
(2016) 05 JH CK 0165

In the Jharkhand High Court

Case No : Criminal Appeal (SJ)No. 682 of 2003 (Against the judgment of conviction and order of sentence dated 24th April, 2003, passed by the Additional Sessions Judge, F.T.C. 1, Chatra in connection with Sessions Trial no. 337 of 1998 corresponding to G.R. Case no

Nayeem Mian

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-05-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, Section 323, Section 341, Section 504

Citation : (2017) 2 AIRJharR 70 : (2017) 1 ECrC 344

Hon'ble Judges : Mr. Ratnaker Bhengra, J.

Bench : Single Bench

Advocate : M/s. A.K. Sahani and Amrita Banerjee, Advocates, for the Appellants; Mr. Tapas Roy, A.P.P, for the Respondent

Final Decision : Disposed off

Judgement

Mr. Ratnaker Bhengra, J. - This Criminal Appeal has been preferred against the judgment of conviction and order of sentence dated 24th April, 2003, passed by the Additional Sessions Judge, F.T.C.-1, Chatra in connection with Sessions Trial no. 337 of 1998 corresponding to G.R. Case no. 79 of 1998, Pratappur P.S. Case no. 06 of 1998, whereby the appellants have been held guilty for the offences punishable under sections 147, 323, 341, 504 of the Indian Penal Code and sentenced to undergo S.I. for six months u/s 147 IPC, S.I. For six months u/s 323 IPC, S.I. For one month u/s 341 and S.I. For six months u/s 504 IPC. All the sentences were directed to run concurrently.

2. The prosecution case, in brief, as per written report of the informant Amna Khatoon is that on 19.2.1998 at about 7 a.m. while the informant was returning from the house of one Md. Abbas the appellants above named started assaulting her by means of lathi, fists and slaps saying that she is a witch (dian). On hearing the alarm raised by her, her daughter Nagina Khatoon ran to her and

tried to save her and she became senseless. It has been further stated that prior to the occurrence, the appellants named above had also assaulted her with intention to kill her but report of that could not be lodged due to poverty. On the basis of written report lodged by Amna Khatoon, Pratappur P.S. Case no. 06 of 1998 dated 26.2.1998 U/Ss. 341/323/307/504/147 I.P.C. was registered. After due investigation, charge sheet was submitted and, accordingly, cognizance was taken and case was committed to the Court of Sessions and registered as Sessions Trial no. 337 of 1998.

3. The appellants stood charged for the offences punishable under sections 147,341,307/149, 323/34 and 504 I.P.C. to which they pleaded not guilty and claimed to be tried.

4. Trial was held and on the basis of the records and evidence the learned court below convicted and sentenced the appellants for a maximum of 6 months concurrent sentences for the offence under Section 147,323,34 and 504 IPC. Hence, this appeal.

5. Amna Khatoon PW.3, informant, has deposed that occurrence took place about four and half years ago at 7 a.m. She had gone to the house of Jawahar Mian while she was returning from his house the appellants assaulted her saying that she is a witch. Appellant no.1 Nayeem was armed with lathi. She sustained injuries on her face, eyes and chest. Her daughter saved her. She has further deposed that the matter was reported to the police and she put her LTI on the written report. She had identified Nayeem Mian in court.

6. PW-1 Nagina Khatoon is the daughter of informant and she has deposed that the occurrence is about one and half years ago. She had gone to the house of Abbas Mian where she saw that Nayeem Mian was armed with lathi and all the appellants assaulting her mother saying that she is a witch and they wanted to kill her. She also deposed that prior to this incident the accused persons had also assaulted Amna Khatoon but the matter was not reported to the police due to poverty. She has further deposed that accused persons assaulted Amna Khatoon near right eye and left hand. In cross-examination she has also said that the accused persons assaulted her with lathi, fists and slaps.

7. P.W. 2 is Roshan Bibi she has deposed that the occurrence took place about one and half years back. She had gone to the house of Abbas Mian and there she saw the accused Nayeem Mian and others assaulted Amna Khatoon by means of lathi, fists and slaps. Amna became senseless. She sustained injuries in the right side of the eye, left hand and foot. The accused persons assaulted her with intention to kill her. She has further stated that even prior to this occurrence they had assaulted her but the matter was not reported.

8. P.W.4 is Dr. Shiv Narayan Singh. He has found following injuries on the person of injured.

i. One lacerated wound with red clotted blood 3 c.m. X 1? c.m. X bone deep over

the web between left index and middle finger.

ii. One tender black bruise 4 c.m. X 2 c.m. Over right upper face below the right eye.

iii. One tender black bruise 8 c.m. X 2 c.m. Over right scapula.

The doctor had opined that injuries were caused by hard and blunt substance and were simple in nature.

At the very outset, learned counsel for the appellants has submitted that he would not like to go into the merits of the case. He further submits that sentence may be reduced to the period already undergone.

