
(2015) 04 JH CK 0082

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 76 of 2005

Surja Pandit and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 307, 324, 342

Citation : (2015) 2 Crimes 362 : (2015) 2 JLJR 313

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : K.P. Deo, for the Appellant; Awani Kant Prasad, Advocates for the Respondent

Judgement

Ravi Nath Verma, J.

1. This appeal arises out of the judgment of conviction and order of sentence dated 4.1.2005 passed by the learned 1st Additional Sessions Judge, Deoghar in Sessions Case Nos. 214 of 1994/20 of 2004 whereby and whereunder out of the seven appellants, who were put on trial, appellant No. 2-Babumani Pandit was held guilty for the offence under Section 324 of the Indian Penal Code for causing injury to the informant-Shri Rai (P.W. 5) and was sentenced to undergo rigorous imprisonment for two years with fine of Rupees five hundred with default clause and all other appellants were convicted for the offence under Sections 324/149 and were sentenced to undergo rigorous imprisonment for two years with fine of Rupees five hundred with default clause to suffer further imprisonment. All the appellants including Babumani Pandit were also convicted under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months with fine of Rupees Five hundred with default clause. Background facts, in a nutshell, are as follows:--

"On the basis of the fardbeyan (Ext.-3) of the informant Shri Rai recorded by S.I., Arun Kumar Rai, Officer-in-Charge of Mohanpur P.S. on 7.5.1993 at 3.10 p.m. at village-Jhalar in the courtyard of one of the appellant Surja Pandit is that

on the same day at 11.30 a.m. he was going to the shop of Balbhadra Modi and when reached near the house of Surja Pandit, suddenly the appellants came there, caught hold of him and assaulted with Lathi. All the appellants forcibly dragged him into the courtyard of the house of Surja Pandit and closed the main door of his house. The appellants threw him on floor of courtyard. Thereafter Babumani Pandit inflicted injuries on both of his legs with sword. Seeing blood coming out of his leg, he became unconscious and regained consciousness after arrival of the police. The motive behind the assault, as disclosed in the fardbeyan, is due to some dispute with the accused persons for the last two years."

2. The police after investigation submitted the charge-sheet against all the appellants whereafter the case was committed to the Court of Sessions and charges were framed. At this juncture it is relevant to mention that in view of the allegation in the fardbeyan, the occurrence took place at two different places. The first part of occurrence took place outside the house of Surja Pandit when the informant was caught by the appellants and dragged him and assaulted with Lathi. Thereafter they forcibly dragged the appellant into the courtyard of the house of one of the appellant Surja Pandit and closed the main door of his house. The second part of the occurrence took place in the courtyard when there is specific allegation of inflicting injuries with sword by Babumani Pandit to the informant.

3. The prosecution, in order to substantiate the charges, examined altogether eight witnesses. Out of them P.W. 1-Badan Thakur, P.W. 2-Bhagu Turi, P.W. 3-Tetu Rai and P.W. 7-Nunlal Turi are the eye witnesses of first part of the occurrence which took place in front of house of the appellant Surja Pandit and all the above witnesses have consistently stated that the informant P.W. 5 was forcibly dragged into the courtyard of the house of one of the appellants Surja Pandit and the main door was closed from inside. Apparently, there is no eye witness of the second part of the occurrence. All the witnesses have further consistently stated that both the parties had land dispute prior to the present occurrence.

4. P.W. 5 the informant corroborating his own statement given in the fardbeyan, has testified that while he was going to the shop of Balbhadra Modi, all the appellants caught hold him and assaulted with Lathi and thereafter dragged him in the courtyard of the house of Surja Pandit and threw him on the floor of courtyard and Babumani Pandit inflicted injuries on both of his legs with sword. P.W. 6 Dr. A.K. Jain, who had examined the informant Shri Rai on the date of occurrence, found following injuries on the body of the informant P.W. 5:--

"(i) incised wound 3" X 2" X 1" above medial malleolus on right leg.

(ii) incised wound at the middle of right leg 1" X 1/2" X 1/2" with fracture of bone.

(iii) incised wound at left ankle 4" X 2" X 3" with fracture of bone.

(iv) incised wound on left foot 4" X 1" X 1" and all the injuries were found to be caused by sharp cutting weapon like sword."

The injury Nos. (ii) and (iii) were opined as grievous in nature but injury Nos. (i) and (iv) were found to be simple in nature. The opinion regarding grievous in nature was given on the basis of the X-ray report. Since the original injury report was not made available, only carbon copy of the injury report was received from Sadar Hospital which was proved by P.W. 6 as Ext. -2. It appears that X-ray plate of the injured informant was not produced in court. The trial court on consideration of the evidences and materials on record convicted and sentenced the appellants as indicated above.

5. Being aggrieved by the judgment of conviction and sentence, all the seven appellants preferred this appeal. However, one of the appellant Ishwar Pandit died during the pendency of the appeal and hence by order of court, the appeal to the extent of deceased-appellant Ishwar Pandit had abated.

