
(2006) 11 JH CK 0012
In the Jharkhand High Court

Chaitan @ Chaitanya Pradhan

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 23-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 307, 324

Citation : (2007) 1 JCR 588

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—The sole appellant Chaitan @ Chaitanya Pradhan was charged with, tried and convicted for the offence u/s 307 IPC and sentenced to undergo R.I. for 7 years and a fine of Rs. 2000/- by the 1st Additional Sessions Judge. Chaibasa vide order dated 20.09.1999 passed in Sessions Trial No. 208 of 1994. The appellant has challenged the aforesaid order of conviction and sentence.

Briefly stated, the facts of the case is that in the evening of 20.4.1993 at about 8.00 PM, the informant namely Rishikesh Pradhan (PW1) after having his dinner, was sitting in front of his house by the side of the road. The accused Chaitan came there flashing torch and began abusing the informant as to why he had shown his house to the police. While so abusing, he whipped out a knife, aiming a blow at the informant. In his attempt to ward off the blow, the informant sustained injury on the thumb of his right hand, but he could not prevent the knife blow inflicting grievous injury on his abdomen. On his alarms, witnesses namely, Motilal Pradhan (PW8), Arkhit Pradhan (PW5), Rajeshwar Pradhan (PW9), Gauri Shankar and Kriti Pradhan came running to him, but by the time they arrived there, the accused had fled away. The informant was promptly taken to the hospital where he was provided medical treatment as indoor patient. The motive attributed for the assault is that in the morning of the previous day, while the informant was sitting at a cycle repairing shop in his village, the police arrived and on being asked by them, he showed the house of the accused Chaitan @ Chaitanya Pradhan to them. It was this grudge which the accused had

borne against the informant.

2. At the trial, the prosecution has examined altogether 10 witnesses including the informant (PW1), the doctor namely, Dr. Kailash Nath (PW4), mother and sister of the informant namely, Indumoni Devi and Sarti Kumari (PW2 and PW6) respectively, besides, co-villagers of the informant. The prosecution has however failed to examine the investigating officer.

3. On considering the evidences and placing reliance upon the testimonies of the informant, his mother and sister as also the evidence of the doctor, the trial court had recorded its finding of guilt against the appellant for the aforesaid offence and had sentenced him accordingly.

4. The main ground on which the impugned judgment of conviction and sentence has been assailed by the appellant is that no offence u/s 307 IPC is made out even on the basis of the entire evidence on record. Learned Counsel for the appellant elaborates that though the doctor (PW4) has claimed that the injury found on the abdomen of the informant was grievous in nature, but the doctor has not explained as to the basis on which he has opined that the injury was grievous. Learned Counsel explains that though, the doctor has found two separate injuries- one on the abdomen and another on the thumb of the informant, but both the injuries were sustained by a single blow only, as per own admission of the informant and there being no repetition of the assault, the circumstance amply demonstrate that the assailant had no intention whatsoever to cause death of the informant. Adverting to the other grounds, learned Counsel submits that though the F.I.R. mentions the names of several persons as witnesses who had purportedly arrived immediately on hearing alarms of the informant at the place of occurrence, but significantly, neither the mother nor the sister of the informant have been named as the persons present at the place and time of occurrence or soon thereafter. Yet, both the mother and the sister of the informant have been examined as material witnesses by the prosecution and both of them claim to have seen the occurrence from the beginning and also to have given statements to the police u/s 161 Cr. P.C., although, there appears no such statements given by them to the investigating officer. Learned Counsel argues that the above inconsistencies and contradictions appearing in the evidence of the mother and sister of the informant could not be brought on record on account of non-examination of the investigating officer causing thereby serious prejudice to the defence. Learned Counsel adds further that there is discrepancy in the evidence regarding the actual place of occurrence also and the exact location of the place of occurrence could possibly have been described by the investigating officer, since the informant does not offer any adequate description, nor do the witnesses. Learned Counsel further submits that none of the independent witnesses have supported the prosecution's case, nor offered any corroboration to the evidence of the informant and, therefore, under such circumstance, the trial court has committed serious error leading to miscarriage of justice by placing implicit reliance upon the testimony of the informant and

gaining support from the statements of the informant's own family members namely, his mother and sister, although, neither of the witnesses were earlier tested by the investigating officer during the investigation. It is lastly submitted that the sentence, as imposed upon the appellant, is also severe and that the trial court has not considered the fact that the alleged motive attributed to the appellant is very weak and further, the circumstance in which the occurrence took place suggest that it was at the spur of the moment that the quarrel ensued between the informant and the accused.

