
(2019) 11 JH CK 0052

In the Jharkhand High Court

Case No : Criminal Revision No. 871 Of 2014

Khageshwar Raut And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 149, 323, 324, 326

Citation : (2019) 11 JH CK 0052

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : P.A.S. Pati, Ashish Kumar, Suraj Kr. Verma

Final Decision : Disposed Of

Judgement

1. The instant application is directed against the judgment dated 26.07.2014, passed by the learned Sessions Judge, West Singhbhum at Chaibasa in Criminal Appeal No. 97 of 2013, whereby the appeal preferred by the petitioners has been dismissed and the judgment of conviction and order of sentence dated 12.09.2013, passed by the learned SDJM, Sadar, Chaibasa, in G.R. Case No. 541 of 2007 (T.R. No. 61 of 2013), whereby the petitioners have been found guilty for the offence under Section 147, 323/149, 326/149 IPC and were sentenced to undergo R.I. for 6 months for the offence under Section 147 IPC, 3 months R.I. for the offence under Section 323/149 IPC, one year and six months R.I. for the offence under Section 324/149 and two years R.I. alongwith fine of Rs. 1,000/- for the offence under Section 326/149 IPC, has been sustained.

2. Learned counsel for the petitioner submits that there was admitted land dispute between the informant and the petitioners for the last 10 years. He further submits that the P.W.3- Prafulla Raut in his cross-examination has admitted that after incident of assault, he reached the place of occurrence. He further admits that Manohar Raut who is injured-cum-eye-witness is his uncle and at his instance, he has given false statement. Learned counsel for the petitioners further submits that even the P.W.1 who is injured-cum-eye witness

has admitted in his cross examination that he has sustained no fracture. Learned counsel for the petitioners further assailed the impugned order specially with respect to offence under Section 326 IPC by relying the deposition of the doctor that there were three injuries found by the doctor out of which injury no. 3 is grievous in nature. Injury no. 3 reflects fracture of bone. He further submits that the doctor himself has admitted in his cross examination in paragraph-6 of his deposition that since X-ray machine was not available at that time at sadar hospital, he had given his medical opinion by seeing injury reports and the X-ray plates. He further admitted that no recommendation has been made by him in the injury reports to admit the patient in the hospital. Relying upon the cross-examination of the doctor, deposition of P.W.-3; deposition of P.W.1 who is injured-cum-eye-witness, who has admitted that he has sustained no fracture, learned counsel submits that no offence is made out under Section 326 IPC. He concluded his argument by submitting that though there was a fight but to attract the charge under Section 326 IPC, the injury has to be grievous in nature by means of any instrument of sharp cutting weapon etc. He further submits that the fracture has not been admitted even by injured witness. In this view of the matter, the petitioners should be acquitted from the charge under Section 326 and for the other offences the petitioners should be discharged from sentence in lieu of fine.

3. Per-contra, the learned APP for the State supports that impugned order and submits that both the courts below have concurred with the finding and there is no error pointed out by the learned counsel so as to warrant any interference by this Court.

4. Heard learned counsel for the parties and after perusing the impugned order including the lower court records, it is apparent that P.W. 1 who is injured-cum-eye-witness himself has admitted in his cross-examination that he has sustained no fracture. It has also come on record from the deposition of P.W. 3 who has reached the place of occurrence after the occurrence has clearly admitted that Manohar Raut is his uncle and he has given this statement at the instance of Monohar Raut. Even the doctor has stated that he himself has not done X-ray, but given his opinion on the basis of X-ray plates. The records also indicate the long fight between the parties with respect to land. In this view of the matter, I am in agreement with the contention of the learned counsel for the petitioner specially after seeing the deposition of the doctor as well as P.W.1 and P.W.3 that no case is made out under Section 326 IPC. As such, the petitioners are acquitted from the charge under Section 326 IPC. However, the conviction against the petitioners with respect to rest of the offences are hereby, confirmed.

5. So far as sentence is concerned, it is on record that the incident is of 2007 and the petitioners must have suffered the rigors of litigations for the last 12 years. It has also not been pointed out by the learned APP that the petitioners have ever misused the privilege of bail. In my considered opinion, interest of justice would be sufficed if the sentence is modified in lieu of fine.

6. Thus, the sentence passed by the trial court and upheld by the appellate court is, hereby, modified to the extent that the petitioners are sentenced to undergo for the period already undergone subject to the payment of fine of Rs. 2,000/- each failing which they shall serve rest of the sentence as directed by the learned trial court.

7. It is made clear that the aforesaid amount of Rs. 16,000/- (2,000/-each) must be paid before the learned District Legal Services Authority, Chaibasa within a period of 3 months from the date of this order.

8. With the aforesaid observations and directions, the instant revision application is disposed of.

9. The petitioners shall be discharged from the liability of their bail bonds subject to fulfillment of conditions aforesaid.

10. Let the lower court record be sent to the concerned court forthwith.

11. Let the copy of the order be sent to the learned trial court and District Legal Services Authority, Chaibasa forthwith.