

(2013) 10 JH CK 0029

In the Jharkhand High Court

Case No : Criminal Revision No. 137 of 2000 (R)

Chhaku Ram and Others

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2013) 10 JH CK 0029

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : A.S. Dayal, for the Appellant;

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. The petitioners are aggrieved by the Judgment dated 19.2.2000, passed by the learned 1st Addl. Sessions Judge, Giridih, in Criminal Appeal No. 3 of 1994, whereby the appeal filed against the Judgment of conviction and Order of sentence dated 16.12.1993, passed by the learned Chief Judicial Magistrate, Giridih, in G.R. No. 1291 of 1986/T.R. No. 92 of 1993, has been dismissed with certain modifications. It may be stated that the Trial Court below had found the petitioner Chhaku Ram guilty for the offence under Sections 324, 148, 427, 452 and 342 of the Indian Penal Code, whereas the other petitioners were found guilty for the offences under Sections 342, 452, 427, 147 and 323 of the Indian Penal Code, and they were convicted for the same. Upon hearing on the point of sentence, the petitioner Chhaku Ram was sentenced to undergo rigorous imprisonment for one year each for the offences under Sections 324, 148 and 452 of the Indian Penal Code, and rigorous imprisonment for six months each for the offences under Sections 342 and 427 of the Indian Penal Code, whereas the other petitioners were sentenced to undergo rigorous imprisonment for one year each for the offences under Sections 323, 147 and 452 of the Indian Penal Code, and rigorous imprisonment for six months each for the offences under Sections 342 and 427 of the Indian Penal Code, and all the

sentences were directed to run concurrently. In appeal, the Appellate Court below, however, modified the Judgment passed by the Trial Court below, and maintained the conviction and sentence of the petitioner Chhaku Ram only for the offence u/s 324, and of all the other petitioners only u/s 323 of the Indian Penal Code, and their conviction and sentence for the other offences were set aside by the Appellate Court below.

2. According to the prosecution case, it is alleged that due to previous enmity, the petitioners forming an unlawful assembly and variously armed, entered the house of the informant Nageshwar Ram on 21.9.1986 and they assaulted the informant. The petitioner Chhaku Ram tried to assault the informant by sword, which the informant saved, but it hit the niece of the informant, causing injury on her. There is also allegation of assault on the informant and his father by hard and blunt substance, and thereafter the informant tried to flee away in order to save himself, whereupon, he was chased by the petitioners and they came on the road and there also the petitioners assaulted the informant by hard and blunt substance. The FIR to the aforementioned effect was lodged on the basis of the written application given by the informant, on the basis of which, police case was instituted and investigation was taken up. After investigation, the police submitted the charge sheet against the petitioners, on the basis of which cognizance was taken against the petitioners, and they were ultimately put to trial.

3. In course of trial, the prosecution has examined ten witnesses in all, out of which, P.W. 1 Birendra Yadav, P.W. 2 Bunda Rana, P.W. 3 Jageshwar Mandal and P.W. 4 Raju Mahto, are the witnesses to the occurrence that had taken place on the road, in which, the informant was assaulted by the petitioners. P.W. 8 Nageshwar Ram is the informant himself, who has supported the allegation of assault on himself as well as on his niece and his father, and he has also proved the written information given to the police, which was marked as Ext-1. P.W. 6 Kanti Kumari is the niece of the informant, who has also supported the occurrence and has stated that Chhaku Ram assaulted the informant by sword, which the informant saved, and it hit her, causing bleeding injuries on her. P.W. 9 Dr. Radheyshyam Prasad had examined all the injured persons and he has proved the injury reports, which were marked as Ext-2 Series. The evidence of this witness shows that he had found lacerated wound on Kanti Kumari, the niece of the informant, and he has stated that the said injury could be caused by, blunt portion of the knife. P.W. 10 is the Investigating Officer, who has proved me formal FIR as Exhibit-3. He has stated about the investigations made by him and has proved the requisitions for the injury reports of the injureds, as Ext-4 Series. P.W. 7 Dewanti Devi, who is the wife of the informant, has only been tendered by the prosecution. The injured father of the informant was not examined and explanation was given that he was too old to come in the Court for giving his evidence. The prosecution has also proved the certified copy of a Judgment of conviction and Order sentence passed against the petitioners Chhaku Ram, Sheo Narayan Ram, Surendra Ram and Sudhir Ram in another case, which was

marked as Ext-5.

4. The defense did not adduce any evidence in the case.

5. On the basis of the evidence on record, the Trial Court found the petitioner Chhaku Ram guilty for the offences under Sections 324, 148, 427, 452 and 342 of the Indian Penal Code, and other petitioners were found guilty for the offences under Sections 323, 342, 452, 427 and 147 of the Indian Penal Code, and they were sentenced as aforementioned. The appeal filed by the petitioners Was dismissed with modifications, in which the conviction and sentence of the petitioner Chhaku Ram for the offence u/s 324 and of the other petitioners for the offence u/s 323 of the Indian Penal Code were maintained.