5. Learned Counsel for the State, on the other hand, has tried to controvert the grounds advanced by the appellant, stating that the evidence of the informant alone is sufficiently reliable and trustworthy to record the finding of guilt against the appellant. Learned Counsel adds further that the fact that the appellant has inflicted knife blow on the abdomen of the informant which is vital part of the body, is itself indicative of the intention of the assailant to inflict such bodily injury, knowing that it may cause death of the informant and, therefore, offence u/s 307 IPC is squarely applicable to the appellant.

6. On perusal of the lower court records, it appears that out of 10 witnesses examined by the prosecution, two witnesses namely, PW3, and PW10 are formal witnesses who have merely proved the documents including the fardbeyan and the formal F.I.R. and also the case diary. PW5, PW7, PW8 and PW9 are the co-villagers of the informant whom prosecution had produced as the eyewitnesses, but all of them have been declared hostile by the prosecution, since they do not offer support to the prosecution's case. The prosecution is thus left with the evidence of the informant (PW1), his mother and sister (PW2 and PW6)), besides evidence of the doctor (PW4) to rely upon.

The informant (PW1) who is the injured is consistent in his evidence and has elaborately stated the manner in which the accused had accosted him, abused and inflicted knife injury on him. He has also described the place of occurrence stating that it was situated just in front of his house by the side of the road. The description of the place of occurrence, as stated by the informant, corresponds to the description given by PW2 and PW6, both of whom happen to be the members of the informant's own family and were present at their house at the time of occurrence. Both PW2 and PW6 affirm that they had found the injury on the abdomen and on the right thumb of the informant. The doctor (PW4) who claims to have attended the informant at the Railway Hospital at Chakradharpur on 20.4.1993 at about 11.15 PM affirms that he had found one incised wound deep over anterior abdominal wall about 2" below the Xiphisternum and another incised wound about 2" in size over posterior aspect of right thumb. Both the injuries were caused by sharp penetrating weapon. He has opined that the injury on the abdomen was grievous, while injury on the thumb was simple in nature. The age of the injury, according to him, was within six hours prior to the examination. There is, thus, ample corroboration to the evidence of the informant, both in respect of the situs and weapon used for inflicting injury on

him as also the time when he had sustained injury besides the place of occurrence. It is in his cross-examination that he has explained that both the injuries were sustained by him by a single blow. He also claims in his cross-examination that besides co-villagers named in the F.I.R., his mother was also present nearby at the time of occurrence. He admits however that he had not stated either in the F.I.R. or in his statement to the police regarding the presence of his mother at the place and time of occurrence. Except the above, improvement regarding presence of the mother, the defence has not elicited any such circumstance from the evidence of this witness which could render his testimony as untrustworthy. Learned Counsel for the appellant has strenuously argued that non-examination of the investigating officer has caused serious prejudice to the defence, but going through the evidences, there does not appear any such circumstance elicited from the witnesses on the basis of which examination of the investigating officer was necessary.