9. Learned A.P.P. has opposed the arguments and submitted that due to the submissions made by the counsel for the appellants he shall be brief but, nevertheless. There are three reliable eye witnesses to the incident and their evidence cannot be denied. PW-3, informant is the injured victim, whose evidence comes more weight. PW-1 is the daughter who had tried to save her and hence, also a direct witness, and PW-2 had also seen the incident. Moreover, he has submitted that the evidence of the doctor and the injuries listed by him corroborate the accusation and oral evidence of assault.

10. In pursuance of his submission, the learned counsel for the appellants has taken the court to Section 386 (b) of the Code of Criminal Procedure, 1973 and referred to sub para iii wherein it has been stated that:

"With or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;"

It has been submitted that the Hon'ble Court can go into the question of sentencing.

Learned counsel for the appellants then taken the court to Section 3 and 4 of the Probation of Offenders Act, 1958 wherein it has been stated that:

"3. Power of court to release certain offenders after admonition:- When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment of not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition."

4. Power of court to release certain offenders on probation of good conduct- "(1)

When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having heard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour."

11. Learned counsel for the appellants has focused on saying that the court may go into the issue of sentencing. He has also relied upon the judgment rendered in the case of Tahrul Islam v. State of Bihar (Now Jharkhand) [2006 (4) East. Cr.C 425 (Jhr)] wherein at paragraph-1 it has been stated that:

" The appellants have preferred this appeal against the judgment dated 29.8.1998 passed by the Additional Sessions Judge, Sahibganj in Sessions Case no. 90/1992, whereby the learned Additional Sessions Judge, convicted all the three appellants for the offence under section 498 A of the Indian Penal Code and has sentenced them to undergo RI for a period of two and half years each. They were further convicted for the offence under sections 3 and 4 of the Dowry Prohibition Act, 1961 and were sentenced to undergo RI for a period of four months each on each count and also to pay a fine of Rs. 3000/- each in default to undergo RI for a further period of two months."

It has been submitted that in this judgment the conviction of the trial court was affirmed by the High Court. However, on the question of sentence it was observed that:

"9 Accordingly, the conviction of the appellants by the trial court is hereby affirmed. So far as the question of sentence is concerned, it appears that the appellants have been awarded 2 and 1/2 years RI each for the offence u/s 498A and four months RI each for the offence u/s 3 and 4 of the Dowry Prohibition Act on each count. The occurrence is said to have taken place in March 1987 and the trial of the case was concluded in the year 1998. Therefore, it appears that in the trial court the case continued for about 11 years thereafter, the appeal has remained pending before this court since September, 1998, i.e. for about 8 years and, therefore, in my view the appellants have undergone the ordeal of protracted trial for a long period and, as such, after such a long lapse of time it would be just and proper to send these appellants to jail again.

10. Accordingly, the sentences awarded by the trial court are reduced to the period already undergone by them. But so far as the sentences of fine, imposed upon them by the trial court, is concerned, the same is being hereby upheld. If the fine is realized, the same shall be paid to the victim lady."

12. The another judgment relied upon by the learned counsel for the appellants

is reported in [2012 (4) East Cr.C. 555 (Pat)] Choghan Yadav v. State of Bihar. In this judgment too the conviction passed by the trial court was upheld and sentence altered to the period already undergone. Further direction to the appellant to pay sum of Rs. 1000/- to the heirs of Guneshwar Ram by way of fine within a period of four months of valid service of notice failing which he would be required to undergo sentence imposed on him by the trial court. The informant was further directed to be noticed to receive the fine amount on behalf of the heirs of Guneshwar Ram.

13. Learned counsel has also submitted that the year of the occurrence is 1998 and we are in the year 2016 so he has faced the rigour of trial for the very long extent. Moreover, he has not been convicted under Witch Craft Act. He has also said that presently the ages of the appellants are 73, 54, 68, 63, 58, 38, 43 and 48 respectively. He has also said that the doctor has opined the nature of injury as simple. He has also stressed on the judgment cited where fine is imposed or sustainable. Hence, sentence may be modified.

14. Since learned counsel for the appellant has not gone into the merits, the issue of quantum becomes relevant. However, on the question of conviction, the argument of counsel for State learned A.P.P. will sustain. There are three reliable eye witnesses to the incident, P.W.-1, P.W.-2 and P.W.-3. Also the evidence of the doctor has corroborated the ocular evidence of the other witnesses. Therefore, conviction has ample support to be sustained.

15. Having gone through the arguments advanced by both the counsels and the facts and circumstances of the case, and bearing in mind that the case is of the year 1998, and that the appellants have already undergone much hardships of trial and some custody, I confirm the conviction passed by the trial court in this case and alter the sentence to the period already undergone. The appellants are on bail they are discharged from the liabilities of their bail bonds subject to condition that each of the appellants shall pay Rs. 3,000/-each to the informant by way of fine within the period of four months of valid service of notice failing which they would be required to undergo remaining sentence imposed on them by the trial court. Informant may be noticed to receive the fine amount.

16. With the above modification in sentence, the appeal stands disposed of.