
(2009) 04 JH CK 0144
In the Jharkhand High Court

Indradeo Ram and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 05-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 307

Citation : (2009) 04 JH CK 0144

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 12.09.2002 passed by 5th Additional Sessions Judge, Palamau in Sessions Trial No. 396 of 1998 whereby and whereunder the learned court below convicted the appellants under Sections 323 and 324 read with Section 34 of the I.P.C. and sentenced them to undergo rigorous imprisonment for three years for the offence u/s 324 of the I.P.C. and also directed to pay fine of Rs. 1000/- each u/s 323 of the I.P.C.

2. The case of prosecution, in short, as per the fardbeyan of P.W. -1 (Budhu Mahto) is that on 01.04.1997 at about 9:00 a.m., while he was collecting mahuwa appellants Indradeo Ram, Shankar Ram, Babloo Ram, Santi Devi, Tilak Ram and Birendra Ram arrived variously armed with lathi, bhala, gadasa and tangi. It is further alleged that on being exhorted by Indradeo Ram, appellant-Shankar Ram gave tangi on the head of informant with an intention to commit his murder. It is further alleged that when the informant fell on the ground, appellant-Santi Devi assaulted him with lathi. It is further alleged that after hearing hulla when informant's daughter Chinta Kumari, sons Bhalu Mahto and Rajendra Yadav, his daughter-in-law Sewanti Devi arrived, they were also assaulted by the appellants. It is then alleged that appellant-Birendra Ram assaulted Rajendra Yadav with tangi, appellant-Indradeo Ram assaulted Bhalu Mahto with gadasa, appellant-Tilak Ram assaulted Sewanti Devi with lathi

whereas Babloo Ram assaulted Chinta Kumari with lathi.

3. On the basis of aforesaid allegation, Manatu P.S. Case No. 08 of 1997 under Sections 147, 148, 149, 307, 324 and 323 of the I.P.C. instituted and police took up investigation. After completing investigation, police submitted charge-sheet against the appellants. It appears that learned C.J.M. Palamau took cognizance of the offence and committed the case to the court of Sessions, as the offence u/s 307 of the I.P.C. is exclusively triable by the court of Sessions.

4. It appears that 5th Additional District & Sessions Judge, Palamau framed and explained charges to the appellants under Sections 147, 148 and 307/ 149 of the I.P.C., to which appellants pleaded not guilty and claimed to be tried. Thereafter, prosecution examined altogether eight witnesses. The injury reports of injured exhibited by the prosecution u/s 294 of the Cr.P.C. It appears that the learned court below after considering the evidences available on record convicted and sentenced the appellants as aforesaid. Against that the present appeal filed.

5. It is submitted by learned Counsel for the appellants that none of the prosecution witnesses supported the occurrence including the injured witnesses, but inspite of the same, learned court below convicted the appellants under Sections 324 and 323 of the I.P.C. It is submitted that the entire judgment of the learned court below is based on conjecture and surmises.

6. Learned Additional P.P., after going through the evidences, had not disputed the aforesaid submissions.

7. Having heard the submissions, I have gone through the record of the case. P.W. -1 Budhu Mahto, (the informant) has been declared hostile as he has not supported the case of prosecution. P.W. -2 Chinta Kumari, is also one of the injured witnesses. She has also been declared hostile as she has not supported the case of prosecution. P.W. -3 Rajendra Mahto (Yadav) has also been declared hostile, as he has not supported the case of prosecution. P.W. -4 Jhalku Mahto, is also one of the injured witnesses. He has deposed that he fell on a stone and because of that he received injury. He made no allegation against the appellants. Thus, I find he has also not supported the case of prosecution. P.W. -5 Sewanti Devi, is also one of the injured witnesses. She stated that some altercation took place in between her father-in-law and Shankar Ram. However, when she tried to intervene she fell on a stone and received injury. She further deposed that she could not identify any accused persons. Thus, I find that this witness also not supported the case of prosecution. P.W. -6 Khedu Mahto has been declared hostile as he has not supported the case of prosecution. P.W. -7 and P.W. -8 had stated that they are not knowing anything about the occurrence. Thus, these witnesses had also not supported the case of prosecution. In the instant case, doctor and I.O. have not been examined.

8. It appears that learned court below after perusing the injury reports and also taking into account that witnesses stated that accused persons are present at the place of occurrence and some scuffle took place, convicted the appellants under

Sections 324 and 323 read-with Section 34 of the I.P.C. In my view, aforesaid finding given by learned court below is erroneous and against the evidence available on record because none of the witnesses stated that they were assaulted by the appellants. Thus, the conviction of the appellants under Sections 323 and 324 of the I.P.C. is not sustainable.

9. In the result, this appeal is allowed. The impugned judgment is set aside. The appellants are acquitted from the charges levelled against them. They are also discharged from the liabilities of the bail bonds furnished by them.