

(2022) 12 JH CK 0008

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 160 Of 2011

Sukhdeo Mahto And Others

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 323, 341, 380, 427, 452
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(i)(v)(x)

Citation : (2022) 12 JH CK 0008

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : S.N. Roy, Dinesh Choudhary, S.K. Srivastava

Final Decision : Allowed

Judgement

Rajesh Kumar, J

1. Heard the parties.

2. This appeal is directed against the judgment of conviction and the order of sentence dated 27.01.2011 passed by learned 1st Addl. Sessions Judge-cum-Special Judge, Giridih in Complaint Case No.1000 of 2005 (T.R. No.1202 of 2006) whereby and whereunder, the appellants have been convicted for the offence under Sections 147, 452 and 380 of the Indian Penal Code and Section 3 (i)(v) (x) of the S.C./S.T. Act and have been maximum sentenced to undergo rigorous imprisonment for two years.

3. Criminal law has been put into motion by filing Complaint Case No.1000 of 2005 (T.R. No.1202 of 2006) and the same has been committed to the Court of Sessions on 07.08.2006. The court has taken cognizance and the appellants have been charged under Sections 147, 452, 323, 341, 380 & 427 IPC and Section 3 (i) (v) (x) of the S.C./S.T. Act, to which the appellants pleaded not guilty and claimed to be tried.

4. It has been alleged that the accused persons on 17.07.2005 armed with weapon started demolishing newly constructed house of Rameshwar Dushad, existing over the Plot No.785, Khata No.25 and that has been protested by these appellants upon which they have been assaulted and 50 Kg of rice has been taken away with certain articles.

5. To substantiate the prosecution case, the complainant has produced altogether five witnesses. P.W.1 is Sewa Devi, P.W.2 is Prakash Paswan, P.W.3 is Jaswa Devi and P.W.4 is Suresh Paswan. They all have supported the allegation made in the complaint petition. P.W.5-Bansi Dushad is complainant and he has deposed that he does not want to prosecute the present case.

6. It has been argued by learned counsel for the appellants and Amicus Curiae that for the alleged incident dated 17.07.2005, an FIR has been lodged being Birni P.S. Case No.71 of 2005 (G.R. No.1277 of 2005 and T.R. No.466 of 2009) for the offence under Sections 147, 148, 149, 323, 341 and 427 of the Indian Penal Code against the appellants and they have been acquitted on conclusion of the trial vide order dated 23.03.2009 and it has been brought on record as Ext.A.

7. It has been submitted that the present appellants have suffered twice as for the same incident, two proceedings have been initiated and they have already been acquitted in Birni P.S. Case No.71 of 2005 and that fact although has been brought to the notice of the court below in the present complaint case, but that has not been discussed.

8. It has been submitted that all the witnesses are the family members and there is no corroboration of the incident. The complainant has not given any statement supporting the allegation. Thus, conviction of the appellants are solely on the basis of the oral deposition of P.Ws.1 to 4 which does not find any corroboration from any corner.

9. Learned A.P.P. has supported the judgment of the conviction and it has been submitted that the deposition of P.Ws. 1 to 4 clearly supported the allegations made in the complaint. There is evidence on the record, justifying the conviction.

10. Having heard learned counsel for the appellants, Amicus Curiae and learned A.P.P. for the State and on perusal of the record, it appears that the criminal case has been initiated on the basis of the complaint and for the same set of incident, there was an FIR and after, facing trial, the appellants have been acquitted vide judgment dated 23.03.2009. In the present case, the complainant has not deposed in favour of the allegation. Other witnesses are oral witness but there is no corroboration of the incident, which took place at the place of occurrence.

11. Considering the above facts, this court finds that there is no sufficient evidence on record, justifying the conviction of the appellants for the offence as mentioned above.

12. In view of the above discussion, this appeal is allowed and the impugned judgment of conviction and the order of sentence dated 27.01.2011 passed by

learned 1st Addl. Sessions Judge-cum-Special Judge, Giridih in Complaint Case No.1000 of 2005 (T.R. No.1202 of 2006) is, hereby, set aside.

13. Since all the appellants are already on bail, they are discharged from the liability of their bail bonds.