
(2020) 01 JH CK 0266
In the Jharkhand High Court
Case No : Criminal Revision No. 998 Of 2014

Rajesh Pramanik @ Jagarnath Pramanik APPELLANT
Vs
State Of Jharkhand RESPONDENT

Date of Decision : 18-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323, 341, 354, 504

Citation : (2020) 01 JH CK 0266

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Pradipto Mitra, Anjani Kr. Toppo

Final Decision : Allowed

Judgement

The instant application is directed against the judgment dated 28.06.2014, passed by the learned Sessions Judge, Dhanbad, in Criminal Appeal No.161 of 2008, whereby the appeal preferred by the petitioners along with the co-convict - Santosh Pramanik has been partly allowed.

The learned appellate court while affirming the conviction and sentence for the offence under Section 323 of the Indian Penal Code against petitioner No.2 and for the offence under Sections 323 and 354 of the Indian Penal Code against petitioner No.1, acquitted the co-convict.

The learned trial court vide its judgment of conviction and order of sentence dated 09.06.08, passed in G.R. No.876/2001, arising out of Katras P.S. Case No.105/2001, corresponding to T.R. No.247/2008, convicted the petitioners along-with the co-accused holding them guilty for the offence punishable under Sections 323 and 354 of the IPC and sentenced them to undergo RI for 6 months for the offence under Section 354 and RI for one month for the offence under Section 323 and both the sentences were directed to run concurrently.

The prosecution case, as it appears from the written report of Putul Devi, alleging therein that on 26.03.2001 at about 1:30 P.M, accused Santosh Pramanik had

set up a coal kiln on her land. It has been further alleged that when the informant-Putul Devi objected, the accused Santosh Pramanik started abusing her. Thereafter, the accused-Santosh Pramanik asked his sons, namely, Rajesh and Diwakar Pramanik (Petitioners herein) to outrage her modesty, upon which Rajesh Pramanik tore her blouse while Diwakar Pramanik kicked her on back and on her Hulla, the husband of the informant and brother-in-law came there to rescue her.

After completion of the investigation, the police submitted chargesheet for the offence under Sections 341, 323, 354 and 504 of the IPC and cognizance was taken against the accused persons and charges were framed. The petitioners pleaded not guilty and claimed to be tried.

The learned trial court after perusing the evidences, both oral and documentary, and argument adduced by the parties convicted the petitioners holding them guilty under Sections 323, 354 IPC and sentenced them as stated herein above.

Being aggrieved, the petitioners challenged the aforesaid order of learned trial court before the learned Sessions Judge, Dhanbad, in Cr. Appeal No.161/2008. The learned appellate court partly allowed the appeal and affirmed the conviction for the offence under Section 323 IPC against the petitioner No.2 and for the offence under Sections 323, 354 IPC against the petitioner No.1.

The learned counsel for the petitioners submits that there are material contradictions in the prosecution witnesses. He further submits that the learned trial court has committed a gross error in passing the impugned judgment as there was no eye witness except the informant and the judgment has been passed merely on the basis of testimony of the informant. He further submits that there is an old enmity between the parties to the dispute. It is also a fact that the husband of the informant was convicted in one case in which one of the petitioner was the informant. He further submits that even the investigating officer of the present case had supported the version of the petitioners regarding their old enmity as well as pendency of the case between the parties.

Relying upon the aforesaid facts, the learned counsel for the petitioners submits that testimony of the solitary witness should be accepted very cautiously especially when the informant and accused are closely related and there is some ill motive against the accused is suggested. In this regard the learned counsel for the petitioner relied upon the judgment passed in the case of Ramji Surjya Padvi and Another versus State of Maharashtra reported in (1983) 3 SCC 629 wherein the Hon'ble Apex court has held as under:

Para 8 : " There is no doubt that even where there is only a sole eye-witness of a crime, a conviction may be recorded against the accused concerned provided the court which hears such witness regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are

those against whom some motive or ill will is suggested. Now in the instant case a careful analysis of the evidence relating to the inordinate delay involved in the giving of the first information to the police and the other inherent inconsistencies in the evidence of the sole eye-witness i.e. Surjabai (PW2) shows that her evidence cannot be considered as sufficient to find the accused guilty. The first information (Ex. P-10) itself appears to be one prepared after some deliberation. The role attributed to Gumba (PW 5) the former Police Patel in the prosecution evidence compels the court to look for corroboration from the other prosecution evidence before accepting the evidence of Surjabai (PW 2)."

