
(2005) 12 JH CK 0004

In the Jharkhand High Court

Case No : Criminal Revision No. 952 of 2005

Nago Bagouth and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 323, 324, 326
Probation of Offenders Act, 1958 — Section 4

Citation : (2006) 3 JCR 134

Hon'ble Judges : N. Dhinakar, C.J

Bench : Single Bench

Advocate : K.P. Deo, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N. Dhinakar, C.J.—The petitioners were tried before the Judicial Magistrate, 1st Class, Godda, under Sections 147/148/323/326/149 and 447 of the Indian Penal Code, in GR No. 960 of 1996. The trial Court found them guilty and convicted all the petitioners as charged and sentenced each of them to suffer rigorous imprisonment for a period of 1 year u/s 148, one year u/s 148, 1 year u/s 323, three years under Sections 324 and 326/149, IPC and three months rigorous imprisonment u/s 448 of the Indian Penal Code.

2. The appellate Court on appeal set aside the sentence of imprisonment imposed upon the petitioner Nos. 3 to 8 by directing the said petitioners to execute bonds for a sum of rupees five thousand each with one surety for a period of two years in terms of the Section 4 of the Probation of Offenders Act.

3. As regards above named petitioner No. 1, (Nago) the appellate Court acquitted him of the offence u/s 323, but found him guilty u/s 324, IPC for which he was sentenced to one year. The conviction and sentence of the petitioner No. 1 u/s 148, IPC was also reduced to six months while the conviction and sentence imposed upon him u/s 447 was maintained.

4. The 2nd petitioner (Sikendra) was found guilty by the trial Court u/s 323, IPC. The appellate Court confirmed the conviction u/s 323, IPC and sentence of three years was maintained. The present revision is against the conviction and sentence,

5. Learned Counsel appearing for the petitioners submits that the occurrence not having taken place in the land not belonging to the victim, it has to be presumed that the witnesses had trespassed into the land over which the petitioners were claiming title and in the said transaction the occurrence might have taken place. In the aforesaid facts and circumstances, the counsel for the petitioners submits that the conviction of the petitioners is bad in law.

6. I have heard the counsel for the State.

7. On going through the materials on the record, I find that there is no illegality or impropriety in the orders of the Courts below. The contention of the counsel for the petitioners that the land in question belonged to the petitioners and not to the witness is not a fact on which this Court can dwell upon as it will fall within the domain of civil Court to go into the question of right and title. The Court below held that the petitioners are responsible for the injuries caused to victims, the PWs 1, 2 and 6 and that the PW 1 Shyakant Choudhary suffered grievous injury which is found as injury No. 3 in the certificate issued by the doctor, PW 4, who found two incised wounds on the back of PW 1 and opined that the injury was grievous in nature and that the injury could have been caused by a sharp cutting weapon. The evidence of the witnesses who suffered injuries is also supported and corroborated by the medical evidence of PW 4 who claims that he had examined the injury at 12.45 p.m. on 22.12.1996 on the very day of the occurrence. He found the injuries of Peshkar Choudhary PW 6; Dhananjy Choudhary PW 2, Shyamakant Choudhary PW 1 and issued the injury report (Exts. 2, 2/1 and 2/2). Their evidence was found acceptable as their evidence was corroborated by independent witness PW 5. On going through the judgment of the Courts below, I find no reason to interfere with the findings. I confirm the conviction of the petitioners.

8. As regards petitioners No. 3 to 8, though they were found guilty, there were directed to be released on executing bond of rupees five thousand each with one surety of the like amount for a period of two years. As the petitioners No. 3 to 8 have been dealt with leniently, I find no reason to interfere with the said sentence.

9. As regards petitioner No. 1, he was found guilty u/s 324, IPC for which maximum sentence is one year. Though convicted for various offences, it is not in dispute that the 1st petitioner is in jail since 9.9.2005 and that three months have elapsed since the date of conviction. Taking to consideration the facts and circumstances of the case, I feel that the sentence of imprisonment imposed upon the petitioner No. 1 can be reduced to the period already undergone and accordingly while I confirm the conviction of the 1st petitioner under various

offences, reduce the sentence imposed upon him to the period already undergone.

10. As regards the above named 2nd petitioner, he stands convicted for the offences u/s 326, IPC for which he was sentenced to imprisonment for a period of three years which was confirmed in appeal. Learned Counsel for the 2nd petitioner submits that since the occurrence had taken place on 22.12.1996, it will cause hardship if the petitioner who surrendered on 9.9.2005 is allowed to continue in jail, since according to him, 9 years have elapsed from the date of the occurrence. I have given anxious consideration to the said plea and taking into consideration the long lapse of time, I feel that the sentence imposed upon Sikendra, petitioner No. 2 can be reduced to the period already undergone. But in view of the reduction in the substantive sentence of imprisonment, I feel he is to be directed to pay a fine of rupees ten thousand for the offence u/s 326, IPC. Accordingly, while the conviction of the petitioner No. 2 under other offences is reduced to the period already undergone, his conviction u/s 326, IPC is maintained and his sentence u/s 326, IPC is reduced to the period already undergone. But in view of the reduction in sentence he shall pay fine of rupees ten thousand within eight weeks from the date of receipt of the judgment and in default of payment of the fine, he will undergo rigorous imprisonment for three years.

With the modification in the sentence, this revision is dismissed.