
(2020) 01 JH CK 0166

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 652 Of 2006, 746 Of 2006

Pancha Nand Singh And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 323, 324, 325, 326
Code Of Criminal Procedure, 1973 — Section 161

Citation : (2020) 01 JH CK 0166

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Shree Nivas Roy, Amrita Kumari, Laxmi Murmu, Arwind Kumar

Final Decision : Disposed Of

Judgement

Both these Criminal Appeals are being heard together and disposed of by this common judgment as both these appeals are arising out from the same order of judgment and conviction.

Heard Mr. Shree Nivas Roy, learned counsel for the appellants as well as Ms. Amrita Kumari, learned A.P. P., appearing for the State (in Cr. Appeal

No.652/2006) and Ms. Laxmi Murmu, learned A.P.P., appearing for the State (in Cr. Appeal No.746/2006) and Mr. Arwind Kumar, learned counsel

for the informant.

These appeal are directed against the judgment of conviction dated 01.05.2006 and order of sentence dated 04.05.2006 passed by Sri Sajjan Kumar

Dubey, Additional District & Sessions Judge, Fast Track Court-IV, Giridih in S.T. Case No. 337/2002 whereby and whereunder the appellants,

namely, Sahdeo Singh, Dharendra Singh @ Mukhiya, Pancha Nand Singh and Nakul Singh have been convicted under Sections 148, 324, 325 &

307/149 of the Indian Penal Code. Accused namely Bantu Singh has been convicted under sections 147,324,325 and 307/149 of the Indian Penal

Code. All accused were sentenced to undergo rigorous imprisonment for seven years under sections 307/149 of the Indian Penal Code and a fine of

Rs. 2000/-, in default of payment of fine rigorous imprisonment for six months. Further all the accused were sentenced rigorous imprisonment for five

years under sections 325/149 of the Indian Penal Code and a fine of Rs 1000/-, in default thereof, rigorous imprisonment for three months and further

rigorous imprisonment for two years under section 324/149 of the Indian Penal Code has also been sentenced. Accused namely Sahdeo Singh,

Dhirendra Singh @ Mukhiya, Pancha Nand Singh and Nakul Singh were further sentenced to undergo rigorous imprisonment for two years under

section 148 of the Indian Penal Code. Accused namely Bantu Singh was sentenced to undergo rigorous imprisonment for one year under Section 147

of the Indian Penal Code. All the sentences were directed to be run concurrently.

Jamua P.S. Case No. 120/2001 has been registered on 07.08.2001 on written report submitted by the informant, namely, Vijay Singh (P.W.-6). As per

the F.I.R. at about 7 AM his father, namely, Jaleshwar Singh-P.W.-8 and brother, namely, Sanjay Singh, P.W.-9 were working in their field. In the

meantime, all the accused persons including one Vinay Singh after forming unlawful assembly armed with deadly weapons came there and have

assaulted Jaleshwar Singh and Sanjay Singh with sword, knife, bhala, tangi and lathi.

It has been stated that Sahdeo Singh has inflicted sword blow on the head of Sanjay Singh and Pancha Nand Singh inflicted knife blow on his leg.

Dhirendra Singh @ Mukhiya has given sword blow on the head of Jaleshwar Singh, Nakul Singh has given bhala blow on Jaleshwar Singh. Rest two

accused have also assaulted with lathi causing injuries.

On the basis of above F.I.R., police has started investigation. On completion of investigation, the appellants have been charge sheeted under Sections

147, 148, 149, 323, 324, 325, 326 and 307 of the IPC. Thereafter, cognizance has been taken. Case has been committed to the court of sessions and

ultimately, charge has been framed under Sections 307/149, 147, 148, 324, 325 & 326 of the IPC to which appellants pleaded not guilty and claimed to

be tried.

To substantiate the prosecution story altogether nine witnesses have been examined.

