
(2019) 11 JH CK 0010

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 731 Of 2013

Kongress Yadav And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 307, 323, 324, 325, 326

Citation : (2019) 11 JH CK 0010

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Ramit Satendra, Pranay Kr. Jaiswal

Final Decision : Partly Allowed

Judgement

Shree Chandrashekhar, J

1. Three accused persons, namely, Kongress Yadav, Rinku Devi and Ghanshyam Mahto @ Ghanshyam Yadav have faced the trial in Sessions Case No. 219 of 2008 on the charge of committing murder of Jhalku Yadav and causing injuries to the prosecution witnesses. The appellant, namely, Kongress Yadav has been convicted and sentenced to RI for life and fine of Rs.5000/- under section 302 IPC, both the appellants have been convicted and sentenced to RI for five years and fine of Rs.2000/- each under section 307 IPC and all the three above-named accused persons are convicted and sentenced to SI for six months under section 323 IPC.

2. The accused, namely, Rinku Devi is not an appellant before us.

3. The informant of this case, namely, Faudi Mahto is the father of the deceased. He has been examined during the trial as PW-3 and Bishnu Mahto, the other son of the informant, has been examined as PW-2; PW-1 is the wife of PW-2.

4. The place of occurrence is in front of the house of the informant; about 25 hands away from the house of Kongress Yadav. It has come in the evidence of

the prosecution witnesses that there was a dispute between the accused persons and the informant's family with respect to the land which according to the prosecution is the place of occurrence. The accused persons have filed documents which were marked as Ext.-A and Ext.-B to establish that the land in question belongs to their predecessors-in-interest. The evidence of PW-2 reveals that when he came out of his house, he has seen the co-villagers, namely, Daso, Munshi and Sudhir, however, the Investigating Officer has not recorded their statement or any other co-villager and during the investigation the Investigating Officer has failed to inspect the place of occurrence, collect the blood-stained soil and recover the crime weapon.

5. The learned Sessions Judge has recorded a finding that the prosecution has failed to establish that murder of Jhalku Yadav has been committed in furtherance of common intention of the accused persons.

6. The prosecution has projected PW-1, PW-2 and PW-3 as eye-witness. Their evidence is corroborated by the findings recorded by the Doctor who has prepared the post-mortem examination report which has been taken in evidence without objection from the defence.

7. In his fardbeyan, the informant has stated that in the morning of 23.03.2008 Kongress Yadav, Ghanshyam Yadav and Rinku Devi; Ghanshyam Yadav is married to the daughter of Kongress Yadav, were digging earth from his land and when his son, namely, Jhalku Yadav objected to their digging earth he was assaulted by Kongress Yadav with Kulhari on his head. At that time, when the other son of the informant, namely, Bishnu Mahto and his daughter-in-law, namely, Lakhia Devi tried to intervene Kongress Yadav assaulted Lakhia Devi with Kulhari on her head and Rinku Devi assaulted Lakhia Devi with lathi. In the Court also the informant has made a specific allegation of assault on Jhalku Yadav by Kongress Yadav on his head and assault by the accused persons on all the witnesses. PW-1 and PW-2 have also supported the prosecution story about the assault on Jhalku Yadav. They have also stated that the accused persons have assaulted them as well as the informant. The post-mortem examination report which is dated 31.03.2008 would disclose that the Doctor has found one stitched wound on the head of Jhalku Yadav. The injury report of Lakhia Devi, Bishnu Yadav and Faudi Yadav were also tendered in evidence without objection by the defence; the Doctor who has examined them has not been produced during the trial. The injury report of Bishnu Yadav would reveal no external injury on him, however, he has complained of pain over his left thigh. On the person of Lakhia Devi, one sharp-cut wound over the right parietal region of the size of 3" x ½" and tenderness over her left forearm were found by the Doctor.

8. On the above evidences, we are inclined to hold that the appellants were present at the time of the occurrence and at the place of the occurrence. The prosecution has also proved that they have played some role in the incident.

