

(2013) 08 JH CK 0055

In the Jharkhand High Court

Case No : Criminal Revision No. 64 of 1999 (R)

Jawahar Thakur and Another

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145
Penal Code, 1860 (IPC) — Section 323, 325, 34

Citation : (2013) 3 JLJR 699

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : B.K. Dubey and N.K. Roy, for the Appellant; Anand Kumar Pandey, for the Respondent

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. The petitioners are aggrieved by the judgment dated-15th January, 1999, passed by the learned 1st Additional Sessions Judge, Chatra, in Cr. Appeal No. 179 of 1996, whereby, the appeal filed against the judgment of conviction and order of sentence dated 31st August, 1996, passed by Sri R.K. Choubey, learned Judicial Magistrate, Chatra, in G.R. No. 804 of 1993/T.R. No. 265 of 1996, convicting and sentencing the petitioners for the offences under Sections 325 and 323 of the Indian Penal Code, has been dismissed by the Appellate Court below with modifications. It may be stated that the learned Trial Court had found both the petitioners guilty for the offences under Sections 323 and 325 of the Indian Penal Code and had convicted them for the same, and upon hearing on the point of sentence, the petitioners were sentenced to undergo S.I. for three years each for the offence u/s 325 of the Indian Penal Code. No separate sentence was passed u/s 323 of the Indian Penal Code. In appeal, the Appellate Court below has confirmed the conviction of the petitioners u/s 323 of the Indian Penal Code, but the conviction of the petitioner Jawahar Thakur, u/s 325/34 of the Indian Penal Code has been set aside. The Appellate Court below has also modified the sentence of petitioner Dinesh Thakur to

undergo R.I. for six months for the offence u/s 325 of the Indian Penal Code and no separate sentence u/s 323 of the Indian Penal Code, has been passed against him, whereas the petitioner Jawahar Thakur has been sentenced to undergo R.I. for three months for the offence u/s 323 of the Indian Penal Code.

2. The record shows that the occurrence had taken place on 27.11.1993, in which it is alleged there was an altercation between the petitioners and the informant Pradeep Kumar Thakur, as some fencing sticks were kept over the land in question, upon which petitioner Jawahar Thakur assaulted the informant with "lathi", causing injuries on his head. The father and mother of the informant came to his-rescue and they were also assaulted by the petitioners, causing injuries to them. The written information, about the occurrence was given at Chatra Police Station by the informant Pradeep Kumar Thakur, on the basis of which, Chatra (Sadar) P.S. Case No. 277 of 1993 was instituted for the offences under Sections 323 and 325 of the Indian Penal Code and the investigation was taken up. After investigation, the police submitted the charge-sheet and cognizance was taken against both these petitioners, and ultimately, the petitioners were put to trial, in which the charge was framed against them under Sections 323 and 325/34 of the IPC. It appears that in course of trial, nine witnesses were examined by the prosecution including the informant, both the other injured persons, the I.O. and the Doctor and two independent witnesses.

3. From the evidence on record it appears that there was land dispute between the parties, on which the occurrence had taken place, for which there were proceedings under Sections 144 and 145 of the Cr.P.C. between them, in which both the parties were claiming possession over the land in dispute, on which occurrence had taken place for keeping the fencing sticks, which was objected by the informant, when he was allegedly assaulted by the petitioner Jawahar Thakur. It has come in evidence that on the same land, there was a "Macha" of the petitioners, near which the fencing sticks were kept, which stands admitted even in the evidence of the P.W. 3 Pradeep Kumar Thakur, the informant himself, as also of P.W. 6 Barho Thakur, the father of the informant, who had sustained grievous injury in the occurrence. The allegations of assault by the petitioners on the informant and his parents have been fully supported by the prosecution witnesses, including the informant, as well as the father and the mother of the informant, who were examined as P.Ws. 3, 5 and 6 respectively. The injuries were proved by P.W. 7 Dr. Nityanand Mondal, including one fracture on the left arm of Barho Thakur, and the injury reports were proved as Exhibit-2 series. The other injuries on the injured were simple in nature. The I.O. was also examined in this case.

