
(2006) 05 JH CK 0141
In the Jharkhand High Court

Sheikh Jago and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2007) CriLJ 463 : (2006) 4 JCR 17 : (2006) 4 EastCriC 455 : (2006) 3 AIRJharR 532

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The appellants along with one Sheikh Irfan were charged for the offence u/s 307/34 IPC and Section 27 of the Arms Act and by the Impugned judgment dated 29-1-1999, the learned Sessions Judge, Godda in Sessions Trial No. 5/1998, convicted these appellants for the offence under Sections 307/34 IPC and Section 27 of the Arms Act and sentenced them to undergo R.I. for a period of 10 years each for the offence u/s 307/34 IPC and R.I. for a period of 3 years each for the offence u/s 27 of the Arms Act.

2. In short the prosecution case is that in the night between 28th and 29th of August 1997, the informant (PW-1), his son Naim (PW-3) and his grand son Md. Farooq Alam (PW-2) were sleeping in their "Basa". At about 12.15 a.m. in the night, these three appellants and the other co-accused Sheikh Irfan (since acquitted) came there and then it is said that the appellant No. 1 Jago shot at the informant by a fire arms causing injuries on his chest. It is further stated that appellant No. 2 Sheikh Abli fired a shot from his pistol at Nairn, the son of the informant causing injuries on his stomach and the appellant No, 3 Sheikh Abbas exploded a bomb, which hit chaukl. According to the informant the motive behind the occurrence was the land dispute between the parties, The Informant and these appellants are closely related to each other.

3. In order to establish the charge, altogether seven witnesses were examined on behalf of the prosecution. Out of them PW-1 Sheikh Jabbar is the informant and also the victim. PW-2 is Farooq Alam the grand son of the Informant and PW-3 Md. Naim is the son of the informant and they all are the eyewitnesses to the occurrence. PW-4 is Sheikh Hubli, who has simply stated that PW-1 and PW-3 were injured. PW-5 is the Doctor, who examined the injuries on the persons of PW-1 and PW-3. PW-6 is Sheikh Rajjak, who was also stated that he saw the injuries on the persons of PW-1 and PW-3. PW-7 is the Investigating Officer.

4. On the basis of the above evidence adduced by the prosecution, the learned trial Court convicted and sentenced the appellants as stated in the earlier paragraphs and acquitted the fourth accused Sheikh Irfan.

5. Miss. Rashmi Singh Deo, learned Counsel appearing for the appellants as Amicus Curiae has fairly assisted the Court and submitted that the conviction of the appellants for the offence under Sections 307/34 IPC cannot be sustained because admittedly both the parties are closely related to each other and admittedly land dispute was going on in between the parties, therefore, from the evidence adduced by the prosecution at best it can be said that at the spur of the moment the appellants assaulted the informant party and there was no intention at all to kill them. It further argued that if the intention would have been to kill the informant party then the appellants must have repeated the fire shots from their firearms.

The submission of the learned counsel for the appellants appears to be convincing. From the evidence discussed above It appears that the appellant Nos. 1 and 2 shot one fire each, which hit the Informant and his son.

6. In this view of the matter, from the evidence adduced by the prosecution, I find that there is complete lack of evidence to come to the conclusion that the appellants actually had any Intention to kill the informant and his son. Therefore. In my view, the appellants could not have been convicted for the offence under Sections 307/34 IPC rather the offence committed by the appellants come within the purview of Section 324 IPC, i.e. voluntarily causing hurt by dangerous weapon.

7. Accordingly, the conviction of the appellants for the offence u/s 307/34 IPC Is set aside and is altered to that of u/s 324/34 IPC. So far as the conviction u/s 27 of the Anns Act Is concerned, the evidence on record clearly establish the offence alleged and, therefore, the conviction for the said offence Is hereby upheld.

8. It Is stated by Miss. Rashmi Singh Deo, learned Counsel appearing for the appellants that the appellants have remained in custody from 26-9-1997 to 30-3-2000, i.e. for more than two years and six months and the alleged occurrence took place In the year 1997, i.e. about 10 years back and, as such, after such a long lapse of time it would not be Justiciable to send these appellants to Jail again.

9. Accordingly, these appellants are convicted for the offence u/s 324/34 IPC and they are sentenced to the period already undergone by them. So far as the sentence of 3 years R.I. u/s 27 of the Arms Act is concerned, the same is also reduced to two years, which the appellants have already suffered.

10. With this alteration in conviction and reduction in sentence as aforesaid, this appeal is dismissed. The appellants, who are on bail, are discharged from the liabilities of their bail bonds.