6. Mr. Deo, learned counsel appearing for the appellants assailed the judgment of conviction and order of sentence on the ground that though the witnesses examined by the prosecution have consistently said about the first part of the occurrence relating to assault by the appellants with Lathi but the doctor has not found even a single injury caused by hard and blunt substance rather all the injuries have been found to be incised in nature. Hence, the witnesses are not truthful and no reliance can be placed on the testimonies of those witnesses. It was also contended that due to non-examination of the I.O. of the case, prejudice has been caused to the defence as the defence could not draw the attention of the court regarding the manner of occurrence and place of occurrence. Learned counsel further assailing the findings of the court below submitted that there is no eye witness of second part of the occurrence except P.W. 5 the injured informant and since the testimony of the witnesses with regard to the first part of the occurrence are not trustworthy, the evidence of P.W. 5 with respect to second part of the occurrence cannot be relied upon. Lastly, it was contended that the occurrence took place in the year 1993 and since then the appellants have faced the ordeal of trial and the pendency of the appeal and their sufferance is greater than any punishment which could have been inflicted upon them.

7. I went through the evidence of the witnesses, especially P.W. 1, P.W. 2, P.W. 3 and P.W. 7 and also the evidence of the informant P.W. 5 the injured and I find substance in the submission of learned counsel for the appellants that except P.W. 5 the informant, all the above witnesses were the witnesses of first part of the occurrence where they have all testified that when the informant was going to the shop of Balbhadra Modi, the appellants caught hold of him and assaulted with Lathi and thereafter dragged him in the courtyard of the house of Surja Pandit and closed the main door of the house but the medical evidence has not at all corroborated this part of the evidence of the above prosecution witnesses. P.W. 6 the doctor has not found any injury on the body of the informant caused

by hard and blunt substance. The prosecution evidence as regard to the second part of the occurrence, relates to the inflicting of injuries by Babumani Pandit with sword on both the legs of the informant P.W. 5. This witness (P.W. 5) has clearly testified that Babumani Pandit inflicted injuries on both of his legs with sword and this part of his testimony has been fully corroborated by the medical evidence where the doctor P.W. 6 has found four incised wound on the left and right legs of P.W. 5. The doctor has found fracture of bone in right as well as left leg and the two injuries were grievous in nature.

8. Thus on consideration of the evidence brought by the prosecution it is well settled that the prosecution story, which relates to the first part of the occurrence, has not been established by the prosecution witnesses. The evidence relating to the injuries inflicted by sword on both legs of the informant P.W. 5 by Babumani Pandit, there is absolutely no reason to disbelieve the evidence of the injured witness P.W. 5 when the medical evidence has fully corroborated the injuries.

9. The appellant No. 2 Babumani Pandit alongwith other appellants were charged under Sections 307/149, 342/149, 324/149 I.P.C. and also under Section 148 of the Indian Penal Code but the trial court did not find the case of Section 307 I.P.C. either against the appellant No. 2 Babumani Pandit or against other appellants. The trial court convicted the appellant Babumani Pandit under Section 324 of the Indian Penal Code separately but further convicted Babumani Pandit and other appellants under Section 148 I.P.C. Considering the evidence of P.W. 5 and the evidence of P.W. 6 (the doctor), who had examined P.W. 5 and the nature of the injury, the conviction of the appellant Babumani Pandit under Section 324 of the Indian Penal Code is justified and it does not need any interference. However, the conviction of the appellant Babumani Pandit under Section 148 I.P.C. is concerned since the prosecution has not been able to prove that the appellants had formed any unlawful assembly and that anything was done in prosecution of common object of any unlawful assembly, the conviction of the appellant Babumani Pandit under Section 148 I.P.C. cannot sustain in the eye of law. Hence, the conviction of appellant Babumani Pandit under Section 148 is set aside. However, coming to the question of sentence awarded to this appellant, it is to be noted that nature of accusations, the age of the appellant, who after more than 20 years of protracted trial is more than 60 years of age and also considering the period of this appellant in custody which is more than six months, the ends of justice would be met if the sentence of imprisonment awarded to the appellant No. 2 Babumani Pandit is reduced to the period already undergone by him.

10. So far the conviction of other appellants Surja Pandit, Gurja Pandit, Rama Pandit, Kamla Pandit and Jugal Pandit under Sections 324/149 I.P.C. and also under Section 148 I.P.C. are concerned, though they were also charged under Sections 307/149, 342/149, 324/149 and 148 of the I.P.C. but as the first part of the occurrence has not been proved by the prosecution, there is nothing on

record to show that the above five appellants had formed any unlawful assembly and that anything was done in prosecution of common object of any unlawful assembly. The learned trial Judge did not pass any order of conviction under Sections 307/149 I.P.C. against the above appellants but he has passed the order of conviction under Section 324 with the aid of Section 149 I.P.C. and also under Section 148 I.P.C. As held above, the prosecution has failed to prove the first part of occurrence beyond any reasonable doubt, the conviction of appellants Surja Pandit, Gurja Pandit, Rama Pandit; Kamla Pandit and Jugal Pandit under Sections 148 and 324 with the aid of Section 149 of the Indian Penal Code cannot be sustained under the law. Hence, the conviction of appellants namely Surja Pandit, Gurja Pandit, Rama Pandit, Kamla Pandit and Jugal Pandit under Sections 324/149 and also under Section 148 of the Indian Penal Code are set aside and they are accordingly acquitted of the charges. Thus, on the basis of the discussions as made above, the appeal with respect to appellant Babumani Pandit is, hereby, dismissed with modification in sentence. The appeal with respect to other appellants Surja Pandit, Gurja Pandit, Rama Pandit, Kamla Pandit and Jugal Pandit is allowed.