The learned counsel further relied upon the judgment passed in the case of Pradip Kumar Saha v. State of Jharkhand reported in (2018) SCC online Jhar 2530 and submits that in the similar facts and circumstances this Court has granted relief to the accused.

Per contra, the learned APP supports the impugned order and submits that the appellate court after hearing detail argument of the petitioners and appreciating the evidences, both oral and documentary, modified the judgment of trial court and there is no error, whatsoever, in the order impugned.

Heard learned counsel for the petitioners and the learned APP for the State.

It appears that this case is counter blast of the case instituted by Santosh Pramanik. Even the judgment of the other case i.e. S.T. No.481/2002 in which P.W. 2 was held guilty for the offence under Section 307 IPC is on record. It also appears from record that the informant was actually the only eye witness apart from being interested witness. The other two witnesses came at the place of occurrence after the occurrence took place.

There is no doubt that even the testimony of sole eye witness of crime is sufficient for convicting the accused person but it is also necessary that some corroboration should be sought from the other prosecution evidence in support of the sole eye witness. In the instant case, admittedly, the sole eye witness happens to be wife of P.W. 1 who has been convicted in another case in which one of the petitioners was the informant. It is also an admitted fact that this case has been lodged pursuant to the case in which P.W.1 was convicted.

In the instant case, with the same set of evidence, the co-convict-Santosh Pramanik (father of the present petitioners) who was also convicted for the same charges i.e. under Sections 323 and 354 Indian Penal Code, has been acquitted by the appellate court. Admittedly the informant happens to be wife of prosecution witness No.1 who has been convicted under Section 307 IPC in which one of the petitioners was the informant. So it can be safely inferred that this case is a counter blast of the case instituted by Santosh Pramanik, who is the father of the petitioner. The judgment of S.T. Case No.481/02 clearly transpires that P.W.1 was held guilty for the offence under Section 307 IPC for injuring Dewakar Pramanik (Petitioner No.2) and his father Santosh Pramanik. P.W. 1 has also admitted that there is land dispute between the parties and his wife

(informant) did not sustain any injury. P.W. 2 admitted that he was not the eye witness and Santosh Pramanik, father of the petitioners, is his step brother and there is the property dispute between them. Even the investigating officer who is P.W.4 has admitted that there is case and counter case as well as the long dispute between the parties. Further, the informant has admitted in her cross-examination that there is no injury report and there was no treatment of her injury. Further, the torn blouse was not handed over to the police for forensic examination.

In view of the aforesaid discussions and also in view of the principle laid down by the Hon'ble Apex Court in the case of Ramji Surjya Padvi and Another versus State of Maharashtra (supra) that though the evidence of sole eye witness is sufficient for convicting an accused person but at the same time some corroboration must be seen before convicting the said accused persons it can be safely inferred that the learned trial court has failed to take into consideration the personal enmity between the parties and the testimony of the informant was not sufficient for proving the conviction beyond all shadow of reasonable doubt.

As a result, the instant revision application is allowed and judgment of conviction and order of sentence dated 09.06.08, passed by the learned Judicial Magistrate 1st class, Dhanbad in G.R. No.876/2001, arising out of Katras P.S. Case No.105/2001, corresponding to T.R. No.247/2008 and the judgment dated 28.06.2014, passed by the learned Sessions Judge, Dhanbad, are, hereby, set aside.

The petitioners are discharged from the liability of their bail bonds.

Let the lower court record be sent back to the court concerned forthwith.

Let a copy of this order be communicated to the court below.