4. Learned counsel for the petitioners has submitted that admittedly the occurrence had taken place on the land, for which there was dispute between the parties and proceedings under Sections 144 and 145 of the Cr.P.C. had been initiated. It is also submitted that one defence witness was also examined who proved the documents relating to the land in question. Learned counsel for the

petitioners has further submitted that the witnesses, including the independent witness P.W. 1 Pramod Kumar Thakur and P.W. 2 Shamsuddin, have admitted that the occurrence had taken place on the same land, for which there was dispute between the parties. Learned counsel has, accordingly, submitted that in view of this evidence, it cannot be said that the petitioners were the actual aggressors, rather in view of the admitted position there was a "Macha" of the petitioners over the land in dispute, the possession of the petitioners over the land at the time of occurrence was also established and it may be a case of exercise of the right of private defence of property by the petitioners over the land in dispute. Learned counsel for the petitioners, accordingly, submitted that the impugned judgments cannot be sustained in the eyes of law.

5. Learned counsel for the State, on the other hand has submitted that the evidence discussed by the both the Courts below in their judgments, fully support the allegation that the petitioners had assaulted the informant and his parents and the father of the informant had also sustained grievous injury caused by the petitioner Dinesh Thakur. Accordingly, the Appellate Court below has rightly set aside the conviction of the petitioner Jawahar Thakur for the offence u/s 325 of the Indian Penal Code, but has maintained the conviction of both the petitioners for the offence u/s 323 of the Indian Penal Code and has also maintained the conviction of the petitioner Dinesh Thakur for the offence u/s 325 of the Indian Penal Code. Learned counsel for the State further submitted that sufficient reduction in sentence has been allowed by the learned Appellate Court below, and there is no illegality and/or irregularity in the impugned judgments, worth interference in the revisional jurisdiction.

6. After having heard learned counsel for both the sides and upon going through the record, I find that there is admitted land dispute between the parties, for which there were proceedings under Sections 144 and 145 of the Cr.P.C. between them. It is also an admitted fact that the petitioners had a "Macha" over the land in dispute; P.W. 1 Pramod Kumar Thakur, who is an independent witness, has clearly stated in his cross-examination that the occurrence had taken place at the same place where the fencing sticks were kept and said land was to be fenced. The fact that there was a "Macha" of the petitioners, near which the fencing sticks were kept, is admitted even in the evidence of P.W. 3 Pradeep Kumar Thakur, the informant himself, as also of P.W. 6 Barho Thakur, the father of the informant. Even P.W. 2 Samsuddin, who is an independent witness, has clearly stated that the occurrence had taken place on the middle of the disputed land. Thus, from the evidence on record it is established that the occurrence had taken place on the land, on which the petitioners were having their "Macha", which prima facie, shows the possession of the petitioners over the land in dispute on the date of occurrence, which is also the place of occurrence. In this backdrop, I am of the considered view that even if the witnesses examined by the prosecution established the fact that the petitioners had assaulted the informant and his parents injuring them, the petitioners were entitled to be given the benefit of doubt, as it could not be ruled out that the petitioners had acted in

exercise of the right of private defence of the property in dispute. Accordingly, it is a fit case for giving the benefit of doubt to the petitioners.

7. In view of the aforementioned discussions, the impugned judgment and order dated 31st August, 1996, passed by Sri R.K. Choubey, learned Judicial Magistrate, Chatra, in G.R. No. 804 of 1993/T.R. No. 265 of 1996, as also the judgment dated 15th January, 1999, passed by the learned 1st Additional Sessions Judge, Chatra, in Cr. Appeal No. 179 of 1996, are hereby, set aside. Both the petitioners, viz., Jawahar Thakur and Dinesh Thakur, are given the benefits of doubt and they are acquitted of the charge. The petitioners are on bail and they are also discharged from the liabilities of their respective bail bonds. The revision application is, accordingly, allowed. Let the Lower Court Records be sent back forthwith.