
(2010) 04 JH CK 0068
In the Jharkhand High Court

Mithu Pasi and Bhithan Pasi	Vs	APPELLANT
The State of Jharkhand		RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 313
Penal Code, 1860 (IPC) — Section 307, 324, 326, 34, 341

Citation : (2010) 04 JH CK 0068

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 26.11.2002 passed by Additional Sessions Judge, F.T.C.-1. Deoghar in S.C. Case No. 34 of 1997/55 of 2002 whereby and whereunder appellants were convicted u/s 326, 341, 504 read with Section 34 of the IPC and sentenced to undergo R.I. for ten years u/s 326/34 IPC and directed to pay fine of Rs. 2000/- each. Appellants were further sentenced to undergo S.I. for three months each for the offences under Sections 341 and 504 read with Section 34 of the IPC.

2. The case of prosecution, in short, is that on 27.11.1996 in the evening at about 7 p.m., appellants were abusing informant's father. It is further alleged that when forbed them, on the instigation of appellant No. 1, appellant No. 2 inflicted knife blow on the abdomen of informant. It is further stated that on hulla, informant's brother Chhaku Pasi and Jhunjhun Pasi arrived, thereafter appellants fled away. It is further stated that informant was brought to hospital, where he was medically treated by the doctor.

3. On the basis of fard beyan of informant, Mohanpur P.S. Case No. 235 of 1996 u/s 341, 342, 324, 504/34 of the IPC instituted and police took up investigation. After investigation, police submitted charge sheet against the appellants under Sections 341, 342, 326, 307, 504/34 of the IPC. After cognizance, the case

committed to the court of sessions as the offence u/s 307 of the IPC is exclusively triable by the court of sessions.

4. The learned court below framed and explained charges against the appellants under Sections 341, 504, 342, 326 and 307 read with Section 34 of the IPC, to which appellants pleaded not guilty and claimed to be tried. Thereafter prosecution adduced oral and documentary evidence in support of its case. After close of the case of prosecution, statement of both the appellants recorded u/s 313 Cr.P.C. in which their defence is of total denial. It appears that learned court below after considering the evidence available on record, acquitted appellants from the charge u/s 307/34 of the IPC. However, by the same judgment appellants were convicted and sentenced as stated above, against that the present appeal filed.

5. Learned Counsel for the appellants Sri K.P. Deo, submitted that in the instant there is delay of about three days in sending the FIR to the magistrate. He then submits that it is an admitted position that there is enmity between the parties from before, thus the aforesaid delay cast a serious doubt on the case of prosecution. It is further submitted that there is dispute with regard to the place of occurrence. It is submitted that the I.O. has not been examined, which is fatal for the case of prosecution. Accordingly, it is submitted that the impugned judgment of the court below cannot be sustained.

6. On the other hand, learned Additional P.P. appearing for the prosecution submits that in the instant case all the witnesses of fact supported the case of prosecution and their evidence find full support from the doctor P.W. 6. It is also submitted that nothing has been elicited by the defence on the basis of which credibility of prosecution witnesses can be doubted. It is submitted that there is no dispute with regard to the place of occurrence. Thus, no prejudice has been caused to the appellants due to non examination of I.O. It is further submitted that though there is delay of 3 to 4 days in sending the FIR to the Magistrate but on the same basis entire case of prosecution cannot be doubted. It is submitted that the delay in sending the FIR to the CJM, Deoghar after delay of three days have of no bearing on the case of prosecution.

7. Having heard the submission, I have gone through the record of the case. In the instant case prosecution had examined altogether six witnesses in support of its case. P.W. 1 Sitaram Pasi (informant-injured), P.W. 2 Malti Devi (wife of informant's brother), P.W. 3 Jhunjhun Pasi (Co-villager), P.W. 4 Butni Pasi (wife of P.W. 3), P.W. 5 kabiya Devi (wife of informant) are the witnesses of fact. P.W. 6 Dr. Jugal Kishore Choudhary, is the doctor who examined the injured at Sadar Hospital, Deoghar. The prosecution had also proved injury report Ext.-1 and 1/1.

