
(2025) 11 JH CK 1957

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 1101 Of 2005

Rajesh Lohar son of Bir Singh Lohar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-11-2025

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 325

Citation : (2025) 11 JH CK 1957

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Jitendra Nath Upadhayay, Mayank Kumar, Rahul Kumar, Harshikha Kumari, Jitendra Pandey

Final Decision : Partly Allowed

Judgement

Rajesh Kumar, J

1. Heard learned counsel the appellant and learned A.P.P. representing the State.
2. Learned counsel for the appellant at the outset has submitted that co-convict Bablu Lohar, who had preferred Cr. Appeal (SJ) No. 1213 of 2005 has died during pendency of the criminal appeal and his case has been disposed of as abated vide order dated 22.06.2022 passed in Cr. Appeal (SJ) No. 1213 of 2005.
3. The present appeal has been preferred against the judgment of conviction and order of sentence dated 18.08.2005 passed in Sessions Trial No. 54 of 2004 arising out Adityapur (R.I.T) P.S. Case No. 03 of 2004 corresponding to G.R. Case No. 8 of 2004 by the learned Sessions Judge, Seraikella-Kharsawan, whereby the appellant along with co-convict namely Bablu Lohar have been convicted for the offence under Section 307 of the IPC and they have been sentenced to undergo R.I. for 7 years along with a fine of Rs. 1000/- each and in default thereof, they have been further directed to undergo S.I. for 3 months.
4. The criminal law has been put into motion on lodging an F.I.R being Adityapur

(R.I.T.) P.S. Case No. 03 of 2004 by the informant Suru Pradhan on 02.01.2004 at Sidhesh Nursing Home, Adityapur Ward No. 17 at 12.30 P.M to Md. Salim, Sub Inspector of R.I.T. Police Station.

The brief story as per the prosecution is that the informant was working as Supervisor at Soma Electric Products Factory, whose owner is Jai Kumar Jain. He has further stated that three months back prior to Durga Puja one Rajesh Lohar, appellant herein, who was working as a casual labour there was granted three days leave by the owner of the factory but he returned after one week and asked the informant to keep him on work. Since the owner was not present at that time, the informant asked him to wait for the owner to come. However, the said Rajesh Lohar went away. Again on 31.12.2003 at about 5.00 P.M. the said Rajesh Lohar along with his associates came to the factory and asked for the informant Suru Pradhan. On seeing him, Rajesh Lohar and Bablu Lohar along with other boys, whom he did not identify, assaulted him. Rajesh Lohar and Bablu Lohar assaulted him with Iron angle and fled away. The informant has stated that the cause of assault is because Rajesh Lohar was not kept as casual labour. After the occurrence the owner was informed telephonically by the other labourers and the informant was taken to Sidhesh Nursing Home for his treatment where he gave his fardbeyan, which was recorded as Adityapur (R.I.T.) P.S. Case No. 03 of 2004. Thus the F.I.R is against two known and two unknown person. The allegation of assault by Iron Rod was against both co-convict i.e., the appellant Rajesh Lohar and other convict Bablu Lohar.

5. On the basis of the investigation, the Police submitted the chargesheet against the appellant. Thereafter cognizance has been taken and the case was committed to the Court of Sessions.

6. Accordingly, the charge under Sections 307 of the IPC was framed against the appellant who pleaded not guilty and claimed to be tried.

7. To substantiate the allegations altogether eight prosecution witnesses have been examined:

I. P.W.1-Suru Pradhan, who is informant of the case and has supported the case of the prosecution. P.W.1 is the victim himself, who has stated that Rajesh Lohar had assaulted him and Bablu Lohar only gave direction for the assault. In the cross examination, he has stated no assault was made by Bablu Lohar rather the allegation of assault is attributed only to Rajesh Lohar, appellant herein. There is a major contradiction of his statement made in his deposition vis-a-vis the F.I.R lodged by him, wherein he has alleged that both Rajesh and Bablu had assaulted him.

II. P.W.2-Jai Kumar Jain, is the owner of the factory and is not an eye witness.

III. P.W.3-Mahabir Jain is also not an eye witness to the incident.

IV. P.W.4- Deven Biswas is one of the co-workers of the factory and claimed himself to be the eye witness to the incident. However, he has made allegation

against 5 persons and it has been stated by him that he has recognized one of the appellant Rajesh Lohar. But no specific assault has been attributed by him upon the appellant Rajesh Lohar rather his allegations are general and omnibus.

V. P.W.5- Gunadhar Mahato has been declared hostile.

VI. P.W.6- Md. Salim is the investigating officer of the case. He has clearly stated that he has found nothing at the place of occurrence and no incriminating article has been seized.

