

(2025) 11 JH CK 1922

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 1022 of 2005

Majharul Ansari son of Nasimuddin Ansari

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-11-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 107

Indian Penal Code, 1860 — Section 34, 107, 307, 325, 335, 341

Citation : (2025) 11 JH CK 1922

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Sanskriti Shalini, Shiv Shankar Kumar

Final Decision : Allowed

Judgement

Rajesh Kumar, J

1. Nobody appears for the appellants. Learned counsel for the State is present. Ms. Sanskriti Shalini, learned counsel is hereby appointed as Amicus Curiae to assist the Court in the instant appeal on behalf of the appellants.

2. Heard learned amicus representing the appellants and learned A.P.P. representing the State.

3. Learned Amicus Curiae, at the outset has submitted that the appellant namely Nasimuddin Ansari has died during pendency of the appeal and his case stands abated vide order dated 19.12.2024.

4. In view of the submission made by learned amicus curiae, the criminal appeal shall now proceed against the remaining three appellants, whose names have been renumbered in the cause title as above.

5. The present appeal has been preferred against the judgment of conviction dated 26.07.2005 and order of sentence dated 27.07.2005 passed in Sessions Trial No. 79 of 2001 arising out Gooda (muffasil) P.S. Case No. 383 of 2000 by

the learned Sessions Judge, Godda, whereby the appellants have been convicted for the offence under Section 325 and 341 of the IPC and they have been sentenced to undergo R.I. for 1 year and a fine of Rs.2000/- each for the charge under Section 325 IPC and 3 months R.I. for the charge under Section 341 IPC. In case of default of payment of fine, each of them is further directed to undergo S.I. for 3 months. All the sentences are directed to run concurrently.

6. The criminal law has been put into motion on lodging an F.I.R being Godda (Muffasil) P.S. Case No. 383 of 2000 against the appellants. The brief story as per the prosecution is that on 08.12.2000 at 2.15 P.M. Sanjida Khatoon had gone to fetch water from a government well constructed in the land of the accused Nasimuddin Ansari where accused Majharul Ansari and Nasimuddin Ansari broke the pitcher of Sanjida Khatoon and restrained her from taking water. She raised alarm upon which her family members namely Ziauddin Ansari, Lal Mohammad and Basir Ansari came there to whom she narrated about the occurrence. Thereafter, Ziauddin Ansari and Basir Ansari asked the accused Majharul Ansari and Nasimuddin Ansari as to why they are stopping Sanjida Khatoon from fetching water, upon which the accused assaulted the informant Lal Mohammad Ansari and other family members including Sanjida Khatoon with iron rod and lathi. In the meantime Sakimuddin Ansari and Najrul Ansari and Saleha Khatoon came there armed with lathi and assaulted the informant party on their head and other parts of the body. Thereafter, the informant gave his fardbeyan before the S.I. of the Muffasil P.S, which was registered as Godda (Muffasil) P.S. Case No. 383 of 2000 under Section 325, 307/34 of the IPC

7. On the basis of the investigation, the Police submitted the chargesheet against all the appellants. Thereafter cognizance has been taken and the case was committed to the Court of Sessions.

8. Accordingly, the charge under Sections 341 and 307/34 of the IPC was framed against the appellants who pleaded not guilty and claimed to be tried.

9. To substantiate the allegations altogether nine prosecution witnesses have been examined:

I. P.W.1-Basir Ansari has supported the case of the prosecution and he is one of the injured witness. This witness in his evidence-in-chief has stated that on the date of incident, on hearing alarm raised by Sanjida Khatoon, he went to the place of occurrence and came to know that the accused persons were restraining Sanjida Khatoon from fetching water from government well and they broke her pitcher. He further stated in his testimony that the accused persons assaulted him and other family members of Sanjida Khatoon. His hand was fractured due to the assault. In his cross examination he has admitted that a case under Section 107 Cr. P.C. has been initiated against him and a criminal case has also been lodged by the accused party in which he is on bail.

