
(2015) 07 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 664 of 2004

Cholwa Sundi and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2015) 4 AJR 739

Hon'ble Judges : Rakesh Ranjan Prasad and Pramath Patnaik, JJ.

Bench : Division Bench

Advocate : R.A. Choubey, for the Appellant; Krishna Shankar, A.P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

1. The appellants, Cholwa Sundi, Sahdeo Sundi, Subhash Sundi and the accused Bishun Sundi (died during trial) were put on trial on the accusation of making an attempt to commit murder of Rupan Thakur, Ramu Thakur and Tulsi Thakur after forming unlawful assembly whereas the appellant, Nando Sundi was charged under Section 307/147 of the Indian Penal Code and all of them were also charged under Section 323 of the Indian Penal Code. The trial court having found all the appellants guilty for making an attempt on the lives of Rupan Thakur, Tulsi Thakur and Ramu Thakur, convicted them for the offence punishable under Sections 307/149 of the Indian Penal Code, vide its judgment dated 26.3.2004 and sentenced them to undergo imprisonment for ten years and to pay a fine of Rs. 5000/- and in default to undergo simple imprisonment for the period of six months. The case of the prosecution is that on 5.5.1991 at about 5 a.m. while the informant, Rupan Thakur (P.W. 4) had gone to his field to meet the nature of call, the appellant, Cholwa Sundi blocked his way and started raising alarm, upon which Basodeo Sundi, the appellants, Nando Sundi, Sahdeo Sundi and Subhash Sundi as well as accused Bishun Sundi came variously armed and started assaulting him. In that course, Rupan Thakur raised alarm, upon which Ramu

Thakur (P.W. 1), Dhaneshwar Thakur (P.W. 2), Mathura Thakur (P.W. 3) and Tulsi Thakur (P.W. 6) came to rescue him but the accused persons assaulted them with lathi, danda and farsa indiscriminately, as a result of which, Ramu Thakur, Dhaneshwar Thakur, Mathura Thakur and Tulsi Thakur received injuries. At the same time, the accused persons also in course of fight also received injuries. Thereafter Rupan Thakur, the informant and other injured came to Koderma Police Station and gave written statement (Ext. 4) at about 6.10 a.m. On the basis of which, a formal FIR (Ext. 2) was drawn and a case was registered as Koderma P.S. case No. 123 of 1991 under Sections 147, 148, 149, 323, 324 and 307 of the Indian Penal Code. The matter was taken up for investigation by the Investigating Officer, R.P. Tiwari, who got the injured examined by Dr. Ramanand Sharma (P.W. 7) who on examining Ramu Thakur did find following injuries.

1. Sharp cut injury on the mid of scalp 2-1/2" x 1/4" X skin deep

2. Swelling with red bruise on the back of chest 2" x 1/2"

2. Both the injuries were found to be simple in nature. According to him, Injury No. 1 was caused by sharp cutting weapon whereas injury No. 2 was caused by hard and blunt substance.

3. The doctor on the person of Mathura Thakur found following injuries.

1. Swelling with red bruise on the right elbow back on 3" x 2"

2. Swelling with red bruise on the external surface of left forearm 2-1/2" x 1"

3. Swelling with red bruise on the left side of chest 3" x 1-1/2"

Injurie Nos. 2 and 3 were found to be simple whereas opinion with respect to injury No. 1 was kept reserved awaiting X-ray report.

Further the doctor did find following injuries on the person of Dhaneshwar Thakur.

1. Lacerated cut injury on the external surface of left forearm 1-1/2" x 1/2" x 1/4"

2. Swelling with red bruise on the back of the right side of chest 3" x 1/2"

3. Swelling with red bruise on the right arm 2" x 1/2"

All the injuries were found to be simple in nature caused by hard and blunt substance.

Further the doctor did find following injuries on the person of Ruplal Thakur.

1. Lacerated cut injury on the right temporal region of scalp 1-1/2" x 1/2" x skin deep.

2. Abrasion on the right shoulder joint 1" x 1/2"

3. Swelling with red bruise on back of chest 6" x 1"

4. Swelling on the left elbow 2" x 1"

All the injuries were found to be simple in nature caused by hard and blunt substance.

The said doctor also found following injuries on the person of Tulsi Thakur.

1. Sharp cut injury on the left side of neck 2" x 1/2" x 1/2"

2. Lacerated cut injury on the left temporal region of scalp 1" x 1/4" x skin deep

3. Swelling on the red forearm 2-1/2" x 1"

4. Swelling on the left index finger 2" x 1/2"

5. Swelling on the left side of upper part of chest 6" x 3"

4. Injury No. 1 was found to be simple caused by sharp cutting weapon whereas injuries Nos. 2 and 5 were found to be simple caused by hard and blunt substance. The opinion with respect to other injuries were kept reserved. Accordingly, the Doctor issued injury reports (Exts. 3 to 3/4).

5. Meanwhile the Investigating Officer recorded the statements of the witnesses. On completion of investigation, when the cognizance of the offences was taken against the appellants, they were put on trial after commitment of the case.