VII. P.W.7-Dr. Binay Sidhesh is the doctor who has examined the injured i.e., the informant and found the following injuries:

- " 1.Lacerated wound with bleeding on left side of head 2" x ½" x ¼".
2. Lacerated wound with bleeding on right side of head 2" x ½"x 1/4".
3. Lacerated wound with bleeding is on the back of the head of the same size.
4. There are bruise and swelling on the nose and also on the left hand wrist.
5. Lacerated wound on the middle portion of left hand.
- 6.Lacerated wound of ¼" on the tip of the middle finger of left hand.

The doctor has stated that injury no. 1,2,5 and 6 were simple in nature and injury no. 3 and 4 were grievous in nature.

VIII. P.W.8-Rabindra Modak is a formal witness, who has proved the final form marked as Ext. 6.

8. After conducting full-fledged trial, the learned Trial Court has convicted and sentenced the appellant as aforesaid.

9. By referring to the above testimonies of the witnesses, learned counsel for the appellant has made following submissions:

i. The two co-accused i.e., appellant Rajesh Lohar and co-accused Bablu Lohar have been convicted but section 34 of the IPC has not been imposed rather there is no discussion whatsoever about the said section. Since, Section 34 of the IPC has not pressed into service, conviction of the appellant is vague and in such a scenario the benefit of doubt must be extended to the appellant.

ii. The victim himself has stated in the F.I.R. that he was assaulted by several persons including assault by Iron rod by the appellant Rajesh Lohar and Bablu Lohar. However, in his testimony during cross examination he has denied any such assault by Bablu Lohar. In his cross examination the attribution of assault is only with regard to Rajesh Lohar. Thus, there is major contradiction in the statement of the victim- informant made in the F.I.R vis-a-vis his deposition, so far as the assault made by one or the other person is concerned.

iii. The testimony of the injured witness is not reliable rather there is a statement

to suggest that there was some dispute with father of the appellant and it is the main cause for false implication of the appellant.

iv. It has been further submitted that place of occurrence has not been proved rather negated by the Investigating Officer -P.W.6 and further no iron rod has been recovered, which as per the prosecution was available at the place of occurrence.

v. Further, it has been submitted that that the doctor P.W.7 has opined that injury no. 1,2,5 and 6 are simple in nature and only injury no. 3 and 4 are grievous in nature. During cross examination the doctor stated that he has not found the injuries to be life threatening.

vi. Thus, it is submitted by learned counsel for the appellant that materials available on record are not sufficient for connecting the appellant in commission of the crime and therefore, no offence under Section 307 of the IPC is made out and at best it can be a case of conviction under Section 325 of the IPC.

10. Learned counsel for the appellant, based on the aforesaid grounds has submitted that appellant has remained in custody for about 1 year 6 months and 22 days and as such, his sentencing part may be reduced to the period already undergone by him.

11. Learned A.P.P. appearing on behalf of the State has supported the judgment of conviction and submitted that there is specific statement of assault by iron rod against the appellant in the F.I.R as well as in the deposition of the informant and this fact gets corroborated by the medical evidence. Therefore, the conviction of the appellant is fully justified.

12. Having heard learned counsel for the parties and having perused the record, it appears that :

a) there is allegation of assault given by iron rod against the appellant Rajesh Lohar and co-convict Bablu Lohar but in his deposition, the informant has attributed the assault by a iron rod only upon Rajesh Lohar. Thus, there is major contradiction in the statement of the informant (P.W.1) made in his deposition vis-a-vis statement in the F.I.R, which has been lodged by him.

b) The doctor (P.W.7) has not found the injuries on the person of the informant to be life threatening.

c) Section 34 I.P.C has not been pressed into service as no finding has been recorded by the learned Trial Court that there was a presence of common intention in commission of crime.

13. In view of above factual matrix, this Court finds that conviction of the appellant under Section 307 of the IPC is not made out and at best it is a case of conviction under Section 325 of the IPC as two grievous injuries were found by the doctor.

14. Accordingly, the judgment of conviction of the appellant under Section 307 of the IPC passed in Sessions Trial No. 54 of 2004 arising out Adityapur (R.I.T) P.S. Case No. 03 of 2004 corresponding to G.R. Case No. 8 of 2004 by the learned Sessions Judge, Seraikella-Kharsawan is set aside and converted into Section 325 of the IPC.

15. So far as sentencing part is concerned, considering the materials available on record, this Court finds that punishment already undergone by the appellant i.e., about 1 and ½ years is sufficient with regard to his conviction under Section 325 of the IPC.

16. With above modification in the judgment of conviction and order of sentence dated 18.08.2005 passed in Sessions Trial No. 54 of 2004 arising out Adityapur (R.I.T) P.S. Case No. 03 of 2004 corresponding to G.R. Case No. 8 of 2004 by the learned Sessions Judge, Seraikela-Kharsawan, the appeal stands partly allowed.

17. Since the appellant is on bail, he is discharged from the liability of his bail bond.