
(2019) 12 JH CK 0025

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 191 Of 2006

Raksu Manjhi And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 323, 324, 325, 341
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 12 JH CK 0025

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Rajiv Sharma, Neetu Sinha, G.S. Prasad

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellants and learned APP for the State.
2. This appeal is directed against the judgment of conviction and order of sentence dated 20.12.2005 passed by Shri Sudhir Kumar Sinha, 3rd Addl. District and Sessions Judge, Fast Track Court, Dumka in Sessions Case No. 94 of 2000 whereby and whereunder these appellants have been convicted for the offence under Section 147 of the Indian Penal Code and the accused namely Raksu Manjhi and Anil Manjhi have also been convicted for the offence under Section 325 of the Indian Penal Code and all these appellants have been sentenced to undergo R.I. for six months for the offence under Section 147 of the Indian Penal Code and the accused Raksu Manjhi and Anil Manjhi have been sentenced to undergo imprisonment for three years for the offence under Section 325 of the Indian Penal Code. All the sentences shall run concurrently.
3. Jarmundi P. S. Case No. 02 of 1998 has been registered on the information of Yogendra Yadav, P. W. 5. As per the FIR, on 05.01.1998 at about 4.45 pm, the appellants were uprooting potato crops of the informant and when it has been objected by the informant, he has been assaulted by all these appellants. Wakil

Manjhi assaulted his father with Lathi and Raksu Manjhi has assaulted his father with stone and Anil Manjhi assaulted the informant with Kachiya (a sharp cutting weapon) on his head due to which grievous injury has been sustained by the father of the informant.

4. On the basis of statement of the informant, Jarmundi P. S. Case No. 02 of 1998 was registered under Sections 147/148/149/323/341/324/307 of the Indian Penal Code. On completion of investigation, charge sheet was submitted against the accused persons and after cognizance was taken, the case was committed to the Court of Sessions. Charges were framed under Sections 147/341/307/149 of the Indian Penal Code against all these accused persons, to which the accused pleaded not guilty and claimed to be tried.

5. On conclusion of the prosecution case, statement of the accused persons under Section 313 of the Cr. P. C. was recorded, to which they pleaded not guilty.

6. Being aggrieved, the present appeal has been filed.

7. To substantiate the charges, altogether eight witnesses have been examined by the prosecution. P. W. 1- Mahendra Marik, who is an eye witness of the occurrence, has supported the incident. P. W. 2-Ram Prasad Durbey has been tendered for cross-examination and in his cross-examination, he said that he knows nothing about the occurrence. P. W. 3-Basani Devi is an eye witness to the occurrence and relative of the informant, has supported the incident. P. W. 4-Saryu Yadav is the father of the informant and an injured witness, has supported the incident. P. W. 5-Yogendra Yadav is the informant and has supported the incident. P. W. 6- Dr. Shesh Narayan Jha, who has examined teeth injury of P. W. -4 Saryu Yadav. P. W. 4 has been forwarded by the police for examination On 27.01.1998 although the incident is on dated 05.01.1998. There is no evidence regarding the grievous injury although there was allegation of injury by sharp cutting weapon. P. W. 7 -Mantu Tiwari is pleader's clerk and formal witness, who has proved the signature of the Officer In-charge of Jarmundi Police Station and signature of the police officer, who has recorded the fardbeyan. P. W. -8, Dinesh Layak is the witness of the incident and has supported the incident.

Ext. A is the certified copy of Jarmundi P. S. Case No. 03 of 1998, which shows that there were previous civil and criminal litigation between the parties.

8. Learned counsel for the appellants has submitted that there is land dispute between the parties and both the parties are claiming on same piece of land, which is the cause of scuffle between the parties. There were previous civil and criminal litigation between the parties. So far as the present allegation is concerned, the alleged injury has not been evidenced as there are specific allegations of throwing stone and other instruments on ten persons, but no such injury has been corroborated or proved. There is specific allegation against Raksu Manjhi and Anil Manjhi for using lathi and sharp cutting weapon but no injury by sharp cutting weapon has been brought on record. So far as teeth injury is concerned that has been proved by X-ray report, which was done on 27.01.1998,

but the date of incident is 05.01.1998 and there is delay of 22 days in conducting the X-ray, which creates doubt regarding date of injury itself. Thus prosecution story is full of doubt and it is settled law that benefit of doubt has to be extended in favour of the appellants.

9. Learned APP has submitted that eight prosecution witnesses have been examined in this case, who supported the incident and the teeth injury of P. W. 4 has also been proved and as such, there is enough evidence for conviction under Section 325 of the Indian Penal Code.

10. Considering the entire material available on record and in view of the discussion made hereinabove, this Court finds that prosecution has failed to substantiate the charge under Sections 147 and 325 of the Indian Penal Code for which the appellants have been convicted. Consequently, the appellants are acquitted from the charge of Sections 147 and 325 of the Indian Penal Code.

11. Accordingly, the judgment of conviction and order of sentence dated 20.12.2005 passed by Shri Sudhir Kumar Sinha, 3rd Addl. District and Sessions Judge, Fast Track Court, Dumka in Sessions Case No. 94 of 2000 is, hereby, set aside. The appeal stands allowed.

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