6. Learned counsel for the petitioners has submitted that the impugned Judgments passed by the Courts below are absolutely illegal and cannot be sustained in the eyes of law, inasmuch as, there are material discrepancies in the evidence brought on record. Learned counsel has submitted that one injured was not examined in the Court below, whereas, the wife of the informant was only tendered. It has also been submitted that the enmity between the parties is admitted in the FIR itself, as also in the cross-examination of P.W. 8 Nageshwar Ram, the informant himself. Learned counsel has also submitted that even though it is the specific case of the prosecution that Kanti Kumari was assaulted by sword, but the injury on her was found to be caused by hard and blunt substance. Learned counsel has accordingly, submitted that the prosecution has failed to prove the charge against the petitioners beyond all reasonable doubts, and the petitioners were at least entitled to be given the benefit of doubt. It is accordingly, submitted that the impugned Judgments passed by the Courts below cannot be sustained in the eyes of law.

7. Learned counsel for the State, on the other hand, has submitted that all the witnesses examined by the prosecution have fully supported the prosecution version. There may be some discrepancies here and there, but discrepancies are only minor discrepancies, which have been considered by the Courts below, and the Appellate Court below has set aside the conviction and sentence of the petitioners for the other offences, but their conviction and sentence for the offences under Sections 324 and 323 of the Indian Penal Code were maintained. Learned counsel has accordingly, submitted that there is no illegality and/or irregularity in the impugned Judgment passed by the learned Appellate Court below, worth interference in the revisional jurisdiction.

8. After having heard learned counsels for both the sides and upon going through the record, I find that the witnesses have supported the occurrence, and though there may be minor discrepancies in the depositions of the witnesses, but the discrepancies are only natural, and not fatal to the prosecution case. The injured witnesses have fully supported the prosecution case of assault made by the petitioners, including the petitioner Chhaku Ram by sword causing injuries on Kanti Kumari, and this allegation is also supported by Kami Kumari, who has

been examined as P.W. 6. A reasonable explanation has been given for non-examination of the injured father of the informant, being an old aged person and not able to attend the Court. The independent witnesses, who had also seen the informant running away and being chased by the petitioners and assaulted by them, have also supported the prosecution case to that extent and they have been examined as P.W. 1 to P.W. 5. There is direct evidence against the petitioner Chhaku Ram to have assaulted the informant by sword which the informant saved, but it hit Kanti Kumari causing injuries on her, and there is evidence against all the petitioners to have assaulted and injured the informant and his father. The injuries on the injured persons are fully supported by the evidence of P.W. 9 Dr. Radheshyam Prasad, who has proved the injuries on the injureds which were found to be simple in nature. Though this witness has stated that the injury on Kanti Kumari was a lacerated injury, but the same was found to be a bleeding injury, and may be caused by the blunt edge of the sword also. In these facts and circumstances of this case, I do not find any illegality in the impugned Judgment passed by the learned Appellate Court below convicting the petitioner Chhaku Ram for the offence u/s 324 of the Indian Penal Code and other petitioners for the offence u/s 323 of the Indian Penal Code.

9. The prosecution has also proved the Judgment of conviction and sentence passed against the petitioners Chhaku Ram, Sheo Narayan Ram, Surendra Ram and Sudhir Ram in another case, as Exhibit-5. The learned Appellate Court below has accordingly, found that these petitioners were not the first offenders and has accordingly, not given them the benefit of Probation of Offenders Act, but there appears to be no valid reason for denying the said benefit to the other petitioners, against whom, there is nothing to show that they were not the first offenders. In my considered view, taking into consideration the fact that the occurrence is of the year 1986 itself, no useful purpose is going to be served by compelling the petitioners to undergo sentence of imprisonment at this belated stage of about twenty seven years after the occurrence.

10. In view of the aforementioned discussions, the sentence of the petitioner Chhaku Ram is hereby set aside and in view of the fact that he is not the first offender, it would be appropriate to sentence him to fine only for the offence u/s 324 of the Indian Penal Code, for which, he has been convicted. Accordingly, the petitioner Chhaku Ram is, hereby, sentenced to fine of Rs. 2000/-. Similarly, petitioners Sheo Narayan Ram, Surendra Ram and Sudhir Ram, who were also found to be not the first offenders, their sentences for the offence u/s 323 of the Indian Penal Code, are also, hereby, set aside and they are sentenced to fine of Rs. 1000/- each.

11. The sentences of the remaining petitioners, namely, Rajesh Ram, Om Prakash Ram, Rabindra Ram and Suresh Ram for the offence u/s 323 of the Indian Penal Code, are also hereby, set aside and these petitioners being the first offenders, are given the benefit of Section 360 of the Code of Criminal Procedure, and they are directed to enter into the probation bonds of Rs. 2000/-

each, along-with two sureties of the like amount each, for keeping peace and be of a good behavior for a period of six months, and to appear in the Trial Court for receiving the sentence, if called in the meantime. In case of making default in payment of fine/entering into probation bonds, the sentences passed against the petitioners by the Courts below shall stand revived.

12. All the petitioners are directed to appear in the Court below for depositing the amount of fine/for entering into the probation bonds, as directed above, and they shall be discharged from the liabilities of their respective bail bonds, on depositing of fine/entering into the probation bonds. If the petitioners fail to appear in the Court below within a period of one month from today, for depositing the fine/for entering into the probation bond, the Trial Court below shall issue process compelling the attendance of the petitioners for the same. With these modifications in sentence, this revision application is hereby, dismissed. Let the Lower Court Records be sent back forthwith.