
(2010) 09 JH CK 0015
In the Jharkhand High Court
Case No : Criminal Appeal No. 21 of 2003

Gulam Khaza and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2010) 09 JH CK 0015

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : A.K. Chaturvedi and Fayyaz Ahmad, for the Appellant; Binod Singh, APP, for the Respondent

Judgement

Pradeep Kumar, J.

By Court,

1. This appeal is directed against the judgment of conviction dated 20.12.2002 and order of sentence dated 21.12.2002 passed by Shri Brajesh Kumar Gautam, Additional District & Sessions Judge, (Fast Track Court-II), Palamau at Daltongarj in Sessions Trial No. 68 of 1998, by which judgment he found the Appellant Nos. 1 and 2, namely, Gulam Khaza and Jafrul Haque guilty under Sections 307 of the Indian Penal Code and sentenced them to undergo 5 years of R.I. and he also found the other Appellant Nos. 3 to 7, namely, Azazul Haque, Hamid Akhtar, Shahid Akhtar, Munzirul Haque, Mahfuzul Haque under Sections 307/149 of the Indian Penal Code and sentenced them to undergo R.I. for three years. All the accused persons are sentenced to undergo 1 year R.I. for an offence u/s 147, 1 year R.I. for an offence u/s 148, 1 year R.I. for an offence u/s 323, 1 year R.I. for an offence u/s 324 and 1 month S.I. for an offence u/s 341 I.P.C.

2. It is submitted by the learned Counsel for the Appellants that it will appear from the medical report that no grievous injury caused to anybody and the doctor, in his cross-examination, at para 11 stated that the injuries were simple

in nature and could have been caused by fall over any sharp pointed Khunta. In that view of the matter, the conviction of the Appellants u/s 307 of the Indian Penal Code is bad and only fit to be set aside. It is further submitted that there was no intention to cause death to anybody and there was fight from both sides due to land dispute and the F.I.R. has been lodged from both sides and the injuries from both sides have been proved. It is further submitted that the prosecution has failed to prove and explain the injury on the person of the Appellants, Gulam Khaza and Azazul Haque and as such the prosecution case has not been proved beyond reasonable doubt and they are only fit to be acquitted from the charges.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that there is direct allegation of assault against all the Appellants that they jointly came and assaulted the injured and witnesses and as such they have rightly been found guilty and convicted u/s 307 and other Sections of the Indian Penal Code and it requires no interference by this Court.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan given by Hasim Ahmad-P.W.7 on 18.8.95 at about 9 a.m. stating therein that on the same day at about 7.30 a.m. in the morning when he was going for ploughing his field with his oxen. When he reached near the door of the Appellant, Gulam Khaza, all the accused persons-Appellants came out variously armed with lathi, Gadansa, Burcha surrounded him and asked him where he is going then the informant said that he is going for ploughing his field. Then the accused, Shahid Akhter assaulted him. Then, he left his oxen ran away, but the accused chased till his door when he reached his door then Md. Jubair came out to save him. Then, the accused Khuaza gave a Burcha blow on the chest of Md. Jubair in order to cause death, due to which he fell down. Then, the accused Jafrul Haque also assaulted him on his head causing injury. Thereafter, sister in law of the informant, Fahmeeda Khatoon and nephew Mohiuddin and another Bhanjha Junaid Haider also came there they were also assaulted.

5. On the basis of the said F.I.R. police registered a case under Sections 147/148/149/323/324/337/307/34 of the Indian Penal Code and after investigation charge-sheet was submitted under all those sections.

6. Since, the case was exclusively triable by a Court of Sessions, the learned Chief Judicial Magistrate after taking cognizance of the case the same was committed to the Court of Sessions and subsequently the case was transferred to the Court of 2nd Additional Sessions Judge, Palamau, who framed the charges under all those sections and subsequently the case was tried by F.T.C. Court-II as aforesaid, who found the Appellants guilty.

7. It appears that in course of trial, the prosecution has examined 9 witnesses. P.W.1, Asma Bibi. P.W.2, Fahmida Khatoon P.W.3, Mohiuddin Ahmad P.W.4, Md. Asad Zubair P.W.5, Junaid Hyder P.W.6 Surendra Prasad Sharma (Investigating

Officer), P.W.7, Hasim Ahmad (informant), P.W.8 Md. Zarif and P.W.9, Dr. Dilip Kumar Singh.

8. P.W.7, Hasim Ahmad, the informant has supported his case and stated that when he was going to plough his field with oxen and when he reached near the house of the accused, Gulam Khuaza then all the Appellants came out variously armed with tangi, farsa etc. then he ran towards his house but he was chased when he reached near the house of Md. Jubair, he came out to save him. Then, the accused Khuaza gave a Burcha blow on the chest of Md. Jubair in order to cause death, due to which he fell down. Then, the accused Jafrul Haque also assaulted him on his head causing injury. Thereafter, sister in law of the informant, Fahmeeda Khatoon and nephew Mohiuddin and another Bhanjha Junaid Haider also came there they were also assaulted. The injured was taken to hospital.

9. The other witness has also supported the fact that the Appellants assaulted the injured, Md. Jubair.

10. P.W.9 is Dr. Dilip Kumar, who examined the informant and found simple injury on the person of, Md. Haseen Ahmad caused by hard and blunt substance. He also found cut injury on the chest of the injured, Jubair by some pointed weapon and there was cut injury on his index finger. He also found simple injury on the persons of Fahmeeda Khatoon and Mohiuddin and Jubair. He proved injury report as Exts. 3, 3/1, 3/2, 3/3 and 3/4. In his cross-examination at para 10 he admitted that the injury No. 1 of Jubair Ahmad, was simple in nature and there was no bleeding injury. He also stated in para 10 that the injury No. 1 of Jubair Ahmad is possible by fall over any sharp pointed Khunta.

11. Thus, it appears that the injuries on injured and informant were simple in nature and they were not caused with any intention of causing death of any of the injured witnesses. In that view of the matter, the finding of conviction u/s 307 of the Indian Penal Code is bad in law and fit to be set aside. As far as defence witnesses are concerned, they have also proved the fact that they also sustained injuries as per the F.I.R. lodged by the Appellant No. 3 and they have also proved their injuries by D.W.1 the same Doctor Dilip Kumar Singh, who found simple injury on the persons of Gulam Khaza. He proved the injury report and also proved injury on the person of Azazul Haque as Exts. A and A/2, which shows that fight from both sides took place and as such the conviction of the Appellants under Sections 147/148/149/323/323 and 341 are sustained. But considering the fact that there was a case and counter case and there was fight with regard to the land and there was assault from both sides. The sentence of 1 year passed under all sections i.e. 147/148/149/323/323 and 341 I.P.C. is altered to the period already undergone by them during trial and appeal.

12. With the aforesaid alternation in the sentence, the appeal is dismissed.

13. The Appellants are on bail they are released from the bondage of their bail bonds.