P.W.-1, Tilak Ravidas, P.W.-2, Bajo Rai and P.W.-3, Dumar Ravidas have claimed that they are labourers and were working in the field alongwith

Jaleshwar Singh and Sanjay Singh since 6 AM. Around 7 AM, the named accused persons came there armed with sword, bhala, lathi, tangi etc. and

have assaulted Jaleshwar Singh and Sanjay Singh. As per these three witnesses, nobody was present at the place of occurrence. In fact, nobody has

come at the place of occurrence. After the incident, these three persons have taken the injured to their house.

P.W.-4, Ayodhya Singh, (relative of both sides) has testified that he saw the informant (Vijay Singh) coming from the place of occurrence towards the

village and informed him that his father and brother have been assaulted by these appellants. Thereafter, he went to the place of occurrence and saw

the injured, namely, Jaleshwar Singh and Sanjay Singh and also saw these appellants armed with various weapons. Thereafter, the injured were

brought to the house. As per this witness, many villagers have assembled at the place of occurrence.

P.W.-6, Vijay Singh (informant) has supported the narration given in the F.I.R. He has testified that he was present at the place of occurrence at the

distance of 400 to 500 yards. He has seen the occurrence and after the occurrence, he got report prepared by Chandrabhushan Singh and has given to

the police at around 9 AM. He has further stated that the appellants were shouting that these injured witnesses have died and thereafter they have left

the place of occurrence.

P.W.-5, B.N. Das is the doctor and has claimed that he has examined the injury of P.W.-8 and P.W.-9.

As per injury report, following injuries have been found on the person of P.W.-8 and P.W.-9.

â??Injuries of Jaleshwar Singh (P.W.-8)

i. Incised wound 3â??x 1/2â?? x bone deep, red in colour, anteriorly over middle portion of skull.

ii. Lacerated wound 2â??x1/4â??x muscle deep, red in colour over the lower portion of the ulnar side of left forearm, X-ray shows fracture of

left ulnar bone.

- iii. Acute tenderness with swelling over right side of upper portion of chest X-ray shows fracture of right clavicle.
- iv. Acute tenderness and swelling over the left side upper portion of back over scapular region, X-ray shows fracture of left scapular bone.
- v. Incised wound $\frac{1}{2}$ x $\frac{1}{2}$ x muscle deep, red in colour on left side of forehead above eye-brow.
- vi. Incised wound $2 \frac{1}{2}$ x $\frac{1}{4}$ x muscle deep, red in colour on the outer and lower portion of left arm.
- vii. Acute tenderness over left knee.

Injuries of Sanjay Singh (P.W.-9)

- i. Lacerated wound $1 \frac{1}{4}$ x bone deep, red in colour medially on right leg, 6" below right knee X-ray shows fracture of upper end of right tibia.
- ii. Incised wound $2 \frac{1}{4}$ x bone deep, red in colour over middle portion of posterior part of scalp.
- iii. Incised wound $1 \frac{1}{2}$ x $\frac{1}{4}$ x muscle deep, red in colour, medially over lower portion of left leg.
- iv. Incised wound $2 \frac{1}{2}$ x $\frac{1}{4}$ bone deep, red in colour, anteriorly over left leg 6" below left knee.
- v. Abrasion with tenderness over right foot.
- vi. Tenderness with swelling on left arm and forearm.

In his cross-examination at para-7 and 8, this witness has admitted that he has examined the victims of its own as he was neither referred by the police nor by the I.O. nor by the any other police station.

P.W.-7, Mangal Baraik, A.S.I. has testified that he has received written information from P.W.-6 at 7 AM and has proceeded to investigate the matter. Subsequently, on the next date on 08.08.2001, he has been authorized by the Officer-in-Charge to investigate the case. Before that, he has started the investigation and has visited the place of occurrence and has referred the injured witness i.e. P.W.-8 and P.W.-9 to Jamua Primary Health Center. He has testified that he has not taken the statement of P.W.-8 and P.W.-9 under Section 161 of the Cr.P.C. He has admitted that he has neither seized any weapon nor blood stained soil and the cloth of the victim. Further he has testified that when he visited the house of injured they

were unconscious but at the same time he also admitted that he has not taken their statement during investigation.

