
(2006) 08 JH CK 0089
In the Jharkhand High Court

Pran Yadav and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307, 323, 324, 34

Citation : 2007 JLJR 1 37 : (2007) CriLJ 1059 : (2007) 2 JCR 13

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. This appeal arises against the judgment dated 27th February, 2004 passed by the Sessions Judge, Pakur in Sessions Case No. 62 of 2002, whereby the learned Trial Court convicted the Appellant No. 1, Pran Yadav, for the offence u/s 307 IPC and sentenced him to undergo rigorous imprisonment for seven years. The said appellant, Pran Yadav, was further convicted for the offence u/s 3/4 of Explosive Substance Act and sentenced to undergo rigorous imprisonment for seven years u/s 3 of Explosive Substance Act. However, no separate sentence was passed u/s 4 of the Explosive Substance Act. Both sentences were ordered to run concurrently. Other Appellant Nos. 2 to 7 were convicted for the offence u/s 307/34 IPC and they were sentenced to undergo rigorous imprisonment for seven years, each, for the said offence. They were further convicted for the offence u/s 323/34 IPC and sentenced to undergo rigorous imprisonment for six months, each, for the said offence. These sentences were ordered to run concurrently.

3. The appellant, Pran Yadav, was charged for the offence u/s 307 IPC and Section 3/4 of Explosive Substance Act for unlawfully and maliciously causing explosion by explosive Substance likely to endanger the life or property and attempting to commit murder of Jagdish Yadav on 21st November, 2001. in

village Turshadih within Hiranpur police station in the district of Pakur. The remaining appellants were charged u/s 307/34 IPC for attempting to commit murder of Jagdish Yadav, in furtherance of their common intention on the aforesaid date and place. They were also charged for the offence u/s 323 IPC for voluntarily causing hurt to Nipen Yadav and Rajan yadav on the same day at the same place.

4. The case was instituted on the basis of the First Information Report, registered on the basis of Fardbeyan of Jagdish Yadav (P.W.8). The informant alleged that on 20th November, 2001, the work was going on to the road of Turshadih, in order to fill up the ditches of the road. For that purpose the appellants were cutting earth from the land of the informant and were throwing the same on road. Nipen Yadav (P.W.7), brother of the informant, Jagdish Yadav; objected to it and asked them not to cut the earth from his land. Thereafter, there was some hot exchange of words between them. On the next day i.e. on 21st November, 2001, at about 9.00 a.m., Nipen Yadav had gone to attend the call of nature and in that course, he went near the pond. At that time, Appellant No. 1, Pran Yadav, armed with bomb; Appellant No. 2, Bonga Yadav, armed with a CHHENI; Appellant No. 4, Anukul Yadav, armed with Lathi; and Appellant No. 6, Bhuttu Yadav, holding a JHOLA containing bombs; Appellant No. 5, Ajit Yadav, armed with Lathi; Appellant No. 3, Chhatis Yadav, and Appellant No. 7, Mitran Yadav, were standing near the said pond. Seeing Nipen Yadav, they started abusing him and they also assaulted him. Appellant, Pran Yadav, exploded bomb and on hearing explosion of bomb, the informant, Jagdish yadav, rushed to the place of occurrence and saw that the accused persons were assaulting his brother, Nipen Yadav. On seeing the informant, the accused persons threw a bomb on him causing injury on both the legs of the informant. In the meantime, Rajan yadav (P.W.6), brother of the informant, also came there and tried to pacify the matter, but the appellant, Bonga Yadav, assaulted him also by means of CHHENI, causing injury on his both hands and fingers. Appellant, Mitran Yadav, was pelting stone and appellant, Chhatis Yadav, was assaulting Rajan yadav (P.W.6) with Lathi. The villagers and labourers working nearby assembled and then saved the life of the informant and his brothers.

5. The case of the defence was the denial of the occurrence on and of false implication.

6. In order to establish the charges, altogether 11 (eleven) witnesses were examined on behalf of the prosecution. Out of them P.Ws.2, 4 and 5 were declared hostile. P.Ws.9 and 10 were Investigating Officers, whereas P.W.11 was the Doctor, who examined the injuries on the injured person. The material witnesses are P.Ws.3, 6, 7 and 8. P.W.8 is the informant, whereas, P.Ws. 6 and 7 are his brothers. From the evidence of the Doctor, P.W.11, it appears that on the person of Rajan Yadav, the following injuries were found:

a. A lacerated wound of size 1" x 1/2" X 1/4" between the left thumb and left index finger.

b. An abrasion 1/4"X1/4" in dimension over the anterior aspect of the right ring finger.

Both the injuries were simple in nature caused by some hard and blunt object and of duration 0 to 3 hours approximately.

According to the doctor, Injury No. (a) may have been caused by blunt side of a big hansua.

From the evidence of the doctor, it further appears that the following injuries were found on the person of the informant, Jagdish Yadav:

a. Multiple pellet injury over the posterior aspect of the right lower leg with multiple pellet injuries posterior aspect of the left lower leg.

b. A small lacerated wound of size 1/4" X 1/4" X 1/4" below the right toe.