9. Now the question is what is the nature of offence committed by the appellants.

10. The appellant, namely, Kongress Yadav has been convicted under sections 302/ 307/ 323 IPC. Jhalku Mahto, the deceased, has died after about a week of the incident which took place in the morning of 23.03.2008. He was first taken to Sarwan hospital, thereafter Deoghar hospital and finally referred to Patna hospital, where he has died in course of his treatment. Neither the Doctor who has conducted the post-mortem examination has been examined nor was the Tangi with which Kongress Yadav has assaulted him has been recovered. The Doctor who has prepared the post-mortem report has simply written cause of the death as head injury, but then, what treatment was given to him after he suffered head injury has not been brought on record. On such facts, we are of the opinion that it is not possible to hold that the appellant, namely, Kongress Yadav has intentionally committed murder of Jhalku Yadav. In absence of the exact nature and extent of the head injury and also due to the handicap about opinion of the Doctors who have treated him and conducted the post-mortem examination, it is difficult to hold that the appellant had knowledge that his act was so imminently dangerous that in all likelihood it would cause death of Jhalku Yadav.

11. Accordingly, it is held that the prosecution has failed to prove the charge under section 302 IPC against the appellant, namely, Kongress Yadav and, therefore, his conviction under section 302 IPC is set-aside.

12. But, the prosecution has been able to establish that Kongress Yadav has caused grievous injury to Jhalku Yadav by dangerous weapon and the assault on the head of Jhalku Yadav with a dangerous weapon would reflect that such injury was likely to cause death and, accordingly, Kongress Yadav is convicted and sentenced to RI for 10 years under section 326 IPC.

13. Both the appellants have been convicted and sentenced under section 307 IPC.

14. The essential distinction between the offence punishable under section 307 IPC and Section 302 IPC is that the offence under section 307 IPC is not culpable homicide; the victim finally survives. What is required by the prosecution to establish is that the accused had requisite intention or knowledge that if successfully executed the alleged act would have caused death. In "State of Maharashtra Vs. Kashirao" reported in (2003) 10 SCC 434, the Supreme Court has observed as under;

"20.The essential ingredients required to be proved in the case of an offence under section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as: (a) the accused knew to

be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury."

15. The appellant, namely, Kongress Yadav has assaulted Lakhia Devi on her head with Tangi and her injury report would disclose one sharp-cut wound over her right parietal region of the extent of 3" x ½". She had gone to save Jhalku Yadav when she was assaulted by Kongress Yadav and, therefore, intention to murder her cannot be imputed on Kongress Yadav, particularly, when no other sharp-cutting or lacerated injury has been found on her person, which Kongress Yadav might have caused had he formed an intention to murder her.

16. In view of the aforesaid facts, the conviction of Kongress Yadav under section 307 IPC is set aside, but he is convicted under section 325 IPC and sentenced to RI for five years with fine of Rs.2000/-. In default of payment of fine he shall suffer SI for two months.

17. The conviction of the appellant, namely, Ghanshyam Mahto @ Ghanshyam Yadav under section 307 IPC is also unsustainable. He is said to have assaulted Bishnu Yadav and Faudi Mahto with lathi, however, no injury has been found on Bishnu Yadav. None of the prosecution witnesses has stated that lathi is a dangerous weapon and death can be caused by assault with lathi. Mr. Ramit Satendra, the learned Amicus, appearing for the appellants submits that lathi is generally carried by the villagers and it is not considered a weapon.

18. Viewed thus and also from the evidences laid by the prosecution on the role played by Ghanshyam Mahto, we find that his conviction under section 307 IPC is not proper and, accordingly, it is set-aside. He is convicted under section 324 IPC and sentenced to RI for one year.

19. The conviction of both the appellants under section 323 IPC is affirmed.

20. Sri Pranay Kumar Jaiswal, the learned APP states that the appellant, namely, Kongress Yadav is in custody for the last more than 11 years.

21. Accordingly, the appellant, namely, Kongress Yadav shall be released forthwith, if not required in connection to any other case.

22. The appellant, namely, Ghanshyam Mahto @ Ghanshyam Yadav is on bail and, therefore, he shall be discharged of liability of the bail-bonds furnished by him.

23. Criminal Appeal (D.B.) No. 731 of 2013 is partly allowed.

24. We appreciate the assistance rendered by Mr. Ramit Satendra, the learned Amicus. He shall be reimbursed by the Secretary, Jharkhand High Court Legal Services Committee on submission of bill(s).

25. Let lower court records be transmitted to the court concerned, forthwith.
26. Let a copy of the judgment be communicated to the trial court through FAX.