II. P.W.2-Ziauddin Ansari has also supported the prosecution story and is one of the injured witnesses. In his testimony he has also reiterated the statement

made by P.W.1 that on hearing alarm, he reached the place of occurrence. In his cross examination he has admitted that he has received some light injury.

III. P.W.3-Mobin Ansari has also reiterated the same story as narrated by P.W.1 and P.W.2. In his cross examination he has stated that both the informant as well as the accused party are descendants of common ancestor.

IV. P.W.4- Md. Qayum Ansari is neighbour of both the parties. He has also reiterated the same story as narrated by P.W.1, P.W.2 and P.W.3. He has also stated that entire Muslim population of the village are "Gotias". In his cross examination he has admitted that the accused party have lodged a case against the informant party. He has further stated that there were differences between the informant party and the accused party and the informant Lal Mohammad Ansari had made compliant before the S.D.O. also.

V. P.W.5- Sanjida Khatoon has supported the case of the prosecution. She has stated in her testimony that on Friday at 2.15 P.M. she went to fetch water from the government well where accused Majharul and Nasimuddin Anari broke her pitcher and restrained her from taking water, to which she raised protest, whereafter, the accused persons assaulted her with iron rod. She raised alarm upon which her father-in-law Lal Mohammad Ansari and other family members namely Basir and Ziauddin also came there who were also assaulted by the accused- appellants. In her cross examination she has stated that accused persons are her "Gotia". She has also admitted that there is a case and counter case between both the parties.

VI. P.W.6- Md. Ishaque Ansari has been declared hostile.

VII. P.W.7-Lal Mohammad Ansari is informant of the case. He has stated that on the date and time of the occurrence his daughter-in-law Sanjida Khatoon had gone to fetch water upon which accused Majharul and Nasimuddin restrained her from fetching water and broke her pitcher. His further evidence is that when her daughter-in-law raised alarm, Basir Ansari and Ziauddin reached there to whom she narrated the whole incident. Thereafter the accused Majharul assaulted Sanjida Khatoon on her head and above left eye with iron rod and they were also assaulted by the accused. In his cross examination he has admitted that the occurrence took place near the government well. He has further admitted that accused persons have lodged a counter case against him.

VIII. P.W.8- Dr. Sunil Kumar Jha is the Doctor who has examined the injured persons and found the following injuries:

" One lacerated wound over vertex and swelling and fracture of right forearm of injured Basir Ansari. One lacerated wound 2/4" x 3 x 1/4" over vertex besides two abrasions over left knee and left thigh and swelling on left forearm of injured Ziauddin Ansari. One lacerated wound over left temporal region of 1/2" x 1/3" besides one abrasion with a bruise of 3/4" diameter on the end of left forearm of injured Sanjida Khatoon. One Lacerated wound measuring 1"x 1/2" x 1/3" over

Occipital region of injured Lal Mohammad Ansari. He has proved the injury report marked as Ext. 1 to Ext 1/3.

During cross examination he has admitted that in the injury report of Basir Ansari and Ziauddin Ansari he has not mention the word 'fracture' but has shown the sign of fracture in the injury report. He has further admitted that he has not mentioned the colour of any injury in the injury report."

IX. P.W.9-Manjur Ali is the Investigating Officer of the case. In his testimony he has stated that on 08.12.2000 he was posted as S.I. in Godda Police Station and at 4.00 P.M. injured Lal Mohammad Ansari, Ziauddin Ansari, Basir Ansari and Sanjida Khatoon came there and thereafter he recorded fardbeyan of Lal Mohammad Ansari (Ext.2). On the fardbeyan of the informant the Officer-in-charge of the Godda Police Station R.R. Kumar put his endorsement marked as Ext. 2/1. This witness has also proved the formal F.I.R marked as Ext. 3. In his cross examination he has stated that he has inspected the place of occurrence. He did not seize blood stained earth and the broken piece of the pitcher. He has also stated that after the occurrence of the instant case he reported for initiation of a proceeding under Section 107 Cr.P.C. against the members of both the parties.

10. The defence has also examined one witness namely Sanaullah, who has stated that the well in question is a private property.

