

(2017) 02 JH CK 0198
In the Jharkhand High Court
Case No : 83 of 2001

Raja Ravi Shekhar @ Kai @ Ravi Shekhar

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 324,
Section 323, Section 341 -
Voluntarily causing hurt by dangerous weapons or means - Punishment for voluntarily
causing hurt - Punishm

Citation : (2017) 02 JH CK 0198

Hon'ble Judges : Rongon Mukhopadhyay

Bench : SINGLE BENCH

Advocate : Rajendra Prasad, Sanjay Kr. Pandey

Judgement

1. Heard Mr. Rajendra Prasad, learned counsel for the petitioners and Mr. Sanjay Kr. Pandey, learned A.P.P. for the State.
2. This application is directed against the judgment dated 09.01.2001 passed by the learned 1st Additional Sessions Judge, Bokaro in Cr. Appeal no. 8 of 1997 whereby and whereunder the judgment and order of conviction passed against the petitioners by the learned Judicial Magistrate 1st Class, Chas in G.R. No. 438 of 1993, arising out of Chas (M) P.S. Case No. 23 of 1993 has been affirmed and the sentence has been modified by reducing the sentence awarded to the petitioner no. 2 from two years to 3 months for the offence punishable u/s 324 of the Indian Penal Code and the benefit of Probation of Offenders Act was given to the petitioner nos. 1 and 3.
3. The First Information Report was instituted by one Gangu Mahto in which it was alleged that his wife had gone to fetch water from the pond and while she was returning she was found fallen down in the street near the house of the petitioner no. 2 and blood was coming from her head. It is alleged that when the informant had tried to help her wife the petitioner no. 2 had assaulted her with a

rod. The informant has further stated that his wife has subsequently disclosed that while she was returning after taking water the petitioner no. 2 had accosted her and subsequently thereto assaulted on the head which resulted in cut injury. The petitioner no. 1 is also said to have assaulted with lathi but somehow she was saved. The reason for the indiscriminate assault on the wife of the informant is the existence of a previous enmity between the parties. On the basis of the aforesaid allegation Chas (M) P.S. Case No. 23 of 1993 was instituted. After investigation was completed charge-sheet was submitted against the petitioners and on taking of cognizance the case was transferred to the court of learned Judicial Magistrate, 1st Class, Chas at Bokaro wherein vide judgment dated 21.12.1996 the petitioners were convicted for the offences punishable u/s 323, 324 and 341 of the Indian Penal Code and were sentenced accordingly. The appeal preferred by the petitioner being Cr. Appeal No. 8 of 1997 was however dismissed on 09.01.2001 sustaining the order of conviction but reducing the sentence imposed upon the petitioners variously.

4. It has been submitted by the learned counsel for the petitioners that the petitioners have been implicated on account of previous enmity which has been admitted by P.W.3 and P.W.4. Learned counsel for the petitioners further submits that there are major discrepancy in the statement of the witnesses P.W.3 and P.W.4 which would make the prosecution case itself false. Learned A.P.P. for the State has opposed the prayer made by the petitioners.

5. It appears that in course of trial six witnesses were examined. Basisth Prasad Thakur (P.W.5) is a formal witness who had proved the formal F.I.R. which has been marked as Exhibit-2. The informant has been examined as P.W.3 whereas his wife has been examined as P.W.4. P.W.3 and P.W.4 have been consistent with respect to the assault committed by the petitioner no. 2 on the head of P.W.4. The version of P.W.3 and P.W.4 has been corroborated by the evidence of the Doctor (P.W.6) who had found sharp cut injury on her head. The injury report has been marked as Exhibit-3. P.W.1 and P.W.2 namely Fatik Gope and Bhoot Nath Mahto, respectively are also eye witnesses. Although some discrepancy has cropped up in their statement with respect to the exact role played by the petitioner no. 1 as Fatik Gope (P.W.1) has not named the petitioner no. 1 as a participant in the occurrence but Bhoot Nath Mahto (P.W.2) had stated that the petitioner no. 1 was armed with a lathi. The minor contradictions existing in the statement of P.W.1 and P.W.2 have been overshadowed by P.W.3 and P.W.4 and as has been discussed above is consistent with respect to the assault and the presence of the petitioners at the place of occurrence. The prosecution having been able to prove its case beyond all reasonable doubt the learned trial court had rightly convicted the petitioners for the offences punishable u/s 323, 324 and 341 of the Indian Penal Code. The appeal preferred by the petitioners was although dismissed on the point of conviction but considering various factors that the petitioner no. 2 belongs to the family of the informant, the major sentence of two years imprisonment u/s 324 of the I.P.C. was reduced to a period of three months whereas the petitioner nos. 1 and 3 were given benefit of Probation of

Offenders Act. Since no error or illegality has been committed by the learned courts below in convicting the petitioners, I do not find any reason to interfere in the judgment and order of conviction.

6. However, with respect to the sentence which has been awarded to the petitioner no. 2 is concerned it appears that out of a maximum sentence of three months imprisonment the petitioner has for some time remained in custody. The petitioner is facing the rigors of the prosecution case since the year 1993. Such circumstance does entitle petitioner no. 2 to reduction of sentence awarded to him. Accordingly, sentence imposed upon the petitioner no. 2 is reduced and modified to the period already undergone. So far as sentence with respect to petitioner no. 1 and 3 are concerned no interference is necessitated in view of the fact that they have already given the benefit under the Probation of Offenders Act.

7. In the totality of the circumstances, enumerated above this application stands dismissed with the modification in sentence so far as the petitioner no. 2 is concerned.