
(2019) 10 JH CK 0030

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 350 Of 2006

Mukku Dome @ Mukund Dome And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 12-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 323, 324, 337, 447

Citation : (2019) 10 JH CK 0030

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Subhash Chandra Prakash, Amrita Kumari

Final Decision : Allowed

Judgement

Heard Mr. Subhash Chandra Prakash, learned counsel for the appellants and Ms. Amrita Kumari, learned A.P.P. appearing for the State.

This appeal is directed against the judgment of conviction and order of sentence dated 28.02.2006 passed by Sri Ajit Kumar, Additional Sessions Judge, Fast Track Court No.IV, Bokaro in S.T. Case No. 108/1994 whereby and whereunder the appellants have been convicted under Sections 147 and 323 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for one year for each offence.

The prosecution story as disclosed in the F.I.R. is that the appellants have trespassed the land of the informant about 5:30 AM on 13.06.1993 and have assaulted the informant and other family members with sharp cutting weapons and due to assault, father of the informant namely, Sahdeo Dome has died and family members of the informant have suffered injury. The reason for offence is land dispute.

On the basis of F.I.R., investigation has been conducted by the Investigating Officer and submitted charge sheet against fifteen accused persons including these appellants under Sections 147/ 148/ 149/ 323/ 337/ 324/ 447/ 307 and

302 of the IPC.

The prosecution has examined altogether seven witnesses.

P.W.-1 Dr. Chandeshwar Choudhary is the Doctor P.W.-2 Mantu Dome is the Eye Witness.

P.W.-3 Ashok Kumar Mahtha is the Hearsay witness.

P.W.-4 Mukutdhari Mahto is the Natural witness

P.W.-5 Malti Devi is the Relative witness

P.W.-6 Humayu Azam is the I.O. P.W.-7 Jhantu Dome is the Informant
Considering the evidence on record, the court below has found that the charge under Sections 307, 302 and 324 of the IPC is not made out as the cause of death was due to chronic alcoholic and starvation largely due to poor nutrition leading to asphyxia, due to respiratory paralysis and might be due to vomiting material inhalation into trachea and lungs causing asphyxial death. Since the death is not homicidal, the appellants have been convicted under Sections 323 and 147 of the IPC. The prosecution witnesses have alleged that the appellants were armed with sharp cutting weapon and has been used for the said offence but no injury from sharp cutting weapon has been found. Only two injuries simple in nature caused by hard and blunt substance has been proved by the P.W.-1.

Thus, the story of the prosecution has not been supported by evidence produced. The court below has convicted the appellants under Sections 323 and 147 on the basis of simple injury. This fact has been overlooked that the weapon used is the sharp cutting weapon while the injury is simple in nature and caused by the hard and blunt substance. Further the allegation that father of the informant has been killed, has been negated. Thus, the prosecution story is full of contradiction and it appears that false allegations have been made against these appellants.

Considering the entire material available on record, it appears that the prosecution story is full of contradiction and appears to be false allegation against these appellants and as such the conviction of the appellants is not sustainable. Accordingly, judgment of conviction and order of sentence dated 28.02.2006 passed by Sri Ajit Kumar, Additional Sessions Judge, Fast Track Court No.IV, Bokaro in S.T. Case No. 108/1994 is, hereby, set aside. Resultantly, the appeal stands allowed.

Since these appellants are already on bail, they are discharged from the liability of their bail bonds.