
(2006) 11 JH CK 0001
In the Jharkhand High Court

Sankar Gaur @ Gouri Shankar Gour

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 14-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 307, 323, 324, 326, 335

Citation : (2007) 1 JCR 70

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The present appeal has been directed against the judgment of conviction and order of sentence passed by the Sessions Judge, East Singhbhum, Jamshedpur in S.T. No. 47 of 1993 whereby and whereunder the appellant: was convicted u/s 326 of the Indian Penal Code and sentenced to undergo R.I. for a period of three years.

2. The prosecution story is in a narrow compass.

The statement of the informant PW 1 Uday Narayan Singh was recorded at Government Hospital, Sakchi, Jamshedpur on 4.9.1987 at 1.30 a.m. who narrated that in the night of 3.9.1987 at about 11.30 p.m. when he, after washing his face, went to answer the call of nature, there started brick-batting from the eastern side of his house. He warded off first stone pelted from outside but second one hit him on his neck and there started bleeding. He identified the assailant Trivedi Gour and another boy whom the informant could not identify. On his alarm there being raised his younger brother Satyendra Kumar Singh, Kishore Kumar Singh, Paramjeet Singh (witnesses) and his father Ram Naresh Singh appeared at the scene of the occurrence. He further alleged that the appellant, Shankar Gour dealt a farsha blow on the head of the younger brother of the informant, Satyendra Kumar Singh and in attempt to word off such blow of farsha Satyendra Singh sustained injury in his left arm causing bleeding. It was

further alleged that he along with other witnesses chased them to some distance but the accused by shooting arrows and pelting stones on them ultimately escaped. The informant admitted previous enmity with the appellants on account of blocking rain water flow on the road. There was an altercation between the villagers and the accused persons which was pacified with the intervention of the father of the informant. It was also alleged that three she-buffalos of the informant were missing and his father had enquired about the missing of she-buffalos from the co-accused Bisheswar Gour and for such reason the accused persons had anguish against the informant and his family members and the occurrence was given effect to in sequel.

3. The police upon the statement of the informant registered a case u/s 341/324/323/336/307/34 of the Indian Penal Code and accordingly, charge-sheet was submitted against accused persons including the appellant, Shankar Gour and two accused persons Trevedi Gour and Bisheswar Gour. Charge against all the accused persons were framed only u/s 307/34 of the Indian Penal Code to which accused persons pleaded not guilty.

4. Upon full trial the accused Sanjay Gour and Bisheswar Gaur were acquitted from the charge framed against them but the appellant Shankar Gour was convicted u/s 326 of the Indian Penal Code though charge was framed u/s 307, IPC and he was punished for substantive sentence of three years rigorous imprisonment.

5. The learned Counsel appearing for the appellant submitted that the conviction and sentence of the appellant is unsustainable in view of the fact that for same set of charge and same set of evidence produced and adduced on behalf of the prosecution, the other two accused persons were acquitted. Advancing his argument the learned Counsel submitted that in course of trial the prosecution examined as many as five witnesses out of whom PW 1 is the informant. PW 2 (Kishore Kumar Singh) is the brother of the informant. PW 3 is the father of the informant, PW 4 Medical Officer who had examined the injured and proved the injury report (Ext. 2) and Ext. 2/1 and PW 5 Satyendra Kumar Singh (injured). The Investigating Officer of the case; could not be examined by the prosecution and for such reason the defence of the appellant has been highly prejudiced.

6. The learned Counsel further submitted that the previous enmity between the parties have been admitted in the statement of the informant before the police at the outset and only partitioned witnesses have been projected as the witnesses of the occurrence who are none other than the brothers and father of the informant. Though it was narrated by the informant that neighbouring people had assembled at the scene of the occurrence but no independent witness has been produced in support of the prosecution case for which adverse inference can be drawn.

7. Attracting the attention, the learned Counsel pointed out that farsha blow was alleged to be dealt by the appellant causing injury to PW 5 but no attempt was

made by the witnesses to stop the bleeding. From the injury of PW 5 and their statement that they chased the culprits even thereafter does not inspire confidence.

8. The learned Counsel submitted that the place of the occurrence was the house of the informant in Kalika Nagar Bastee which was consisting of 15 to 20 houses at the relevant time of the alleged occurrence but not a single witness from the said village has come in support of the prosecution case and therefore, inference can be drawn that the occurrence did not take place in the manner presented by the prosecution and false story was cooked up to implicate the appellant and other accused persons who were acquitted by the trial Court. Similarly neither blood stained earth collected from the place of occurrence nor blood stained clothes were produced before the police in support of the manner of occurrence as alleged.

