
(2007) 03 JH CK 0060
In the Jharkhand High Court

Ram Chandra Yadav and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2008) 1 Crimes 134 : (2007) 3 JCR 29

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—All the appellants stand convicted for the offence punishable under Sections 147 and 323 of the Indian Penal Code and sentenced to serve rigorous imprisonment for one year on each count, by the 5th Additional Sessions Judge, Giridih in Sessions Trial No. 1 of 1995.

2. Brief facts leading to this appeal are that 23.9.1992, informant Dwarika Yadav while moving around his fields, found all the appellants making drain his field situated in Mauza-Govinddih to irrigate there own paddy fields. According to the informant, he protested, on which the appellants abused and assaulted him variously. The informant raised alarms on which other witnesses arrived but they were also assaulted resulting in severe injuries.

3. The injured persons were removed to Birni Hospital for their treatments where A.S.I., Rajaram Singh, O/C Birni Police recorded the statement of informant at 12.00 noon. Birni Police Station Case No. 101 of 1992 under Sections 147, 148, 149, 323 and 307 of the Indian Penal Code was registered against five persons. The injured were referred for medical examination and finally submitted charge-sheet against the appellants under Sections 147, 323 and 325 of the Indian Penal Code. However, during framing of charge by the Judicial Magistrate, 1st Class, Giridih, the case was committed to the Court of Sessions as offence u/s 307 of the Indian Penal Code was made out. Accordingly, the learned trial Court

charged the appellants under Sections 307, 323 and 149 of the Indian Penal Code. The appellants pleaded not guilty and claimed that for the same occurrence, a counter case was lodged vide Birni Police Station Case No. 100 of 1992 by which the informant side was facing trial u/s 307 of the Indian Penal Code. The learned trial Court after considering the evidence on record found and hold the appellants guilty under Sections 323 and 149 of the Indian Penal Code only and sentenced them to serve rigorous imprisonment for one year on each count.

4. The present appeal has been preferred mainly on the grounds that the learned trial Court has failed to consider the contradictions in the evidence of prosecution witnesses. Mr. Ramawatar Sharma, learned Counsel appearing on behalf of the appellants, further asserted that in view of counter case lodged earlier by the appellants, the falsity of the present prosecution case has not been considered. According to Mr. Sharma, "marpit", if any, has been proved beyond doubts made by the informant side upon the appellants. The learned Counsel pointed out that when major portion of the allegation has been disbelieved, the learned trial Court should have acquitted that the appellants. Learned Counsel further pointed out that the genesis of the occurrence has not been proved by showing that the drain was being dug on the land of the informant. Learned Counsel further submitted that in absence of specific charge u/s 147 of the Indian Penal Code, the conviction of the appellants for this offence is not maintainable.

5. Learned A.P.P. for the State opposed these contentions and supports the conviction by the learned trial Court.

6. I have gone through the materials on record carefully. It is admitted fact on record that a same occurrence took place in the evening of 23.9.1992 for alleged digging of "nala" to irrigate the paddy fields between the parties for which case and counter case have been lodged vide Birni Police Station Case Nos. 100 and 101 of 1992. The police had submitted charge-sheet in Birni Police Station Case No. 100 of 1992 also under various Sections 325, 307 of the Indian Penal Code whereas in the present case charge-sheet was submitted under Sections 147, 323, 325 of the. Indian Penal Code. The learned trial Court after considering the materials on record has found and held that the prosecution has not been able to prove the charges under Sections 307, 325 and 148 of the Indian Penal Code, but held that the appellants have tried to irrigate their fields by digging "nala" on the land of the Informant. The learned trial Court has considered this aspect vide paragraph-23 of the judgment accepting that "nala" was being dug on the land of the informant. However, I do not find any material on record to support the fact that said "nala" was being dug the land belonging to the informant. The defence witnesses examined have clearly asserted that at the time of occurrence, the water was being drawn from "nala" after making passage on the land of Ram Chandra Yadav one of the appellants. He asserted specifically vide paragraph-13 that the land belongs to him.

7. It further appears that the informant (PW 9) has asserted that the incident

took place on Plot No. 107 of Khata No. 22, which belongs to him. He has further admitted in paragraph-15 that the appellants have got their land just after the land belonging to him and all the landholders" used to irrigate by creating Bandh. However, he denied that any criminal case has been lodged for the same occurrence. The investigating officer of this case (PW 10) has admitted in examination-in-chief vide paragraphs that the place of occurrence of this case was situated in Jogiyari "nala" in Which the appellants have created a temporary Bandh using soil and sand to irrigate his paddy fields. He found just east of this Bandh a diesel pump. According to him, the incident took place when the drain created to irrigate the paddy fields was cut by one of the witnesses Arjun Yadav. He also found just on east and north the paddy field belonging to the appellants while the land west of the place of occurrence belongs to informant. He further found" vide paragraph-19 that he investigated Birni Police Station Case No. 100 of 1992 and submitted charge-sheet finding it true. He further admitted that appellant Mahadeo Yadav was brought to Birni Hospital by village chowkidar vide paragraph-25. He has contradicted the prosecution witnesses in Paragraphs-33 to 37, showing that the statement of the eye-witnesses as well as injured persons were exaggerated during trial.

8. Having considered the above-mentioned facts and circumstances of this case, I find that on 23.9.1992 some occurrence took place for which two cases were registered giving different versions of the occurrence. The learned trial Court has found that the prosecution was not coming with clean hand and providing exaggerated version just to prove the point that the appellants were aggressors. I further find that the witnesses having exaggerated and contradicted themselves in the Court from their earlier statements making the prosecution case doubtful. Accordingly, I find that the conviction of the appellants for offences under Sections 323 and 147 of the Indian Penal Code cannot be sustained. As such, the present appeal has got merit and deserves to be allowed.

9. In the result, the present appeal is allowed and the judgment of the trial Court convicting the appellants is hereby set aside. The appellants are acquitted from the charge levelled against them and further discharged from the liabilities of their bail bond.