
(2006) 03 JH CK 0124

In the Jharkhand High Court

Case No : Criminal Appeal No. 274 of 1997

Gopal Maharana and Others

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 304, 323

Citation : (2006) CriLJ 3932 : (2006) 2 JLJR 609 : (2006) 2 EastCriC 499 :
(2006) 2 AIRJharR 713

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Ranjan Kumar Singh, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Judgement

Amareshwar Sahay, J.—This appeal arises against the judgment dated 9-9-1997 passed by Sri Hari Shankar Prasad, Sessions Judge, Dumka in Sessions Case Nos. 177 of 1989/ 203 of 1990, whereby he convicted all the six appellants for commission of the offence u/s 304, II of the Indian Penal Code and sentenced them to undergo R.I. for a period of 5 years each for the said offence. All the appellants, except appellant No. 6 Hansi Devi, have further been convicted for committing the offence u/s 323 of the IPC but no separate sentence was passed.

2. The prosecution case in short is that PW-7 Budhan Maharana gave a fardbeyan on 9-4-1987 alleging therein that on 8-4-1987 at about 6.00 P.M. all the appellants came at the door of the informant complaining that the she goat of the father of the informant had eaten up pumpkin plant of the accused persons and then they started abusing and assaulting the informant's father with Lathi and slaps. The informant's father raised alarm, at this the informant and his mother came to rescue Dewali Maharana (the father of the informant) and then it is said that the informant and his mother were also assaulted by the accused persons. On the basis of the said report the F.I.R. was registered under Sections 147 and 323 of the I.P.C. However, since the injured Dewali Maharana died

subsequently and, as such. Section 304 of the IPC was added. After investigation, charge sheet was submitted u/s 304/323 IPC and, thereafter, they were put on trial.

3. In order to establish the charges, altogether eight witnesses were examined on behalf of the prosecution and one witness examined on behalf of the defence also, PW-1 is Dr. Sita Ram Sah, who examined the injuries on Sitia Devi (PW-6) and found a lacerated wound on the right side of forehead caused by hard and blunt substance. He also examined injuries on the informant Budhan Maharana. PW-2 is Dr. K. D. Singh, who held Post Mortem examination on the dead body of the deceased Dewali Maharana. PW-3 is Milkhi Devi, is the daughter of the informant and is an eyewitness to occurrence. PW-4 is Kauleshwari Devi, the wife of the informant Budhan Maharana (PW-7) and she is also an eyewitness to the occurrence. PW-5 has been tendered. PW-6 is Sitia Devi, wife of the deceased and the mother of the informant and also an eyewitness to the occurrence. PW-7 is the informant Budhan Maharana whereas PW-8 is a formal witness, who has formally proved the F.I.R. The Investigating Officer was not examined.

4. On consideration of the evidence, adduced by the prosecution, the learned trial Court convicted all the appellants as stated in earlier paragraphs.

5. The learned Counsel appearing for the appellants submitted that since the Investigating Officer, who was a very important witness, was not examined on behalf of the prosecution and, therefore, the appellants were greatly prejudiced, because they could not draw the attention of the Investigating Officer towards the contradictory statements of the prosecution witnesses particularly the so-called eye-witnesses. He has further submitted that there are vital contradictions in the evidence of the eyewitness regarding the manner of assault and the place of occurrence and they have badly contradicted each other on every material points.

The learned Counsel for the appellant drew my attention to the evidence of PW-3 Milkhi Devi, wherein, in paragraph 1 of her examination-in-chief, she had stated, specifically taking the name of all the appellants, that they assaulted her father, grandfather and grand-mother by means of Lathi, whereas PW-6 Sitia Devi in her examination-in-chief had specifically stated that all the appellants. except Ajabi Maharana, were empty handed, meaning thereby they have no weapon in their hands. It is said that AJabi was only having a Lathi. In paragraph-2 she had stated that appellants Gopal, Arjun, Gambhari and Jhari assaulted by means of fists and slaps, whereas the appellant Ajabi assaulted by means of Lathi. He further drew my attention to the statement of the informant, who in his examination-in-chief had stated that all the accused persons holding Lathi in their hands. On the basis of this evidence he submitted that there is vital contradiction in the evidence of the P. Ws with regard to the weapon used by the appellants for assaulting the informant party as well as the deceased.

6. I have carefully gone through the evidence of all the prosecution witnesses

and find that so far as the allegation of assault by the appellant Nos. 1, 2, 3, 4 and 6 are concerned, there is no consistent evidence of the prosecution with regard to the assault made" by them. The prosecution witnesses have made contradictory statements in that regard and, therefore, it is not safe to rely on their testimony and, as such, I find that the prosecution has not been able to establish the charges beyond all reasonable doubts against the appellant Nos. 1 to 4 and 6.

So far as appellant No. 5 Ajabi Maharana is concerned, I find that all the prosecution witnesses have consistently stated that he gave lathi blow on the deceased Dewali Maharana on his head, who subsequently, died after ten days of the occurrence. Therefore, I find that the trial Court has rightly found him guilty for the offence u/s 304, II of the IPC.

7. Accordingly, this appeal is allowed so far the appellant Nos. 1, 2, 3, 4 and 6, namely, Gopal Maharana, Gambhari Maharana, Arjun Maharana, Jhari Maharana and Hansi Devi are concerned and their conviction and sentence passed by the trial Court is hereby set aside. They are on bail and, as such, they are discharged from the liabilities of their bail bonds.

So far as appellant No. 5 Ajabi Maharana is concerned his conviction for the offence u/s 304, II of the IPC is hereby affirmed. However, so far as the sentence is concerned, I find that both the parties are close agnates and belong to the same family. I further find that the occurrence took place only because of dispute of a trivial nature and therefore, I feel that the sentence awarded by the trial Court against the said appellant is a bit excessive and it requires reduction. Accordingly, the appeal of the appellant No. 5 Ajabi Maharana is dismissed with modification in sentence of imprisonment by reducing the same to the period already undergone by him and further to pay a fine of Rs. 5000/- to be deposited within a period of eight weeks from today. in default he shall undergo R. I. for a period of 1 year. If the fine is deposited by the said appellant the same shall be paid to the informant.

8. With this modification in sentence, the appeal of appellant No. 5 Ajabi Maharana is dismissed.