9. The learned Counsel submitted that (he conviction of the appellant cannot sustain on the testimony of the interested witnesses who had previous enmity with the appellant. He relied on the decision reported in 2001 (3) ECC 172. The Bench of this Court in Sidheshwar Paswan and Ors. v. State of Bihar, observed:

While passing the judgment the trial Court placed much reliance on the evidence of PW 3, who is admittedly own brother of the deceased but his evidence has not been corroborated by any other evidence either documentary or oral. Non-corroboration of evidence of interested eye-witness also makes the prosecution case suspicious, when admittedly both parties are on inimical terms from before.

10. On non-examination of the I.O. reliance has been placed upon the decision reported in 2005 (3) ECC 288. The Division Bench of the Patna High Court in Jodhan Yadav and Ors. v. State of Bihar, propounded that in case, the material witnesses have made certain development in their statements beyond what they had stated before the police u/s 161, Cr PC the denial of the right accrued to the defence to cross-examine the Investigating Officer by drawing his attention towards the development made in the statement of the material witnesses of the prosecution certainly caused prejudice to the defence. But in the present case the learned Counsel failed to point out as to what sort of substantial developments have been made by the witnesses in their statements before the trial Court beyond what they had narrated earlier before the police. Admittedly, neither blood stained earth was collected from the place of occurrence nor the blood stained clothes were seized by the police and for such lapses the prosecution story cannot be disbelieved in view of the consistent witnesses who have narrated the occurrence.

11. The appellant has been convicted by the trial Court u/s 326 of the Indian Penal Code though charge was framed u/s 307 IPC. Section 326 of the Indian Penal Code speaks:

Voluntarily causing grievous hurt by dangerous weapons or means. Whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt

by means of any instrument for shooting, stabbing or cutting. or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

12. PW 1 (informant) has supported the prosecution case as well as his earlier version before the police that he was hit by the stone on his neck in the night of occurrence causing injury and his alarm when his younger brother Satyendra Singh followed by Kishore Singh, Paramjee Singh and his father Ram Naresh Singh came out from the house. Satyendra Singh chased the culprits near the boundary of one Nazir Babu, but in the same sequence the appellant Shankar Gour dealt farsha blow aiming his neck and when Satyendra Singh raised his hand to ward off the blow dealt by farsha to save his neck, he sustained cut injury in his arm. On the alarm raised by the witnesses the assailants including the appellant escaped towards their own house. The victim was taken to police station and from there immediately to the Government Hospital, but when he could not recover within 3 to 4 days he was sent to Tata Main Hospital where he was admitted and from there to Vellore Hospital. His statement was recorded by the police at the Government hospital and not at the police station since first aid was required immediately to be given to the victim. He admitted that on the alarm of the victims, the villagers had assembled there.

13. PW 2 Kishore Kr. Singh has supported the allegation that occurrence took place in the night of 2.9.1987 at about 1 1.30 O'clock and at that time he was in his house and that he came out on the alarm of his brother, Uday Narayan Singh and followed his younger brother Satyendra Singh where he witnessed that the appellant and others pelting stones and also shooting arrows. In the meantime stone came from the accused side which struck on the left side on the neck of Uday Narayan Singh and with the intention to chase the assailants when Satyendra Singh proceeded towards the appellant, the appellant Shankar Gaur who was holding farsha in his hand dealt aiming on the neck of the Satyendra Singh with the intention to commit his murder, but Satyendra Singh raised his left arm and bowed his neck as a result of which he sustained cut injury on his left arm with farsha at the hands of the appellant and there started bleeding. The victim was first removed to the Government Hospital and from there to Tata Main Hospital. Even, when his injury could not be cured, he was taken to Vellore for the treatment. He identified the accused persons including the appellant in the dock. He admitted that after the escape of the culprits the villagers arrived.

14. PW 3, Ram Naresh Singh, the father of the informant supported the occurrence as the eye-witness by narrating that amongst the assailants were the appellant Shankar Gour having farsha in his hand, Bisheswar Gour having stick

whereas Trivedi Gour and Sanjay Gour were holding bows and arrows who were running towards Dimmna Road. When they were chased by his son Satyendra Singh the appellant inflicted farsha blow aiming at his neck but his left arm was cut. Satyendra Singh had also sustained injury in the finger of his left arm caused by arrow. Satyendra Singh and Uday Narayan Singh were taken to hospital and when Satyendra Singh could not recover during his treatment for a week then he was taken to Tata Main Hospital and from there he was taken to Vellore but even then he could not be fully cured. In the cross-examination he narrated that Satyendra Singh and Uday Narayan Singh were taken to police station on Rickshaw and from there the injured were sent to hospital by the police. He had not narrated before the police that Satyendra Singh was taken to Vellore Hospital for the reasons that removal of Satyendra Singh was a subsequent event to his statement before the police.

