

(2010) 04 JH CK 0116
In the Jharkhand High Court

Sudi Mochi and Bineshwar Mochi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 323, 325, 332, 333, 341

Citation : (2010) 04 JH CK 0116

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This appeal is directed against the judgment of conviction and order of sentence dated 31.3.2003 and 01.04.2003 passed by Additional Sessions Judge, Fast Track Court No. 11, Palamau at Daltonganj in Sessions Trial No. 287 of 2000, whereby appellants were convicted under Sections 332, 323, 341. Appellant No. 1 further convicted u/s 379 of the IPC. All the appellants sentenced to undergo simple Imprisonment for one year for each of the offences u/s 332, 323 of the IPC and simple imprisonment for one month for the offence u/s 341 of the IPC. Appellant No. 1 further sentenced to undergo simple imprisonment for six months u/s 379 of the IPC.

2. The case of prosecution in short is that on 16.1.1999, while the informant (a village choukidar) was returning from duty, in the way, he met with Unnet Manji near a grocery shop at Canal bridge of Pokhraha Kala Village. It is further stated that informant stopped there and took a cigarette from a shop and started smoking. During that period appellants came armed with lathi and thrashed the informant by saying that informant used to make complaint against them. Informant received injury on his head, right eye and hand. It is further stated that hearing the cry of informant, Bhola Paswan, Nandu Paswan arrived, then appellants fled away. Thereafter the aforesaid persons took the Informant to police station.

3. On the basis of statement of informant, Sadar P.S. Case No. 14 of 1999 under Sections 341, 323, 325, 333 of the IPC instituted and police took up investigation. After investigation, police submitted charge sheet against the appellant u/s 341, 323, 325, 333 and 379 of the IPC. It appears that learned CJM, palamau, took cognizance of the offence and committed the case to the court of sessions.

4. Learned court below framed charges against all the appellants under Sections 341, 323, 325, 333 of the IPC and a separate charge u/s 379 of the IPC was also framed against appellant No. 1 (Sudi Mochi). All the charges explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried. Thereafter, prosecution examined altogether eight witnesses. Prosecution also proved Ext-1 series-the signature of witness on the fard beyan, Ext-2, the Injury report, Ext-3, the Fard beyan, Ext-4 the requisition for injury report and Ext-5, the formal FIR. After close of prosecution case appellants were examined u/s 313 Cr.P.C. in which their defence is of total denial. It then appears that learned court below after considering the evidence, convicted and sentenced the appellants as aforesaid, against that present appeal filed.

5. It is submitted by learned Counsel for the appellant that in the instant case, no offence u/s 332 of the IPC is made out. It is submitted that P.W. 6, informant has admitted that the place of occurrence is not within his territorial jurisdiction. He further admitted that he had not gone to the place of occurrence in exercise of any official duty. It is submitted that for convicting the appellants u/s 332 of the IPC, it is necessary for the prosecution to show that the appellants caused voluntarily hurt to the informant while he was discharging his official duty as a public servant. It is submitted that the essential ingredient for convicting the appellants u/s 332 of the IPC is missing in this case. It is further submitted that there is material contradictions in the evidence of prosecution witnesses with respect to assault and taking away money from the pocket of informant. Accordingly, it is submitted that the impugned judgment cannot be sustained in this appeal.

6. On the other hand, learned Additional P.P. submits that the P.W. 1, 3 and 6 consistently stated that the appellants thrashed informant with lathi. P.W. 3 and 6 had also deposed that appellant Sudi Mochi took away money from the pocket of informant. Learned APP, further submits that the statement of P.W. 1, 3 and 6 find full corroboration from the medical evidence. Accordingly, it is submitted that offence u/s 323, 341 and 379 of the IPC is made out against the appellants. Thus, there is no illegality in the impugned judgment of learned court below.

7. Having heard the submission, I have gone through the record of the case. P.W. 6 categorically stated that on 16.1.1999 at about 6 p.m., while he was smoking cigarette in front of grocery shop at Pokhraha Kala near Canal Bridge, appellants came armed with lathi and assaulted him, due to that he received Injury on his head, right eye and right hand. Aforesaid statement of informant find full support from the statement of P.W. 1 Nandu Kumar Paswan and P.W. 3 Bhola Paswan,

who are also eye witness of the occurrence. The doctor, who examined P.W. 6, had found injuries on the left scalp, right eye and right hand of the informant, caused by hard and blunt substance. The doctor further opined that all the injuries are simple in nature. Thus the doctor also supports the evidence of eye witnesses.

8. However, from perusal of the evidence of P.W. 6, it appears that the place of occurrence is not within his working area. He further admitted at paragraph No. 8 that he has not gone to the place of occurrence in checking or for doing any official duty. Section 332 of the IPC reads as follows:

332. Voluntarily causing hurt to deter public servant from his duty.- Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

9. From the perusal of aforesaid provision, it is necessary that the accused must caused hurt to a public servant while he was discharging his official duty or with an intent to prevent or deter him from discharging his duty. In the Instant case, as noticed above, at the time of occurrence informant was not discharging his official duty, nor the said occurrence took place within the working area of informant. Under the said circumstance, in my view, offence u/s 332 of the IPC is not made out. Hence, I find that the conviction and sentence of appellant for the offence u/s 332 of the IPC is illegal, therefore, same is hereby set aside and the appellants are acquitted from the charge levelled against them u/s 332 of the IPC.

10. However, as noticed above, there is cogent and consistent evidence against the appellants that they assaulted the informant with lathi, due to that informant received simple injuries on his head, eye and hand, therefore, offence u/s 323 of the IPC is made out. Prosecution witnesses stated that before assault appellants surrounded the informant and in that circumstance offence u/s 341 of the IPC is made out. P.W. 3 and 6 had specifically stated that the appellant Sudi Mochi took out money from the pocket of informant, therefore, offence u/s 379 of the IPC is also made out against the appellant Sudi Mochi. In that view of the matter, I find that the court below had rightly convicted the appellant for the said offence.

11. It appears from the impugned judgment that the appellants have no criminal antecedent. Moreover, it appears that the case is of the year 1999 and all the offences committed by the appellants are petty in nature. Under the said circumstance, in the ends of justice, in my view, the appellants are entitled for the benefit of Probation of Offenders Act, 1958. Accordingly, I direct the trial court to release the appellants on their furnishing a bond of Rs. 10,000/- (Ten

Thousand) with two sureties of the like amount each for keeping piece in the locality for one year.

12. In the result, this appeal is dismissed, subject to aforesaid modification in the judgment of conviction and order of sentence. The appellants are directed to appear in the court below and execute bond as directed hereinbefore.