

(2009) 03 JH CK 0089

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 264 of 2000 (R)

Kala Chand Gorain and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2009) 57 BLJR 1965 : (2009) CriLJ 4506 : (2010) 7 RCR(Criminal) 324

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : A.S. Dayal, Partha S. Ghosh, J.C. to A.K. Sahani, for the Appellant;
I.N. Gupta, Assistant Public Prosecutor, for the Respondent

Judgement

D.G.R. Patnaik J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 26.07.2000, passed by the learned Sessions Judge, Bokaro whereby the appellants were convicted for the offences under Sections 148 and Section 307 read with Section 149 of the I.P.C. and sentenced to imprisonment for five years.

2. Trial against the appellants had commenced on framing of charge against them for the aforementioned offences together with an additional charge for the offence u/s 326 of the I.P.C. against the appellants, namely Mohan Lal Gorain @ Mohan Master and Dhannu Gorain. However, the trial court did not find the accused/appellant Mohanlal Gorain @ Mohan Master and Dhannu Gorain guilty for the offence u/s 326 of the I.P.C and acquitted them from the charge. The F.I.R. was instituted on the basis of the Fard Bayan of the informant, Bharat Gorain recorded at 10 A.M. on 12.01.1986 and registered as Pindrajora P.S. Case No. 5 of 1986.

3. According to the prosecution's case, in the morning of 12.01.1986 at about 5.15 A.M., when the informant's mother, Gunjia Devi, went towards the village pond to attend the call of nature, she was accosted by the accused persons, total 14 in number, each of them variously armed with weapons, like "Lathis", spears and bow and arrow and "Tangis". The accused Mohan Lal Gorain @ Mohan Master is alleged to have dealt with a "Tabla" (a sharp cutting weapon) on Gunjia Devi, mother of the informant. At that time, the informant was washing his face in front of his house and on hearing the alarms of his mother, he alongwith his wife, Upasi Devi, sister-in-laws, Pato Bala and Masuri Devi, father, Lakhan Gorain and brothers, Prafulo Gorain and Pran Krishna Gorain was towards the pond to rescue the informant's mother. It is alleged that the accused Mohan Gorain assaulted the informant's wife, Upasi Devi with Tabla while Dhanu Gorain assaulted Masuri Devi with an arrow and the rest of the accused persons assaulted the other members of the informant's family with Lathi, Bhala and Tabla etc. The accused Asutosh Gorain and Kalachand Gorain are alleged to have assaulted the informant with stones. Before the villagers could arrive, the assailants left the place. The injured persons were taken to the Hospital for their immediate treatment by the co-villagers, namely Navin Chandra Thakur, Mhabir Gorain, Badal Ram and others. It was at the Hospital that the Fard Beyan of the informant, Bharat Gorain was recorded by the Police Officer.

4. It appears that in respect of the occurrence of the same date, another case was registered on the basis of the Fard Bayan of the appellant-informant Mohan Lal Gorain against the informant and the members of his family for the offences under Sections, 147, 148, 323, 324, 325/34 and 326 of the I.P.C. It also appears that the same Investigating Officer (P.W. 11), in the present case, had taken up the investigation in respect of both the cases and had submitted chargesheet in both the cases. While chargesheet was submitted against the present accused persons for the offences under Sections 147, 148, 149, 323, 324, 337 and 307 of the I.P.C, the chargesheet against the informant-party in the other case was submitted for the offences under Sections 147, 148, 323, 324, 325/34 and 326 of the I.P.C.

It further appears that since the chargesheet in the present case was submitted for the offences u/s 307 of the I.P.C., the case against the present appellants, after cognizance of the offences, was committed to the Court of Sessions while the case against the informant-party was tried by the Magistrate.

The case against the informant party had ended resulting in their conviction for the offences under Sections 147, 148, 323 and 325/34 of the I.P.C. and they were sentenced to undergo imprisonment ranging from six months to two years for the individual offences.

However, extending the benefit of probation, the convicted members of the Informant-party were let off by the trial court on probation on their executing bond of Rs. 2,000/- for maintaining peace and good behaviour for a period of one year.

The present appellants who were convicted for the offences under Sections 148, 307 and 149 of the I.P.C., could not get the benefit of probation of the Offenders Act, since such benefit could not be made applicable to a conviction for the offences u/s 307 of the I.P.C.

5. At the trial, witnesses, including the informant and the injured persons, the Doctor and the Investigating officer were examined on behalf of the Prosecution. The appellants had also examined witnesses in their defence through whom, the details of the purported counter case, filed by the accused Mohan Lal Gorain against the informant-party was brought in evidence.

6. The learned trial court after considering the evidences on record, had observed that there was sufficient evidence to confirm that the appellants had caused multiple injuries to as many as eight members of the informant party by the use of various weapons. The appellants in their defence had also brought on record that as many as nine members of the family of the accused persons, had sustained injuries at the hands of the informant-party and that they too were admitted to the same Hospital at the same time and this fact was confirmed even by the Investigating Officer (P.W. 11) in his evidence.

The trial court appears to have taken into account the evidence to the fact that on the same day, at or about the same time a case was instituted by the accused persons against the informant party. However, by considering the evidence of the prosecution in the present case, that the time of occurrence was 5.15 A.M., whereas in the case instituted by the accused persons, the time of occurrence was stated to be 6 A.M., the learned trial court observed that both the transactions did not occur at the same time and that the time of occurrence for which the present appellants were accused, had preceded the time of occurrence of the later case.

On such observations, the trial court had declared that even though there were injuries on the person of the accused party, but since the time of occurrence is different, the prosecution did not own any responsibility to explain the multiple injuries found on the person of the accused party.

