
(2012) 08 JH CK 0048

In the Jharkhand High Court

Case No : Criminal Revision No. 352 of 2003

Gulu Gupta @ Kamal Kishore Gupta and Another

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 324, 326, 34, 341

Citation : (2012) 4 JLJR 398

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. 2. The petitioners are aggrieved by the judgment dated 25.2.2003 passed by learned 1st Additional Sessions Judge, Deoghar, in Cr. Appeal Nos. 11 of 1999/108 of 2002, whereby the appeal filed against the judgment dated 12.2.1999 passed by Shri A.K. Yadav, learned Judicial Magistrate, 1st Class, Madhupur at Deoghar, in G.R. No. 516 of 1995/T.R. No. 238 of 1999, was dismissed by the Appellate Court below with modification in sentence. It may be stated that the trial Court had found the petitioners guilty for the offence under Sections 341/323/324/ 326/504/34 of the I.P.C., and had convicted them for the same. Upon hearing on the point of sentence, the Trial Court had denied the privilege of the Probation of Offenders Act to the petitioners and had sentenced them to undergo simple imprisonment for one year each for the offence under Sections 341/323/504/34 of the I.P.C., and further simple imprisonment for two years each for the offence under Sections 324/326/34 of the I.P.C. Upon appeal, the learned Appellate Court below set aside the conviction of the petitioner Jugal Kishore Gupta for the offence u/s 326 of the I.P.C., but maintained his conviction for the other offences and gave him the benefit of Probation of Offenders Act,

directing him to enter into the probation bond of Rs. 2,000/- with two sureties of the like amount each for keeping peace and maintaining good behaviour for a period of two years. The conviction and sentence of the petitioner Gulu Gupta @ Kamal Kishore Gupta was upheld by the learned Appellate Court below.

2. From perusal of the lower court records, it appears that petitioners were made accused in Madhupur P.S. Case No. 223 of 1995, G.R. No. 516 of 1995 for the offence under Sections 341/323/ 324/326/504/34 of the I.P.C., on the allegation that on 8.11.1995, while the informant was teaching the students at his house, both the accused petitioners alongwith other unknown persons came and assaulted the informant with some pointed object, causing injuries over his right eyebrow.

3. Upon investigation, the police submitted the charge-sheet and in course of trial, charge was framed against both the petitioners for the offence under Sections 341/323/324/504/34 of the Indian Penal Code. Against Gulu Gupta, charge was also framed u/s 326/34. Charge u/s 326/34 was not framed against the petitioner Jugal Kishore Gupta. As such, the Appellate Court below has set aside the conviction of the petitioner Jugal Kishore Gupta for the offence u/s 326/34 of the IPC.

4. It appears from the Lower Court Records that seven witnesses were examined on behalf of the prosecution including the doctors and the I.O. Out of the material witnesses examined on the point of occurrence, the prosecution case has been supported only by PW-1 Md. Abid Hussain and PW-3 Jugal Narayan Sah, the informant in this case. Other witnesses on the point of occurrence have turned hostile. It also appears that the two doctors, who had examined the informant's injuries, were examined as PW-5 Dr. Bishwanath Das and PW-6 Dinesh Kumar Pathak, who was posted at Sadar Hospital, Deoghar, and he has proved the injury report issued by him and has deposed that there was a fracture on the frontal bone, which was grievous in nature. In his cross-examination he has stated that the fracture was visible without any X-ray. PW-7 is the I.O. in the case.

5. The statements of the accused persons were recorded u/s 313 of the Cr.P.C., wherein the petitioner Gulu Gupta had stated that on the date of occurrence, actually the informant had assaulted the defence side. It also appears that the defence has also examined two witnesses including a doctor as DW-1, who had proved the injuries on the petitioner Gulu Gupta @ Kamal Kishore Gupta, whom he had examined on the date of occurrence itself, i.e. 8.11.1995. DW-2 is petitioner Gulu Gupta @ Kamal Kishore Gupta, who has also deposed about the occurrence that had taken place on the same date, time and place of occurrence, in which he was assaulted by the prosecution side. He has also stated that he had also filed a police case, in which the police had submitted the final form and the protest petition was filed by him, which was also dismissed. It appears from the record of the Trial Court that the certified copy order-sheet in T.R. Case No. 1011 of 1997/P.C.R. Case No. 227 of 1996, has been proved as Exhibit-5, which

shows that in Madhupur P.S. Case No. 224 of 1999, in which the informant in the present case namely, Jagat Narayan Sah and others were accused, the police had submitted the final form. Subsequently, the protest petition was also filed, which was dismissed by the Court below.

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 is admittedly a case and counter case between the parties. It is submitted that the defence had brought on record the evidence that on the same date, place and time of the occurrence, the petitioner was assaulted by the informant and cogent evidence with respect thereto was brought on record. Learned counsel further submitted that the conviction of the petitioner Gulu Gupta @ Kamal Kishore Gupta for the offence u/s 326 of the I.P.C., cannot be sustained in the eyes of law, inasmuch as, PW-6 Dinesh Kumar Pathak has admitted in his cross-examination that he had opined about the fracture without there being any X-ray examination. Learned counsel accordingly, submitted that in that view of the matter, the prosecution had failed to prove that actually any grievous injury was caused on the informant. Learned counsel also submitted that in view of the fact that there was case and counter case between the parties and petitioners had brought on record the evidence to show that the petitioner Gulu Gupta @ Kamal Kishore Gupta was injured in the occurrence, the petitioners were entitled at least to get the benefit of doubt.

7. Learned counsel for the State on the other hand has opposed the prayer and has submitted that there is no illegality and/or irregularity in the impugned judgments worth interference in the revisional jurisdiction.

8. Having heard learned counsel for both the sides and upon going through the records, I find that from the evidence of PW-6, Dinesh Kumar Pathak it appears that he had given the opinion about the fracture without there being any X-ray examination. No X-ray report has been proved by the prosecution. In that view of the matter, I am of the considered view that the opinion about the fracture on the frontal bone given without any X-ray examination, cannot be relied upon and accordingly, the prosecution has failed to prove beyond any reasonable doubt that there was any grievous injury on the informant and as such, the conviction of the petitioner Gulu Gupta @ Kamal Kishore Gupta for the offence u/s 326 of the I.P.C., cannot be sustained in the eyes of law. I further find that the defence has brought on record the evidence to show that there was a case and counter case between the parties, in which the defence side was also assaulted and injured on the same date, place and time of the occurrence. The certified copy of the order sheet in T.R. Case No. 1011 of 1997/P.C.R. Case No. 277 of 1996 has been proved by the prosecution itself, which was marked as Annexure-5. Though the counter case had culminated in submission of the final form and protest petition filed against it, was also rejected, but the position remains that the defence has been able to create a bona fide doubt in the prosecution case and in the facts of this case, petitioners were entitled at least to the benefit of doubt.

9. In view of the aforementioned discussions, the judgment dated 12.2.1999 passed by Sri A.K. Yadav, learned Judicial Magistrate 1st Class, Madhupur at Deoghar, in G.R. No. 516 of 1995/T.R. No. 238 of 1999, as also the judgment dated 25.2.2003 passed by the learned 1st Additional Sessions Judge, Deoghar, in Cr. Appeal Nos. 11 of 1999/108 of 2002 are hereby set aside. The petitioners are given the benefit of doubt and they are acquitted of the charge. Petitioners are on bail and they are discharged from the liabilities of their respective bail bonds. This Cr. Revision Application is accordingly, allowed. Let the Lower Court Records be sent back forthwith.