(a) number injury on the person of Jagdish Yadav may be caused by some explosives like substance and (b) number injury may be caused by some hard blunt object. Both injuries are of 0 to 3 hour duration and of simple in nature.

According to the doctor, Injury No. (a) appearing on the person of injured Jagdish Yadav may have been caused by splinter of a bomb.

P.W.3, Manik Kisku, in his evidence has stated that after hearing the sound of bomb explosion, he went near the pond and saw the informant, Jagdish Yadav, and his brother, Nipen Yadav, lying in injured condition and when he enquired from the informant, he told him that accused Pran Yadav and Bonga Yadav had thrown bombs. He further told him that Bonga Yadav had assaulted his brother, Nipen Yadav, and, thereafter, both of them have fled away. This witness saw the accused/appellants, Pran Yadav and Bonga Yadav, fleeing away from the place of occurrence.

P.W.6, Rajan yadav, has stated in his evidence that he was tending cattle near the pond and on hearing "Halla", he went to the place of occurrence and saw that all accused persons were assaulting Nipen Yadav and when he tried to pacify, the appellant, Ajit Yadav, gave a kick, on his back. The accused/appellant, Bonga Yadav, wanted to assault him on his neck by means of CHHENI, which he stopped, as a result of which he sustained injury on the right hand. On hearing "Halla", the informant, Jagdish Yadav, came running from his house and when he was at the distance of 20-25 cubits, accused Pran Yadav threw a bomb on Jagdish Yadav. Suresh and other villagers also came running at the spot and, thereafter, the accused persons fled away.

P.W.7, Nipen Yadav, in his evidence has stated that he saw the accused/appellants, Anukul Yadav and Bonga Yadav, cutting earth from his land filling the flank of the road. He went there and objected ? to it, whereupon those two appellants threatened him. On the next day, at about 8.00 a.m., when he had gone near a pond to attend call of nature, he saw all the appellants standing there and the appellant, Pran Yadav, was having bomb in his hand. Seeing the

bomb in the hand of Pran Yadav, this witness started fleeing away and then Pran Yadav threw a bomb on him, but it did not cause any injury. At that time, his brother, Jagdish Yadav (informant), came running, but the accused/appellant Pran Yadav threw a bomb upon him also, due to which Jagdish Yadav sustained injury on his legs and he fell down. His other brother, Rajan Yadav, also came there and he was assaulted by Bonga Yadav by means of CHHENI on his hand.

7. On the discussion of the evidence of the aforesaid witnesses, it appears that the genesis of the occurrence was a day prior to the main occurrence. From the evidence of P.Ws., it is established that the cause of dispute was cutting of earth by the appellants from the field of informant party, which was objected to by them, and then on the next day informant party were assaulted by the appellants, causing injuries on the persons of P.Ws.6 and 8. The said fact has been fully corroborated by the evidence of the doctor. However, it appears from the evidence of the doctor, P.W. 11, that injuries received by the injured were simple in nature. However, they were not on any vital part of their body.

8. From the evidence of prosecution witnesses, it further appears that there is no evidence to show that the appellants had any intention to kill or commit murder of the informant or any of his brother, rather it appears that the cause of the occurrence was cutting of earth and in that course the informant party were assaulted by the appellants causing injuries on them, which were found to be simple in nature. Therefore, in the totality of the evidence, I find that the offence committed by the appellants cannot come within the provisions of Section 307 IPC.

9. Therefore, the conviction of appellant No. 1 for the offence u/s 307 IPC and the conviction of the appellant Nos. 2 to 7 u/s 307/34 IPC cannot be sustained. Manner of occurrence and overt act committed by the appellants would certainly fall within the ambit of Section 324 IPC. Therefore, the appellant No. 1 is convicted u/s 324 IPC and rest of the appellants are convicted for the offence u/s 324/34 IPC for causing injuries to the informant and his brother, P.W.6.

10. From the evidence, the prosecution has been able to establish the charge u/s 3/4 of Explosive Substance Act against Appellant No. 1, Pran yadav, who exploded two bombs on the informant party and, therefore, his conviction for the offence u/s 4 of the Explosive Substance Act is affirmed.

11. From the record, it appears that Appellant No. 1, Pran Yadav, remained in jail custody for more than ten months, whereas other remaining Appellant Nos. 2 to 7 were remained in jail custody for more than six months. In this view of the matter, I do not feel desirable to send these persons to jail again after a lapse of five years from the date of the occurrence.

12. Accordingly, this appeal is dismissed on alteration of conviction and modification in sentence, as indicated herein below.

13. The Appellant No. 1, who has been found guilty and convicted u/s 324 IPC, is

sentenced to the period already undergone by him. He is further sentenced for the offence u/s 4 of the Explosive Substance Act to the period already undergone by him and to pay a fine of Rs. 2,500/- (rupees two thousand five hundred) in default, shall undergo rigorous imprisonment for six months.

Rest of the appellants 2 to 7, who have been convicted u/s 324 IPC, they are also sentenced to the period already undergone by them.