6. During which the prosecution examined altogether seven witnesses. Of them, P.W. 4, Rupan Thakur is the informant who did testify that while he had gone to field for easing himself. While he was coming back, the appellants who were having variously armed surrounded him and started assaulting. When he raised alarm, Ramu Thakur (P.W. 1), Dhaneshwar Thakur (P.W. 2), Tulsi Thakur (P.W. 6) came to rescue him but they were also assaulted, as a result of which, they received injuries. More or less, similar is the testimonies of P.W. 1, Ramu Thakur, P.W. 2, Dhaneshwar Thakur, P.W. 3, Mathura Thakur and P.W. 6, Tulsi Thakur. According to P.W. 1, Ramu Thakur and P.W. 2, Dhaneshwar Thakur, the appellants Cholwa Sundi, Subhash Sundi and Sahdeo Sundi were having farsa, whereas Bishun Sundi and Basodeo Sundi were having Bhala and Nando Sundi was having lathi and of them, Cholwa Sundi assaulted him on his head with farsa whereas Nando Sundi gave lathi blow over his back. Sahdeo Sundi and Subhash Sundi assaulted him with farsa whereas Dhaneshwar Thakur was inflicted with Bhala injury by Bishnu Thakur and Tulsi Thakur was assaulted by Cholwa Sundi and Bishnu Sundi with farsa. Likewise, other witnesses P.W. 3 and P.W. 6 also testified naming the persons who assaulted whom.

7. On closure of the prosecution case, when the appellants were questioned under Section 313 of the Code of Criminal Procedure over the incriminating evidences appearing against them, they denied.

8. The accused persons also adduced two witnesses in defence. D.W. 1 has proved the formal FIR, Fardbeyan and inquest report as well as post-mortem report of the deceased Basudeo as Exts. A, B, C and D respectively which were

concerning Koderma P.S. Case No. 124 of 1991 lodged against the informant and the witnesses for committing murder of Basudeo Sundi. D.W. 2 has proved requisitions sent by the then Assistant Sub-Inspector of Koderma P.S. noting therein the injuries received by the persons facing trial and other as Exts. E to E/6. He has also proved the injury report of the person facing trial and also others as Exts. F to F/7.

9. The trial court having found the witnesses to be trustworthy convicted and sentenced the appellants as aforesaid which is under challenge.

10. Mr. R.A. Choubey, learned counsel appearing for the appellants submits that none of the injuries found on any of the injured has been found to be grievous or dangerous to life, still the trial court has recorded the order of conviction and sentence which is quite illegal and thereby the judgment of conviction and order of sentence is fit to be set aside.

11. In this regard, it was further submitted that though the informant has lodged the case alleging therein that he as well as other witnesses had been assaulted by the accused persons but, in fact, it was the informant and the witnesses who did assault Basudeo Sundi as well as the accused persons and others, as a result of which, Basudeo died and these appellants and others had received injuries. Some of them were grievous in nature but the trial court did not take into account all this aspect of the matter and thereby the judgment of conviction and sentence being illegal is fit to be set aside.

12. As against this, learned counsel appearing for the State submits that it may be the case of the appellants that the appellants as well as others including Basudeo were assaulted by the informant as well as by the witnesses but at the same time, the appellants and other persons did assault the informant and the witnesses, as a result of which, they sustained injuries which is evident from the evidence of the doctor and that some of the injuries were inflicted over the head, vital part of the body and thereby the trial court was absolutely justified in recording the order of conviction and sentence against the appellants.

13. Having heard learned counsel appearing for the parties and on perusal of the record, it does appear that on the same day, i.e. 5.5.1991 and at the same time at about 5 a.m. incidents took place at the same place of occurrence whereby the informant (P.W. 4) and the witnesses P.W. 1, Ramu Thakur, P.W. 2, Dhaneshwar Thakur, P.W. 3, Mathura Thakur and P.W. 6, Tulsi Thakur did receive injuries on their persons and at the same time, from the documents such as, fardbeyan, charge-sheet, injury reports etc. concerning Koderma police station case No. 124 of 1991 adduced in evidence by defence it does appear that the accused persons and also other persons including Basudeo had received injuries alleged to be caused by the informant and the witnesses on account of which Basudeo Sundi died. For the said occurrences, the informant lodged this case which was at earlier point of time than the case which was lodged from the side of the appellants. The place of occurrence appears to be the same. Thus, there

appears to be free fight in between the parties, during which the informant and other witnesses of this case received injuries which gets corroboration from the evidence of the doctor.

14. However, the question does arise as to whether in the facts and circumstances, the trial court was justified in recording the order of conviction and sentence for the offence under Section 307/149?

15. By referring to the evidence of the doctor (P.W. 7), we may reiterate that none of the injuries on any of the persons either was found to be grievous or dangerous to life and thereby the trial court committed illegality in recording the order of conviction and sentence under Section 307/149 and hence, it is hereby set aside. However, the appellants keeping in view the evidence of the witnesses which gets corroboration from the medical evidence, we do find the appellants guilty for the offence under Section 323 of the Indian Penal Code and they are, accordingly, convicted and sentence for the period already undergone. Thus, this appeal stands allowed but in part.