8. P.W. 1 stated that at the time of occurrence, while he was in his house, appellants were abusing his father. He further deposed that he came out of his house and forbad appellants from abusing his father. Whereupon appellant No. 2 gave knife blow on his abdomen on being exhorted by appellant No. 1. It is

stated that on hulla the informant's brother and co-villagers arrived, then appellants fled away. The aforesaid statement fully supported by P.W. 2, 3, 4 and 5 who are also eye witnesses of the occurrence. It is worth mentioning that all the witnesses were cross examined by the defence at length but nothing elicited from them on which their testimony can be thrown overboard. The doctor who examined the informant on the date of occurrence itself at 10.05 p.m., found one incised wound (Penetrating) on the abdomen of informant which according to him, grievous in nature. The doctor also gave opinion that the said, injury was caused within six hours. Thus, I find that the doctor also supports the version of P.W. 1 to 5. Under the aforesaid circumstance, I find that the learned court below rightly accepted the evidence of P.W. 1 to 5 for convicting the appellants.

9. In the instant case, record reveals that the FIR has been lodged on 29.11.1996 and the same was received in the court of CJM, Deoghar on 3.12.1996. Thus, there is delay in sending the FIR to magistrate. As per the provision contained in Section 157 Cr.P.C., the FIR is required to be sent to the magistrate forthwith. The aforesaid provision has been brought on the statute book with a view to check and ensure that the earlier version of the prosecution be sent to the court without any embellishment and /or development. It has been held in various decisions of Apex Court that the delay in sending the copy of FIR may not by itself render the whole of the case of prosecution doubtful, unless defence shows that there is development and/or embellishment in the case of prosecution. In the instant case, the defence has not brought anything on record to show that any development has been made by any of the witnesses to falsely implicate the present appellants. Being conscious of the fact that parties have inimical relation from before, I have carefully examined and scrutinized the evidence of P.W. 1 to 5 and I find nothing in their evidence from which it can be gathered that the appellants were falsely implicated in the present case. Moreover there is nothing on record to show that there is any improvement or embellishment in the case of prosecution with due deliberation. In the instant case, FIR has been lodged within 3 to 4 hours of the occurrence in Sadar Hospital, Deoghar. The doctor has also examined the injured on the same day and issued injury report Ext.-1. Ext.-1/1 was issued on the next day after the operation conducted by the doctor. Thus, I find nothing on which it can be presumed that the appellants were falsely implicated. Thus, I am of the view that delay in sending the FIR to a Magistrate has no bearing on the case of prosecution.

10. The contention of learned Counsel for the appellants that there is dispute with regard to the place of occurrence also appears to be ill founded. Prosecution witnesses stated that the appellants were abusing the father of informant from out side. The informant further stated that he came out of his house and forbed them from doing so, thereafter on being exhorted by appellant No. 1, appellant No. 2 inflicted knife wound on the informant. Thus, it is clear that all the witnesses stated that the occurrence took place out side the house of informant. However it is submitted by Sri Deo that a suggestion was given to the

prosecution witnesses that occurrence took place at some other place, which was denied by them. In my view, a denied suggestion is no evidence. According to the appellants, if occurrence took place somewhere else than the burden is upon the appellants to prove the same. In the instant case, no evidence adduced by the defence to support its case. Thus aforesaid contention raised by Mr. K.P. Deo cannot be accepted.

11. As noticed above, nothing has been elicited by the defence to contradict prosecution witnesses from their previous statement made before the police. I further find that there is no dispute with regard to the place of occurrence. Therefore due to non-examination of the I.O., no prejudice caused to the appellants. Under the circumstances, non-examination of I.O. had no bearing on the case of prosecution.

12. As discussed above, I find that learned court below rightly convicted and sentenced the appellants for the charges levelled against them.

13. In the result, appeal fails and is accordingly, dismissed. The impugned judgment of the court court is hereby affirmed. It appears that both the appellants are on bail. Their bail bonds are canceled, they are directed to surrender in the court below for serving out the sentence. The court below is also directed to take all coercive steps of their appearance.