
(2019) 12 JH CK 0023

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 556 Of 2006

Sita Ram Mahto And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 18-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323, 324, 325, 347, 379, 447

Citation : (2019) 12 JH CK 0023

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : S.P. Sinha, Ram Prakash Singh

Final Decision : Disposed Of

Judgement

1. Heard the parties.
2. As per the report dated 17.11.2018, the appellant No.1, namely, Sita Ram Mahto has died on 30.07.2006. The death certificate has been sent along with the report.
3. Since no legal heir is interested in pursuing the present appeal, the appeal as against appellant No.1 stands abated.
4. So far Shambhu Mahto-appellant No.2 is concerned, he has been charged under Sections 447, 323, 324, 325, 347, 379 and 307 of the Indian Penal Code and has been finally convicted under Section 323 of the Indian Penal Code and sentenced him six months rigorous imprisonment for the offence under Section 323 of the Indian Penal Code.
5. Meral P.S. Case No. 21 of 1991 dated 04.03.1991 has been registered on the fardbeyan of the informant, Ashok Kumar Gupta (P.W.-4). As per the FIR, Ram Parvesh Prasad (P.W.-2) was working in his field along with labourers at around 11.30 a.m. The appellant, late Sita Ram Mahto, armed with farsa, present appellant namely, Shambhu Mahto armed with Lathi and late Vidyarthi Mahto

armed with Lathi came to his field and has assaulted the informant (P.W.-4), due to which, he sustained injury. He ran away and raised alarm, upon which Ram Pyare Ram, Hare Kishun Mahto and Ram Parvesh Prasad came and has rescued the informant. His son namely, Pramod Kumar Gupta (P.W.-3) has also been assaulted by these accused.

6. On completion of the investigation, the charge-sheet has been submitted and after cognizance was taken, the case has been committed to the court of Sessions. The charge has been framed under Sections 447, 323, 324, 325, 347, 379 and 307 of the Indian Penal Code to which the appellant pleaded not guilty and claimed to be tried.

7. To prove the prosecution case, altogether 7 (seven) witnesses have been examined. P.W.1-Hare Krishna Mahto, P.W.2-Ram Parvesh Prasad and P.W.3-Pramod Kumar Gupta have reached at the place of occurrence on raising alarm and have rescued the informant and as such, they have testified incident. P.W.4-Ashok Kumar Gupta is the injured witness and informant, who has sustained injury. P.W.5-Ful Kuer is also an independent witness, who has supported the incident. P.W.6-Chandrika Ram and P.W.7-Ganesh Prasad are the formal witnesses.

8. The injury of the informant has been brought on record as Ext.2 while injury of the Pramod Kumar Gupta has been brought on record as Ext.2/A. The Investigating Officer and the Medical Officer have not been examined in the present case.

9. Submission has been advanced on behalf of the appellant that non examination of the I.O. and the Medical Officer is fatal. Further the incident is of the year 1991 and the trial has been concluded in the year 2006 and the present appeal is being heard in the year 2019 and seeing the long litigation period, sentence as awarded by the trial court may be reduced.

10. Counsel for the State has supported the conviction and argument has been advanced that the case has been properly evidenced by the eye witnesses and as such, no interference is required by this Court.

11. Heard counsel for the parties.

12. The present appellant has been alleged to be armed with Lathi. There were three injuries. One and two has been caused by the sharp cutting weapon and third has been caused by hard and blunt substance. Two persons, namely, Shambhu Mahto and Vidyarthi Mahto were armed with Lathi. Vidyarthi Mahto has died during trial.

13. The prosecution has sufficiently evidenced the allegation as no contradiction has been extracted in the testimony of the informant namely, Ashok Kumar Gupta. Other witnesses have corroborated the incident. Non-examination of the Investigating Officer and the Medical Officer will not be fatal to the prosecution case as the injury has been proved by Ext.-2 and further the eye witness has

proved the allegation made against present appellant/accused.

14. Considering the material available on record, the order of conviction and sentence passed against the appellant-Shambhu Matho under Section 323 of the Indian Penal Code is, hereby, sustained but considering the period of litigation and the year of incident, the sentence is converted from six months to Rs.5,000/- as a fine.

15. With the above modification, present appeal stands disposed of.

16. The appellant-Shambhu Mahto is directed to deposit the fine amount within six weeks from today.