

(2005) 05 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Appeal No. 261 of 1991 (P)

Lakshmi Narain Gorain and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2005) 4 JCR 217

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Sunil Kumar Mahto, for the Appellant; Vijay Gopal, APP, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—By the impugned judgment, the appellant No. 1, Lakshmi Narain Gorain was found guilty for committing the offence u/s 307, IPC and was sentenced to undergo RI for a period of seven years for the said offence. The appellant No. 2, Sheikh Nashir was found guilty for the offence u/s 323, IPC. However, no substantive sentence was awarded to him and he was released on probation after executing the bond for a period of one year. The other three accused, who were tried alongwith these two appellants were acquitted from the charges by the impugned judgment dated 18.07.1991 in Sessions Case No. 17 of 1995 by the Additional Sessions Judge, Dumka.

2. The prosecution case in short is that on 18.03.1984 at about 11.30 a.m., while the informant Madhusudan Gorain (PW 5) was returning to his house on a bicycle and when he crossed the house of the appellant No. 2, Sheikh Nashir situated in village Baskuni, the appellants Lakshmi Narain Gorain, who was armed with a tangi and the appellant No. 2 Sheikh Nashir, who was armed with "bhujali" attacked the informant from behind and assaulted by means of their respective weapons held by them. Consequently, the informant fell down and thereafter it is said that the other accused persons assaulted him with lathi on his leg and

hands. On halla being raised by the informant PW 1 Nikhil Kr. Sah (hostile), PW 2 Basant Gorain (Hostile) PW 3 Atul Chand Dey (Hostile) and PW 4 Ramdayal Guluka (Hostile) arrived at the P.O., whereupon the accused persons fled away after taking out a sum of Rs. 450/- from the informant.

3. All the five accused persons were charged for the offence under Sections 147: 307/149: 307 and 379, IPC and further these two appellants were charged for the offence u/s 148, IPC.

4. The prosecution examined seven witnesses in all including the Doctor, PW 6 Sachida Nand Jha, who medically examined the informant on 18.03.1984 and found the following injuries on his person.

(i) Cut injury on posterior part of head 2" x 1/4" x 1/6".

(ii) Cut injury on posterior part of head, below injury No. 1, size 3" x 1/4" 1/6

(iii) Cut injury 1" x 1/6" x 1/6" on left leg.

(iv) Cut injury 1/2" x 1/6" x 1/6" left leg with swelling of ankle joint.

(v) Swelling left elbow 3" x 4".

(vi) Scratch below right knee size 1/2" x 1/4".

5. No doubt the PWs 1, 2, 3 and 4 have been declared hostile and have not supported the prosecution case but as it appears that PW 5, the informant was actually assaulted by the accused persons including these two appellants. PW 5 in his evidence has specifically stated that the appellant No. 1 Lakshmi Narain Gorain assaulted him on his head by means of "tangi", whereas the appellant No. 2 Sheikh Nashir assaulted him by means of "bhujali" on his leg. In the cross-examination this witness PW 5 has specifically stated that the appellant No. 2 gave two "tangt" blows on his head and the appellant No. 2 thereafter assaulted him on his legs by means of "bhujali" and thereafter the appellant No. 2 assaulted him thrice by means of bhujali held by him. Nothing has been taken by the defence in the cross-examination of this witness so as to make his evidence unbelievable rather on the other hand, the evidence of the informant PW 5, who is the injured witness has succeeded in the test of cross-examination and his statement has totally been corroborated by the medical evidence.

6. From the impugned judgment, I find that the learned trial Court has rightly found these two appellants guilty for the offences committed by them. It has rightly been held that the prosecution has been able to prove the charges against these two appellants. The appellants have rightly been convicted by the trial Court. The sentence awarded to these appellants also does not appear to be excessive. Accordingly, having found no merit, this appeal, is dismissed.