
(2013) 01 JH CK 0170
In the Jharkhand High Court
Case No : Criminal Revision No. 757 of 2008

Suresh Mahato

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2013) 2 AJR 8

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant; Moti Gope, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. The petitioners are aggrieved by the judgment dated 6.8.2008 passed by learned Sessions Judge, Dhanbad, in Criminal Appeal No. 52 of 2002, whereby, the appeal filed against the judgment of conviction and Order of sentence dated 16th May, 2002 passed by Sri A.K. Yadav, learned Judicial Magistrate 1st Class, Dhanbad, in G.R. No. 2139 of 1997/T.R. No. 1806 of 2002, has been dismissed by the learned Appellate Court below.

2. The petitioners have been found guilty by the Trial Court for the offences under Sections 147, 148, 149 and 323 of the Indian Penal Code and the petitioner Kokil Mahto was also found guilty for the offence u/s 324 of the Indian Penal Code and they were convicted and sentenced for the same. The appeal filed against the judgment and Order passed by learned Trial Court was also dismissed by learned appellate Court below.

3. From perusal of the impugned judgments, it appears that there is allegation against the accused persons that on 10.8.2007 while the informant was working in his agricultural land along with his brother, the accused petitioners and other

accused persons armed with deadly weapon forming the unlawful assembly came there and assaulted them causing injuries on them. With these allegations, the FIR was lodged and upon investigation, the police submitted charge-sheet against these petitioners. It appears that ultimately, the petitioners were put to trial and in course of trial, the prosecution examined eight witnesses in the case, including one of the injured and the doctor, who had examined the injuries on the victims. It also appears that the defence had also examined three witnesses and they have also proved the sale deed and rent receipts with respect to the land in question, which is the place of occurrence and the same were marked exhibits.

4. From perusal of the impugned judgments, it appears that though the witnesses have supported the case of assault, but P.W.5 Gopal Mahto, who is also one of the injured, has admitted in his cross-examination that his father Chaita Mahato and Budhu Mahato are own brothers. Budhu Mahato had sold the portion of his land, but he has denied the knowledge whether Budhu Mahto had sold the land to the accused-petitioners. It is apparent that same portion of the land is the place of occurrence in the case. Chaita Mahto was also examined as P.W.6 and he has also admitted the fact that his brother Budhu Mahato had sold 20 decimals of land to Paro Devi. The doctor, who has examined the injuries, has proved the injury report and it appears from the impugned judgment that the injuries on the injured were only simple in nature. Other witnesses have also supported the case of assault except P.W.2 Umesh Prasad Mahto and P.W.3 Thakur Bhuiyan, who had turned hostile.

5. The defence has taken the plea that the land in question was purchased by the defence side and they were in possession of the land. The defence had examined Budhu Mahto as D.W. 1, who had proved the sale deed executed by him. Though the Court below has found that the land in question was purchased by the accused petitioners, but it was found that the witnesses had not stated that after purchase of the land, the defence side was put in possession. However the evidence of P.W. 1 Rashmi shows that the defence side was in the cultivating possession over the land in dispute for the last 16-17 years.

6. Learned counsel for the petitioners has submitted that the impugned judgments passed by the Court below are absolutely illegal, inasmuch as, the defence have been able to prove that the land in question was purchased by the defence and the same belonged to the defence side and actually, the informant side were the aggressor over the land of the petitioners. Learned counsel accordingly, submitted that the impugned judgments cannot be sustained in the eyes of law.

7. Learned A.P.P. for the State, on the other hand, has submitted that there is no illegality in the impugned judgments passed by the Courts below.

8. After having heard learned counsels for the parties and upon going through the record, I find that the defence have been able to prove the fact that the land

in question, which is the place of occurrence, had been sold to the defence side by the brother of the father of the informant, who had sold his portion of land. This fact stands admitted by P.W.5 Gopal Mahato as well as by P.W.6 Chinta Mahto, who is father of Gopal Mahto. Evidence of P.W. 1 Rashmi shows that after the purchase, the defence side was in the cultivating possession over the land in dispute for the last 16-17 years.

9. In that view of the matter, I am of the considered view that the defence have been able to prove that after the purchase of the land in dispute, they were in cultivating possession over the same, and the prosecution side were aggressor over the land of the defence side. Thereby, the defence successfully created doubt in the prosecution case. Once the defence is able to make the prosecution story doubtful, the petitioners were entitled at least to the benefit of doubt.

10. In view of the aforementioned discussions, I am of the considered view that the impugned judgments cannot be sustained in the eyes of law. Accordingly, the impugned judgment dated 16th May, 2002 passed by Sri A.K. Yadav, learned Judicial Magistrate 1st Class, Dhanbad, in G.R. No. 2139 of 1997/T.R. No. 1806 of 2002, as also the judgment dated 6.8.2008 passed by the learned Sessions Judge, Dhanbad, in Criminal Appeal No. 52 of 2002, are hereby, set aside. The petitioners are given the benefit of doubt and they are acquitted of the charge. The petitioners are already on bail and they are discharged the liabilities of their respective bail bonds. This revision application is, accordingly, allowed. Let the Lower Court Records be sent back forthwith.