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(2010) 09 JH CK 0147

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 36 of 2003

Shriram Pandit and Others — APPELLANT

Vs

The State of Jharkhand — RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:
Penal Code, 1860 (IPC) — Section 147, 307, 323, 324, 341
Probation of Offenders Act, 1958 — Section 4

Citation : (2010) 09 JH CK 0147

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for the Appellants and the learned Counsel for the state.

2. The instant appeal is directed against the judgment of conviction and order of sentence dated 21.11.2002 passed in S.T. No. 257 of 1996 by Shri C. Tanti, 4th Additional Sessions Judge, Dumka by which judgment he found the Appellants guilty under Sections 147 and 323 of the Indian Penal Code and released u/s 4 of Probation Offender Act on their entering into a bond of Rs. 2000/- with one sureties for a period of one year to appear and receive sentence when called upon during such period.

3. It is submitted by learned Counsel for the Appellant that it is a case and counter case, where fighting between them and both sides received injury. The informant himself admitted in his evidence that when he reached police station he saw accused persons there. He also admitted that occurrence took place due to land dispute and according to the informant the accused persons forcible grabbed the land on which informant had obtained the decree from the Court of Commissioner, Bhaglapur. He himself admitted that in his evidence he is an accused in the case of Ram Prasad Pandit, which is also with respect to the same occurrence and as such, his conviction is bad in law and fit to be set aside.

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4. On the other hand, learned Counsel for the State has opposed the prayer and submits, that all the witnesses proved that there is a case and a counter case and admits that there was fighting between them. In that view of the matter, conviction under Sections 147 and 323 of the Indian Penal Code is rightly founded after the conclusion that since in the absence of medical proof the accused persons cannot be found guilty under Sections 307 and 324 of the Indian Penal Code.

5. After hearing both the parties and going through the evidences, I find that prosecution case was started on the basis of fardbeyan(Ext.1)of the, informant Shiv Shankar Pandit (P.W.5) stating therein that on 07.02.1996 at about 4 P.M. when he was coming from Barapalasi market and reached near his house his cousin Ram Pandit, Laxman Pandit, Bharat Pandit along with Ashok Pandit, Sarju Mahto, sabu Mahto and Kailash Mahto surrounded him being armed with Lathi, Danda, Farsha and Iron Rod and all of them assaulted him and he sustained several injury on his head and other injuries. Digmber Musuk(P.W.1) Ganesh Musuk(P.W.6) came to save him then accused Sri Ram Pandit and Laxman Pandit also made them injured by inflicting Iron rod blows on their head. Other accused persons also assaulted them by Lathi. The villager assembled on Hulla and saw the occurrence. The villagers lifted them and brought to Jama Hospital. The reason of occurrence is said that there was previous land disputes.

6. On the basis of the said fardbeyan, police registered a case under Sections 147, 341, 323, 324 and 307 of the Indian Penal Code and after investigation, police submitted charge-sheet in the case. Since, the case was exclusively triable by the court of Sessions, after taking cognizance learned Chief Judicial Magistrate committed the case to the court of Sessions and subsequently, the case was tried by learned 4th Additional Sessions Judge, Dumka, who found the Appellants guilty as aforesaid.

7. It appears that in the course of the trial, the prosecution has examined as many as eight witnesses.

P.W. 1, Digamber Musuk, P.W. 2, Shankara Charya Pandit, P.W. 3, Sanat Pandit, P.W. 4, Uchedi Musuk, P.W. 5, Shiv Shankar Pandit, informant of the case, P.W. 6, Ganesh Musuk, P.W. 7, Dr. Vijay Kumar, P.W. 8, Subodh Ekka, the Investigating Officer.

The prosecution case has been supported by all the witnesses.P. Ws. 1, 5, and 6, who are witnesses and injured witnesses.P. Ws. 3, 4 and 7 have also supported the prosecution case. P.W.8, Investigating Officer, has also supported the prosecution case. P.W. 7, the doctor has submitted that although these persons P.W.5 Shiv Shankar Pandit, P.W.1. Digamber Musuk and P.W. 6, Ganesh Musuk received injuries, which were simple in nature caused by hard and blunt substance, but no injury was found by iron rod pr farsa on the injured. Subsequently, the aforesaid medical report and evidences the Court has found the Appellants guilty under Sections 147 and 323 of the Indian Penal Code.

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8. I find no illegality in the judgment of the trial Court and further the bond period has already expired. In that view of the matter, I am not inclined to interfere with the finding of the trial Court.

9. This Criminal Appeal is, accordingly, dismissed.

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