It further appears that on relying upon the testimony of the injured witnesses and finding support from the testimony of the Doctor and on considering the fact that grievous injuries on the left temporal region on the person of the injured, Masuri Devi, grievous injury on the left scalp of the injured Upasi Devi and grievous injuries on the left hand palm of the injured, Palo Devi was caused by the accused out of which, the injury on the Masuri Devi was inflicted by arrow and the injury on the Upasi Devi was with Tabla, the learned trial court had inferred that the offence u/s 307 of the I.P.C. read with Section 149 of the I.P.C. is made out against the appellant and convicted them accordingly.

7. The appellants have challenged the findings as recorded by the trial court in the judgment of conviction mainly on the ground that the learned court below has seriously erred in failing to take into consideration, the fact that even as per

the evidences adduced by the Prosecution, the genesis of the occurrence was the illegal construction of the wall by the informant party over the land of the accused persons and that such construction was made in a manner which posed interference in the right way. It is further submitted that the place of occurrence, even as admitted by the Investigating Officer of the case, is adjacent to the house of the accused persons and at a distance from the house of the informant-party. This, according to the learned Counsel for the appellants would amply suggest that it was the informant-party, who had come to the house of the appellants and had indulged in the assault, when the appellants had protested against the construction of the wall.

8. Learned Counsel adds further that the finding of the trial court that the offence u/s 307 of the I.P.C. is proved against the appellants is also incorrect and misleading and not in consonance with the evidence on record. Learned Counsel explains that the learned trial court appears to have swayed merely by the injury Reports and the evidence that three out of the several injured persons had sustained grievous injuries. Learned Counsel adds that the learned trial court did not appreciate the evidence of the Doctor that the injury on the person of the Upasi Devi, even though grievous in nature, but was not dangerous to life and further, the learned trial court has also ignored the manner of occurrence and the fact that the members of both sides in large numbers had sustained injuries at the hands of each other and even on the basis of the evidence, brought on record, the Prosecution was not able to prove the charge for the offence u/s 326 of the I.P.C. against the accused persons. Learned Counsel adds further that in absence of any evidence to suggest that there was any intervening circumstance, which had prevented the assailants to do away with the life of the injured persons, mere infliction of the single grievous injury on the person of the injured, cannot lead to the inference that the injuries were caused with intention to commit murder of the victims.

9. Learned Counsel for the informant as also learned Counsel for the State, on the other hand would argue that the evidences, brought on record, amply demonstrate that the appellants being armed with lethal weapons, like Tabla and arrow, had caused multiple injuries to the victims. The injury caused on the injured Upasi Devi, with Tabla was on the right portion of her head while the injury on the Masuri Devi though single, was caused on her left temporal region with arrow. Injuries on both these ladies were found to be grievous in nature by the Doctor.

Learned Counsel add further that the genesis of the occurrence is not as sought to be described by the learned Counsel for the appellants. Rather, the fact is that the construction of the wall was completed, even two days prior to the date of occurrence and it was after two days of the construction that the accused persons had chosen to pick up a quarrel with the informant party and for such purposes, they had visited the house of the informant-party inviting them into a quarrel and made assault on the informant party and causing multiple injuries to

them.

10. I have gone through the evidences on record as also the finding of the court below as recorded in the impugned judgment.

11. It appears that the learned trial court did not find sufficient evidence for convicting the accused persons for the offence u/s 326 of the I.P.C. If this was so then the Prosecution's contention that the injuries were caused by means of sharp-cutting weapons, cannot logically be sustained. It also appeals from the observations of the trial court recorded in the impugned judgment that the inference for the offence u/s 307 of the I.P.C. was drawn only on the ground that the injuries were caused on the vital part of the body, namely the head of the victims and were found by the Doctor to be grievous in nature. Apparently, the trial court has failed to consider that the Injury No. 1 on the person of the injured Upasi Devi was though on the left scalp but was only bone deep. Even this injury, though opined by the Doctor to be grievous in nature but at the same time it was also opined that it was not dangerous to life.

12. It further appears that even according to the manner of occurrence as narrated by the witnesses, after having inflicted injuries on the several members of the informant party, the accused-assailants had left the place of their own. The inference, which could reasonably be drawn, is that the intention at best, was to inflict injuries on the injured members of the informant's party and was not prompted with any intention to kill any of the victims. Had there been any such intention then, as per the evidences on record, there was no intervening or interfering circumstance to prevent the assailants from carrying out such intentions. It is also significant to note that the Prosecution has not been able to prove the offence u/s 326 of the I.P.C. Thus, even on considering the evidences adduced by the prosecution, the offence made out at best would be offences punishable u/s 325 read with Section 149 of the I.P.C. and certainly not u/s 307 of the I.P.C.

13. In the light of the above discussions, the impugned judgment of conviction for the offence u/s 307 of the I.P.C. and the corresponding sentence, is hereby set aside. The conviction is modified to the offence under Sections 149/325 of the I.P.C. and on considering the fact that the informant-party had availed the benefit of probation despite their conviction for the same offences, the conviction of the present appellants being altered to the offence u/s 325/149 of the I.P.C., they too are allowed the benefit of probation u/s 360 of the Cr.P.C. and they shall be let off on their individually executing bonds of Rs. 2,000/- (Rupees Two thousand only) with two sureties each, before the trial court, for maintaining peace and good behaviour for a period of one year. Let this order be communicated to the trial court or its successor forthwith. The appellants shall surrender before the trial court within fifteen days from this order and shall file their bonds as directed above.