Both PW2 and PW6 in their respective depositions have claimed to be the eyewitnesses to the occurrence and have tried to explain that they being the members of the informant's family and being present in their house at the time of occurrence, had witnessed the occurrence themselves. This part of the evidence of these two witnesses has been challenged by the learned Counsel for the appellant. His contention is that even though both these witnesses who were members of the informant's family, may have been present at their house, but their presence at the place of occurrence as eyewitnesses, cannot be believed in view of the fact that neither of these two witnesses have been named in the F.I.R., although the informant has named several other co-villagers as eyewitnesses to the occurrence. Furthermore, in their respective statements to the police, neither of these two witnesses has claimed to have seen the actual assault or occurrence. Rather, they had arrived at the place of occurrence after hearing alarms of the injured and by the time they had arrived, the assailant had fled away. There appears substance in the above contention of the learned Counsel for the appellant. The circumstance pointed out by the learned Counsel for the appellant do render claim of both the witnesses to be the eyewitnesses to the occurrence, as doubtful. Nevertheless, statements of both these two witnesses relating to the place of occurrence and the fact that they had seen the injury on the abdomen and the thumb of the informant and the time of occurrence can definitely be accepted.

The contention of the learned Counsel for the appellant that none of the independent witnesses have supported the prosecution's case and, therefore, the evidence of the informant, should not be relied upon, is not persuasive. These witnesses have been named in the F.I.R. as eyewitnesses and the prosecution has produced each of them for their examination. That the witnesses have chosen to abstain from supporting the prosecution's case, is for reasons of their own. This in itself does not discredit the veracity of the informant whose evidence has been found trustworthy and reliable. The trial court has rightly placed reliance on the testimony of the informant and, the evidence of the

informant alone is sufficient to confirm that he had sustained injury at the hands of the appellant.

7. The question which remains to be addressed is whether the evidence on record constitutes offence u/s 307 IPC? As rightly pointed out by the learned counsel for the appellant, there is no evidence that the appellant had repeated assault with knife on the informant. There is no evidence that the attack on the informant by the appellant was made by way of a pre-conceived plan. The trial court has placed reliance upon the testimony of the doctor whose evidence indicates that one of the injuries was on the abdomen which is treated as vital part of the body and other being on the thumb, the nature of injury on the abdomen was found to be grievous. Referring to the size of the injury, it appears to be stab injury caused by sharp penetrating weapon and the depth being confined to the abdominal wall, the doctor has opined the injury to be grievous. Cross-examination by the defence is lacking, but it was essentially required by the doctor to explain the basis on which he had formed his opinion that the injury was grievous. Though depth of the injury could not be measured, but it is clear that the penetration did not go beyond the abdominal wall or abdominal muscle. In absence of adequate explanation by the doctor regarding the basis of his opinion, it would be improper to place reliance on his opinion and to conclude that the injury was grievous. The mere fact that the knife blow was inflicted on the abdomen, in itself does not conclusively suggest that the assault was made with intention to commit murder of the victim or with such intention or knowledge that the injury was likely to cause death of the victim. Going by the explanation given by the informant himself, the appellant aimed the blow on him which he tried to ward off by his hand, sustaining injury on his right thumb and in the process, the blow hit his abdomen causing the abdominal injury. Considering the above circumstances, it cannot be declared with absolute certainty that the intention behind the assault was to commit murder of the informant or to inflict bodily injury knowingly that it was likely to cause death of the victim.

The prosecution, therefore, does not appear to have led sufficient evidence in respect of offence u/s 307 IPC. The findings of the trial court and the conviction of the appellant for the offence u/s 307 IPC, is therefore, not sustainable. However, evidences on record amply demonstrate that the appellant had caused bodily injury with sharp cutting weapon to the informant. The evidence is therefore sufficient to establish and prove the charge for the offence u/s 324 IPC against the appellant. Even though charge was not framed specifically for the offence u/s 324 IPC, but considering the fact that it is a lesser offence and substance thereof was explained to him while framing charge for the offence u/s 307 IPC, the appellant is liable to be convicted for the offence u/s 324 IPC.

8. Accordingly, conviction and sentence, as passed by the trial court against the appellant for the offence u/s 307 IPC is hereby set aside and he is acquitted of the said charge. The appellant is instead convicted for the offence u/s 324 IPC

and sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs. 1000/-, failing which he is further sentenced to undergo imprisonment for six months. Period of sentence shall be set off against the period already undergone by the appellant as under trial prisoner.

9. With this modification, this appeal is partly allowed.