In his cross-examination, he has admitted that he has taken the statement of other witnesses and the informant before formal registration of the F.I.R.

The I.O. in his cross has testified that the P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have not stated regarding the presence of other witness.

P.W.-8, Jaleshwar Singh is the injured witness and father of the informant. He has testified in his main examination that he has been assaulted by

these appellants while he was working with Sanjay Singh. He has not stated regarding presence of other witness. Further he has testified in his cross

examination that his statement was never taken by the Investigating Officer.

P.W.-9, Sanjay Singh, brother of the informant and is a injured witness. He has stated the same version as P.W.-8.

Learned counsel for the appellants has assailed the judgment of conviction on the ground that P.W.-8 and P.W.-9 are not charge sheeted witnesses

and they have never been examined by the Investigating Officer and suddenly they have given their statement in court as a court witness after four

years of the incident and as such their evidence cannot be relied upon.

For this purpose, learned counsel for the appellants has relied upon the judgment reported in 1992 East Cr. C. 263 (Pat) in the case of Brij Nandan Rai

and Ors. Vrs. State of Bihar (Pat). On the strength of above judgment, it has been argued that if the witness has neither examined by the police nor

presented as a prosecution witness and had given their evidence after a year, although in the present case, it has been given after four years, then the

testimony of such witness cannot be accepted and the same cannot be a basis for conviction.

It has been further argued that P.W.-1, P.W.-2 and P.W.-3 were workers and they have claimed to be an eye witness, has clearly stated that they

were present at the place of occurrence and has seen the occurrence and other witness were not present. P.W.-4 and P.W.-6 have improved their

version. P.W.-6, has tried to be eye witness although in the F.I.R. he has not disclosed such fact. Further even in his testimony, he has not stated

anything about the helping or saving his father or brother or even helping them to bring to the house.

P.W.-5-doctor, has given opinion regarding the grievous injury and simple injury.

The gravity of injury of P.W.-9 has been given on the basis of X-ray report, which has been not placed on record.

P.W.-7, I.O. of the case, has clearly admitted that he has not examined the injured witness i.e. P.W.-8 and P.W.-9 and further the injury report is not

at the instance of police officials rather it has been prepared at the instance of the informant and as such no reliance can be placed upon that.

It has further been argued that the informant and the appellants are Gotias and there is a land dispute between them. Further various litigations are

going on between the parties, which has been admitted by P.W.-6 and P.W.-4. Earlier a criminal case has been lodged by the appellants, which has

been marked as Ext.A. Thus, due to enmity, the present appellants have been falsely implicated in the present case on the strength of forged and

manipulated injury report.

Alternatively, learned counsel for the appellants has submitted that the incident is of the year 2001 and the trial has been concluded in the year 2006

and the appeal is being heard in the year 2020, long litigation itself is a punishment and due to which appellants have suffered mental agony and more

so also since the appellants in Cr. Appeal No. 652 of 2006 have remained in custody for more than 45 days and the appellants in Cr. Appeal No.746

of 2006 for more than two months pre and post trial and already deposited the fine amount, the sentence awarded to the appellants may be reduced.

Per contra, learned APP assisted by Mr. Arwind Kumar has supported the judgment of conviction and argued that P.W.-1, P.W.-2 and P.W.-3 are

the independent eye witnesses, who were labourers and have no enmity or relation with one or other parties. They have clearly stated that while they

were working with P.W.-8 and P.W.-9, these appellants have come there armed with deadly weapons and have assaulted the victims. When they left

the place of occurrence then P.W.-1, P.W.-2 and P.W.-3 have taken the injured persons to the house and thereafter they informed the police. Thus,

the testimony of P.W.-1, P.W.-2 and P.W.-3 are reliable and sufficient to prove the story of the prosecution. Further P.W.-8 and P.W.-9, who are the

injured witnesses, have clearly stated that they have been assaulted by the present appellants. The discrepancy in the evidence of P.W.-4 and P.W.-6