15. PW 4 Dr. A.K. Chowdhury had examined Uday Narayan Singh on 4.9.1987 at about 1.20 a.m aged about 28 years and found the following injuries:

(1) one punctured wound lateral aspect of the left side of lower part of the neck 1/2" x 1/3". The injury was simple in nature caused by sharp pointing weapon within 12 hours of his examination. In his opinion such injury was not possible by hit of stone. He proved the injury report (Ext. 2) in his pen and signature.

On the same day after short while he examined Satyendra Singh male aged about 19 years, and found the following:

(i) one sharp cut along the lateral aspect of left arm 7" x 2" x bone deep, radial nerve damaged leading to wrist top. This injury was caused by sharp cutting weapon, grievous in nature, within 12 hours of his examination and in his opinion injury might have been caused by farsha. He proved second injury report Ext. 2/1.

16. PW 5 Satyendra Singh is injured witness. He corroborated the versions of the other witnesses. He narrated that occurrence took place on 3rd September, 1987 at about 11.30 a.m. while he was in the house situated at Dimmna Road Mango (Kalika Nagar Bastee). On the alarm there being raised by his brother Uday Narayan Singh he came out from the house and found the appellant Shankar Gour with farsha in his hand. He along with other chased him and in the meantime the appellant Shankar Gour ordered the other accused persons to kill them and in the same sequence, the appellant Shankar Gour dealt a farsha blow aiming on his neck which inflicted injury in his left arm, causing deep injury with the cut of vein. His injury was bandaged by his brother Kishore Kumar Singh and he was removed to Mango Police Station on Rickshaw. From there he was sent to Mahatma Gandhi Memorial Medical College Hospital, Jamshedpur where he was treated from 10 to 12 days and thereafter he was referred to Tata Main Hospital Jamshedpur where he remained for three weeks and on advise of the doctor attending him he was referred to Vellore in the month of December, 1997. He was admitted in Christen Hospital, Vellore Hospital where he had undergone

minor operation and he remained there for three weeks. His displayed the scar of the injury after removing sleeves of his left arm to the trial Court.

17. Disclosing genesis of the occurrence the witness narrated that the residents of Kalika Nagar Bastee had constituted a Development Committee and his father was the secretary of the said committee at the relevant time of the occurrence. The witness admitted that during rainy season rain water used to over flow in the fields of the accused persons from Kalika Nagar Bastee and the accused persons used to stop the flow of water from entering in their fields by raising ridges, as a result of which, rain water used to gush in the residential houses as well as in the shops of the Bastee and it happened so soon before the occurrence. His father had protested the acts of the accused persons as the Secretary of the Development Committee. In cross- examination the witness narrated that when he arrived at the place of occurrence the brick batting was stopped and he found injury on the neck of his elder brother.

18. From the statement of the appellant, Shankar Gaur recorded u/s 313, Cr PC it is evident that the incriminating articles available on the record were read over to him to which he denied his guilt.

19. I find from the concluding part of the judgment delivered by the Sessions Judge that there was but only a single blow of farsa was dealt by accused (appellant) Shankar Gour on the injured Satyendra Kumar Singh. Therefore, although the offence of causing grievous hurt has been proved beyond reasonable doubt against accused Shankar Gour and it could not be proved beyond reasonable doubt that the said hurt was caused with an intention of committing murder of the injured Satyendra Kumar Singh. Pursuant to such reasoning, the learned trial Court came to the finding that offence u/s 326 of the IPC instead of u/s 307. IPC was proved beyond reasonable doubt against the appellant and accordingly the appellant was convicted u/s 326 of the Indian Penal Code.

20. Upon conscious consideration I find substance in the observation of the Sessions Judge and that the appellant was rightly held guilty u/s 326 of the Indian Penal code as its required ingredients to constitute such offence was proved by the prosecution. I find that sentence by way of three years rigorous imprisonment to the appellant for his conviction u/s 326, IPC is adequate and that the judgment of conviction and order of sentence passed against the appellant do not call for interference in this appeal and hence it is upheld and maintained.

21. In the result, this appeal is dismissed and bail granted to the appellant, Shankar Gour stands vacated and he is directed to serve out the remaining period of sentence. The Court below shall take effective steps in this regard.