
(2023) 02 JH CK 0022
In the Jharkhand High Court
Case No : Criminal Revision No.533 Of 2015

Sayed Ansari And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 15-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 325, 341, 342
Probation Of Offenders Act, 1958 — Section 4

Citation : (2023) 02 JH CK 0022

Hon'ble Judges : Ambuj Nath, J

Bench : Single Bench

Advocate : Sadab Eqbal, Zaid Ahmed

Final Decision : Partly Allowed

Judgement

Ambuj Nath, J

Heard the parties. This application is disposed of at the stage of admission itself.

Petitioners, Sayed Ansari, Safina Khatoon, Afsana Khatoon and Nasima Khatoon have preferred this application against the judgment dated 16.03.2015 passed by Sri Vishnu Kant Sahay, learned Sessions Judge, Lohardaga in Criminal Appeal No.45 of 2010, whereby and wherein the learned Sessions Judge, Lohardaga dismissed the appeal of the petitioners and affirmed the judgment of conviction and order of sentence passed by Sri Rajiv Ranjan, learned Judicial Magistrate, 1st class, Lohardaga in connection with Kuru P.S. Case No.22 of 2008 corresponding to G.R. No.60 of 2008 holding the petitioners guilty of the offences under Sections 341, 342, 323 and 325/34 of the Indian Penal Code and thereby sentencing them to undergo simple imprisonment for one month for the offence under Section 341 of the I.P.C., simple imprisonment for one year for the offence under Section 342 of the I.P.C, simple imprisonment of one year for the offence under Section 323 of the I.P.C and rigorous imprisonment for three years for the offence under Section 325/34 of the Indian Penal Code. All the sentences were

ordered to run concurrently.

The prosecution case was instituted on the basis of the written report of the informant, Nejawat Ansari alleging therein that on 17.02.2008 at about 8:00 P.M, there was quarrel between children of both the sides. The quarrel flared up and the petitioners assaulted the informant and her family members causing injuries to Reyatun Nisha, Bilash Khatoon and the informant, Rajina Khatoon.

Learned counsel appearing on behalf of the petitioners submitted that there is concurrent finding on facts of both the learned trial court as well as the learned Appellate Court, regarding the guilt of the petitioner. Accordingly, he will confine his argument only on the point that the judgment of conviction and order of sentence under Section 325 of the Indian Penal Code is bad in law.

It was submitted that the prosecution has not brought the x-ray report on record to prove the fact that the injured persons had sustained grievous injuries. It was also submitted that the supplementary injury report prepared by Dr. Om Prakash Gupta P.W.5 is not admissible in evidence as the primary document on the basis whereof this report was prepared, was not adduced in evidence during the trial.

Mr. Md. Zaid Ahmed, learned counsel for the opposite party No.2 admitted that the prosecution has not brought the x-ray report on record. However, it was submitted that the witnesses have been consistent in their statements that the appellants had assaulted them causing injuries.

On perusal of the statement of Dr. Om Prakash Gupta, P.W.5, it appears that on 18.02.2008, he had examined Maitun Bibi and found the following injuries on her person :

(i) Lacerated wound over mid head 1/2" x 0.2" x muscle deep.

(ii) Abrasion on right hand palmer surface 3/4" x 1/2"

According to him the nature of injuries was simple and caused by hard and blunt substance.

He has further deposed that on the same day, he examined Reyatun Nisha and found the following injuries on her person: -

(i) Swelling over left shoulder over the clavicle area with painful shoulder movement 2 1/2 " x 1/2"

(ii) Swelling on left thumb 1/2" x 1/3"

(iii) Abrasion on left side cheek 3/4" x 1/2"

According to this witness, the nature of injuries (ii) and (iii) was simple in nature and opinion regarding injury No.1 was kept reserved for want of X-ray plate. Subsequently, he had stated that the Injury No.1 of Reyatun Nisha was grievous in nature as he had received the X-ray report of left shoulder over the clavicle area and there was fracture of mid shaft of clavicle.

He has further stated that on the same day, he examined Bilash Khatoon and found the following injuries on his person:

- (i) Bruise over left arm 1 ½" x ½"
- (ii) Abrasion below right eye.
- (iii) Pain all over the body.

The injuries according to this witness are simple and may be caused by hard and blunt substance.

Thereafter, this witness examined Nejawat Ansari and found the following injuries on his person :

- (i) Bruise over left forearm 1 ½" x ½"
- (ii) Abrasion below left eye ½ x 1/3"

The aforesaid injuries, according to this, were simple in nature and caused by hard and blunt substance.

From perusal of the injury reports which are Exhibits-3 series, it appears that the oral testimony of Dr. Om Prakash Gupta, P.W.5 is corroborated by his findings in the injury reports of the injured persons.

Admittedly, the X-ray plate has not been brought on record. In his cross-examination, this witness has stated that in the supplementary report, he has not mentioned about the report of radiologist. He has further stated that the report sent to RIMS is not available for the present. He has returned the report to the concerned police station.

According to this witness, he has mentioned enclosures in the supplementary report which shows that he has returned the same to the police.

It is admitted that the report of radiologist and the X-ray plate have not been brought on record by the prosecution. Supplementary report states that injury No.1 sustained by Reyatun Nisha was grievous as per Register No.11 dated 20.02.2008 from RIMS, Ranchi, mentioning that fracture of mid shaft of clavicle. Though it has been mentioned in the supplementary injury report under heading enclosures that report of X-ray shoulder of A.P View from RIMS duly attested, but it transpires from the cross-examination of this witness that in supplementary report he has mentioned enclosures which shows that he had returned the same to the police.

The opinion of this witness is not based after viewing the X-ray plates of the injured Reyatun Nisha. It is based on the entry made in the Register No.11 dated 20.02.2008 received from RIMS, Ranchi. Accordingly, the prosecution case as far as the nature of injury, i.e, injury No.1 sustained by Reyatun Nisha comes under cloud. In fact, Dr. Om Prakash Gupta, P.W.5 has not perused the X-ray plate of the injured himself. His opinion is based on the opinion of someone else.

Accordingly, his opinion that the injury No.1 sustained by Reyatun Nisha was grievous, is not sustainable.

In view of the aforesaid facts and circumstances, the judgment of conviction and order of sentence passed against the petitioners under Sections 325/34 of the Indian Penal Code cannot be upheld. Accordingly, the same is set aside.

As far as the conviction of the petitioners under Sections 341, 342 and 323 of the Indian Penal Code is concerned, learned court below has rightly held the petitioners guilty under the aforesaid offences.

There is nothing on record to show that the petitioners had earlier been convicted in any other case. Accordingly, the order of sentence passed by the learned Court below for the offences under Sections 341, 342 and 323 of the Indian Penal Code is set aside.

Accordingly, I am of the opinion that the petitioners being the first offender should be given the benefit of Section 4 of the Probation of Offenders Act.

The petitioners shall be released on their entering into a bond for a sum of Rs.10,000/- with two sureties of like amount each to the satisfaction of the court below for maintaining peace and good behavior for a period of one year.

This appeal is partly allowed with the modification of sentence.