11. After conducting full-fledged trial, the learned Trial Court has convicted and sentenced the appellants as aforesaid.

12. Learned Amicus Curiae by referring to the statement of the witnesses, has pointed out to this Court that there was a dispute between the parties over fetching of water from a well. The prosecution has made out a story that the well in question, is a government well, while P.W.1 Basir Ansari has clearly admitted in his cross examination that the well in question is a private property.

13. Further, it has been submitted that P.W.9 namely Manjur Ali, who is investigating officer of the case has also admitted that the well in question is within the boundary wall of Nasimuddin Ansari. By referring to the above statement of the prosecution witnesses as well as one defence witness, learned Amicus Curiae has submitted that the well in question is a private property and dispute has been raised by the victim party. The scuffle has taken as the informant party were getting prohibited from fetching water from the well in question. The injury, as suggested by the doctor P.W.8 is simple in nature, save and except fracture of forearm. Injuries itself suggest that no deadly weapon has been used in the alleged crime.

14. On the above factual matrix, it has been stated by learned amicus curiae that the offence under Section 341 IPC is not made out as because the well in question is a private property and they had every right to defend their property.

15. So far as conviction for the offence under Section 325 IPC is concerned, it

has been submitted that the appellants within their rights have defended their private property and it is the respondents-informant party who are the aggressor and they tried to encroach the private property of the appellant and as such, no offence under Section 325 IPC is made out rather it is offence under Section 335 of the IPC.

16. Learned A.P.P. appearing on behalf of the State has supported the judgment of conviction and submitted that admittedly the victim party have sustained injury and they have supported the case of the prosecution stating that the well in question is a government well and everybody has a right to use it.

17. Having heard learned counsel for the parties and having perused the record, it appears that there is material to suggest that the well in question is a private property of the appellants. This fact has been admitted by the Investigating Officer-P.W.9 and other prosecution witnesses in their cross examination. Further, there is a proceeding under Section 107 Cr.P.C between the parties. Thus, the offence under Section 341 of the IPC is not made out as the present appellants have every right to protect their property. It cannot be said that any wrongful restrain has been created against the alleged victim party.

18. Accordingly, the judgment of conviction dated 26.07.2005 and order of sentence dated 27.07.2005, so far as section 341 IPC is concerned, passed in Sessions Trial No. 79 of 2001 arising out Gooda (Muffasil) P.S. Case No. 383 of 2000 by learned Sessions Judge, Godda is hereby set aside.

19. So far as the conviction under Section 325 of the IPC is concerned, admittedly the informant and others had entered upon the property of the present appellants and as such there is enough provocation on their part. Further, the injury sustained by the informant party are simple in nature. Accordingly, the conviction of the appellants under Section 325 of the IPC is converted into Section 335 of the IPC.

20. So far as the sentencing part is concerned, it is submitted by the learned amicus curiae that the appellants have undergone custody for about 1 month. Further, the incidence is of the year 2000 and the appellants have also faced the rigor of trial for a longer period of time. On the above factual mitigating circumstances, it has been submitted that the sentencing party may be interfered with by reducing the same to the period already undergone by the appellants.

21. Considering the above facts that conviction has been converted from 325 to 335 of the IPC and also the fact that appellants have remained in custody for a month and incident is of the year 2000, the order of sentence dated 27.07.2005 is reduced to the period already undergone by the appellants.

22. With above modification in the judgment of conviction dated 26.07.2005 and order of sentence dated 27.07.2005 passed in Sessions Trial No. 79 of 2001 arising out Gooda (muffasil) P.S. Case No. 383 of 2000 by the learned Sessions

Judge, Godda, the appeal stands partly allowed.

23. Since the appellants are on bail, they are discharged from the liability of their bail bond.

24. This Court appreciates the assistance rendered by Ms. Sanskriti Shalini, learned amicus curiae. Let admissible remuneration of the learned Amicus Curiae be paid by the JHALSA. Let this order be communicated to the learned Member Secretary, JHALSA for the needful.