
(2006) 05 JH CK 0142
In the Jharkhand High Court

Nayeemuddin Mian and Another

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 202, 323, 326, 379

Citation : (2007) CriLJ 676

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—Petitioners have been jointly convicted under Sections 323 and 379 of the Indian Penal Code with their father Israil Mian (Since dead) whereas the petitioner Nayeemuddin Mian has been separately convicted for the offence u/s 326 of the Indian Penal Code by the Court of Sri. Ram Siya Singh, Judicial Magistrate 1st Class, Deoghar in Complaint Case No. 449 of 1989 corresponding to T.R.No. 661 of 1993.

2. Against the order of conviction and substantive sentence passed therein, the petitioners herein preferred Cr. App. No. 48 of 2003, which is presently pending in the Court of 1st Additional Sessions Judge, Deoghar. They have challenged the order impugned dated 13-2-2006 whereby and whereunder the petitions dated 17-1-2006 and 23-1-2006 was rejected by the learned Additional Sessions Judge to call for Ext. 2 and Ext. 3 which were the entries made in the station diary and proved by P.W. 6, Chandra Bhushan Prasad Singh. By bringing about the present application u/s 482 of the Code of Criminal Procedure, prayer has been made for quashing the order impugned dated 13-2-2006 passed by 1st Additional Sessions Judge, Deoghar in the criminal appeal aforesaid.

3. Annexure A which is the Xerox copy of the statement of P.W. 6 Chandra Bhushan Prasad Singh in the trial Court indicates that he proved the entry made in station diary, vide entry No. 84 dated 5-11-1989 drawn by the Munshi Ramjee Singh of Jasidih Police Station with the signature of Birendra Mohan, Officer-in-

Charge of the police station thereon and it was marked Ext. 2. Similarly, another station diary entry No.91 was proved and marked Ext. 3 which was under the signature of Officer-in-Charge Birendra Mohan. In the cross-examination P.W. 6 Chandra Bhushan Prasad Singh Constable No.306 stated that at the time of occurrence he was posted at Jasidih police outpost and that entries in the station diary were not made in his presence. He had no personal knowledge about such entries. He further deposed the Ramjee Singh was alive but was transferred to another place and that Birendra Mohan was still under employment.

4. Briefly stated opposite party No. 2 Jhagru Mian filed a Complaint Petition No. 449 of 1989 against the petitioners and their father Nashir Mian for the alleged occurrence dated 5-11-1989 stating, inter alia, that while the petitioners were cutting Babul tree standing over plot No.876, Mauza Tabhaghat, it was opposed by the complainant as it was in his peaceful possession, whereupon, it is alleged that father of the petitioners Nashir Mian commanded the petitioners to kill the complainant and pursuant to that, petitioner No. 1, Nayeemuddin Mian inflicted axe blow on the head of the complainant causing injury and the petitioner No. 2, Israil Mian assaulted the complainant with the iron rod, as a result of which the complainant fell down and thereafter it is alleged that Nashir Mian also assaulted him. He was removed to Jasidih Police Station where statement of the complainant was recorded and he was medically treated by Jasidih Hospital but the police did not institute any case. Injuries were grievous in nature, by sharp cutting weapon and it was alleged that the petitioners removed branches of Babul tree worth Rs. 200/- which was in possession of the complainant. The complainant proposed the offence against the petitioners and their father under Sections 323/379/326 of the Indian Penal Code. The complaint petition was fixed on 21-11-1989 as against the date of occurrence on 5-11-1989. After the trial, the three including the petitioners were convicted in the manner stated above.

5. It is contended that after filing of the Criminal Appeal No.48 of 1993, lower Court record was called for in the year 1993 itself by the order of the appellate Court and after receipt of the same after long gap on 17-12-2005, it was detected that Exts. 2 and 3 were not in the record. Thereafter the petitioners filed two applications in succession praying to call for Exts. 2 and 3 but the prayer was refused under order impugned on the ground that lower Court record did not contain Exts. 2 and 3 and after extensive search lower Court's record could be located and received in the appellate Court on 7-12-2005. It is further stated in the impugned order that the injury report was proved as Ext. 1 at the enquiry stage of the case u/s 202 of the Code of Criminal Procedure. However, a petition was filed on 17-6-1992 to call for station diary entry Nos. 84 and 89 before the trial Court but no order was passed in the order-sheet to such effect calling for the said entries in the station diary. It was nowhere explained in the lower Court record as to under what manner the station diary was received and proved by the P.W. 6 Chandra Bhushan Prasad Singh. The impugned order of Additional Sessions Judge further contained that it was not evident from the lower Court record as to whether any order was passed by the substitution of the

said entries Nos. 84 and 89 of the station diary. Finally it is stated in the order impugned that Cr.App.No. 48 of 1993 was an old appeal and evidence of P.W. 6 was available on the record and in view of that the petitions filed by the petitioners herein (appellant) on 17-1-2006 and 23-1-2006 were rejected.

6. Learned Counsel for the petitioners highlighted that such rejection of the petition by the order impugned was highly prejudiced the defence of the appellant-petitioners.

7. Advancing his argument learned Counsel submitted that complainant had alleged before the police at the first point in time that he was assaulted by Lathi which could be evident from the perusal of the station diary and subsequently he was referred by the police to Dr. S.B. Pandit, Jasidih but in the complaint case which was filed after 16 days of the alleged date of occurrence. It has been submitted for the petitioners that after procuring a false injury report purported to be caused by sharp cut weapon from another Doctor the complaint case No. 449 of 1989 was filed on concocted facts and for such reason, for the substantive ends of justice the perusal of the relevant entries in the station diary of Jashidih Police Station for the year 1989 was required for the contradiction in the statements of the complainant/opposite party No. 2 herein.

8. From perusal of the entire facts of the case and the materials on record it is evident that the case was conducted by the trial Court Magistrate in a very slipshod manner. From the order impugned it is evident that the order-sheets of the trial Court has got no bearing as to under what manner the station diary of Jasidih Police Station was called for and entries Nos. 84 and 91 were proved by P.W. 6. The appellate Court did not find even either the substituted copies or reconstructed copies of the said entries on the record In the event it were lost, which is disgraceful.

9. The Court finds substance in the prayer of the petitioners herein that the original substituted or reconstructed Ext. Nos. 2 and 3 which were proved by P.W. 6 are important materials for pointing out contradiction in the statements of the complainant. Therefore, the intention of the petitioners herein is not that of bringing about additional evidence on the record at the stage of appeal, rather they wanted to bring the Exts. 2 and 3 on record which are the entries made in the station diary of the year 1989.

10. Under the circumstances the appellate Court is directed to call for the station diary of the period concerned and to examine in relation to entries Nos. 84 and 91 on the statement of P.W. 6. Chandra Bhushan Prasad Singh with respect to Exts. 2 and 3 under the provisions of the Indian Evidence Act and pass order in accordance with law. The order impugned dated 13-2-2006 is, accordingly, set aside with the above observation. The appeal being 13 years old it be disposed of as soon as possible.