and further the deposition of P.W.-5 i.e. doctor and P.W.-7 i.e I.O. will not make any difference as the eye witnesses have proved the case beyond

all the reasonable doubt. It has further been argued that D.W.-1 i.e. Sahdeo Singh, who is appellant no. 1 in Cr. Appeal (SJ) No. 746 of 2006, has been examined on behalf of the appellants, has testified before the court as defence witness that Vijay Singh and Jaleshwar Singh were present in the field and they were destroying the earlier crops, which has been objected by this D. W.1 and being furious, he has been chased by Jaleshwar Singh and Sanjay Singh with sword and bhala. In defense, he has thrown small wood log, which has hit Jaleshwar Singh and thereafter he pick up the sword and flashing in his defense and has fled away from the place of occurrence. The testimony of this witness at least corroborates the fact that Vijay Singh, Jaleshwar Singh and Sanjay Singh were present at the place of occurrence. Thus the occurrence has been sufficiently evidenced and further the nature of injury and weapons used justify the conviction under Sections 307/149, 324, 325 of the Indian Penal Code and other charged sections.

Heard learned counsel for the parties.

From perusal of materials available on record and after hearing the parties, it appears that on 07.08.2001, the scuffle has taken place between the parties and this fact has been testified by the defense witness as well as by the prosecution witnesses and further by the labourer present at the site.

P.W.-1, P.W.-2 and P.W.-3 the laborers present at the site have clearly testified regarding consorted assault made by the appellants upon P.W.-8 and

P.W.-9. The plea of these appellants that P.W.-8 and P.W.-9 have been called after four years of incident and they have not been examined by the

I.O. will not make any difference as they have been given sufficient opportunity to cross-examine the injured witness. In fact, the entire prosecution

story is nothing but assault to P.W.-8 and P.W.-9 by these appellants. In such scenario, making them as charged witness or not by the I.O. will not

make any difference. They were only the competent witness and omission on the part of I.O. will not make any difference. Further the appellants

have been given sufficient opportunity to cross examine them and as such they cannot make any complaint regarding the same.

It is trite that flaw in investigation is not always fatal for the prosecution, in such cases, the evidence available on record has to be examined with great

caution. In the present case, P.W.-1, P.W.-2 and P.W.-3 are not relative, rather they are independent witness. They are labourers, who used to work

for different persons and were working in the disputed field. D.W.-1 has also testified that P.W.-8, P.W.-9 and P.W.-6 were present in the field and were doing the agricultural work.

It is settled law that Section 307 of the IPC is nothing but failed murder. It means that the accused have taken all steps for killing but failed due to circumstances beyond their control.

In the present case, five persons were present and nobody was there to save the victims. Further, injury report itself is doubtful and so-called injuries

and the circumstance with which the weapon used clearly suggest that there was no intention to kill the victims. Further the nature of injuries is not

sufficient to cause death in ordinary course of nature. Thus, neither intention is present nor the injuries suggest that the ingredient of Section 307 of the

IPC is attracted and as such, conviction of the appellants under Sections 307/149 of the Indian Penal Code is not made out and they are discharged

from the charges under Sections 307/149 of the Indian Penal Code. As, injury itself has not been proved beyond reasonable doubt, conviction of

appellant u/s 324, 325/149 is set aside.

However, P. Ws. 8 and 9 has been assaulted, the conviction of these appellants is sustained under Sections 147 & 148 of the Indian Penal Code and

the sentence to these appellants is reduced to the period already undergone. The fine amount is enhanced to Rs.10,000/- and the appellants are

directed to deposit the fine amount of Rs. 10,000/- in the court below within two months from today which shall be disbursed to P.W.-8 and P.W.-9 or

their legal heirs.

In view of the material available on record and the discussion made herein above, the judgment of conviction dated 01.05.2006 and order of sentence

dated 04.05.2006 passed by Sri Sajjan Kumar Dubey, Additional District & Sessions Judge, Fast Track Court-IV, Giridih in S.T. Case No. 337/2002 is

modified to the extent indicated hereinabove. Accordingly, the appeal stands disposed of.

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