96 of 2013 and accordingly having

found no reason to interfere in the said judgment, this appeal stands dismissed. Pending I.A. stands disposed of.