

(2016) 07 JH CK 0025

In the Jharkhand High Court

Case No : Acquittal Appeal No. 18 of 2003, (Against the judgment and order dated 22.08.2002 passed by Sri Arun Kumar Rai, Addl. District and Sessions Judge, III, Dhanbad in Cr. Appeal No. 20 of 2000).

The State of Jharkhand - Appellant @HASH Ghuran Mandal, Dhanbad

Date of Decision : 12-07-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, Section 353

Citation : (2017) 1 AIRJharR 540 : (2016) 4 ECrC 260

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Mr. Hardeo Prasad Singh, Advocate, for the Appellant; M/s Gautam Kumar and Anil Kr. Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Verma, J. - The State of Jharkhand has preferred this Acquittal Appeal under section 378(1)(2)(5) of the Code of Criminal Procedure (in short the Code) against the judgment of acquittal dated 22.08.2002 passed by Sri Arun Kumar Rai, Additional District and Sessions Judge - III Dhanbad in Criminal Appeal No. 20 of 2000, whereby and where under the accused Ghuran Mandal has been acquitted of the charges for the offence under sections 353/323 of the Indian Penal Code and the conviction of other two accused namely, Tarun Singh and Arun Singh have been affirmed but released after due admonition under section 3 of the Probation of Offenders Act, 1958.

2. On the basis of the written report of the informant, Mahipal Singh Yadav, Executive Officer, Dhanbad Municipality (P.W.6), Dhanbad P.S. Case no. 450 of 1993 was instituted under sections 353/323/34 of the Indian Penal Code on the allegation that the informant came to Professor's Colony at Chinagora on 30.7.1993 at about 9 a.m. for inspection of the existing drain in the colony with other officials namely, Sri Abdullah, Sanitary Inspector, Ward Commissioners, Nirmal Kumar Mukherjee and Sri Babban Pathak. During inspection almost 25-30 persons of the locality also assembled there. The inspection was made on the

basis of complaint made against Ghuran Mandal. The informant along with others came near the house of Ghuran Mandal and tried to convince him, but in the meantime, his sons, Tarun Singh, Arun Singh and Laxman Singh came there and assaulted the informant from behind and when the Ward Commissioners, Baban Pathak and Nirmal Kumar Mukherjee tried to save the informant, the accused persons assaulted them also. Arun Singh took out Rs. 600/- and odd from the pocket of Nirmal Kumar Mukherjee and fled away.

3. After due investigation, the police submitted the charge-sheet against Ghuran Mandal, Tarun Singh and Arun Singh. Accordingly charges were framed against the accused persons. The prosecution in order to substantiate the charges, examined altogether 11 witnesses. The trial court after hearing the parties and examining the evidences available on record, convicted Ghuran Mandal and Arun Singh under sections 353/323 of the Indian Penal Code and sentenced them to undergo S.I. for Six months under section 353 of the Indian Penal Code and S.I. for three months under section 323 of the Indian Penal Code. Other accused namely, Tarun Singh was also convicted under sections 353/323/379 of the Indian Penal Code and sentenced to undergo S.I for Six months under sections 353/379 of the Indian Penal Code and S.I for three months under section 323 of the Indian Penal Code. Aggrieved by the said judgment of conviction and order of sentence, all the three convicts preferred appeal bearing Criminal Appeal No. 20/2000 before the Sessions Judge, Dhanbad, which was heard by Additional Sessions Judge-III, Dhanbad and the appellate court after hearing the parties and considering the evidence available on record acquitted Ghuran Mandal from the conviction under sections 323/353 of the Indian Penal Code. Another accused Tarun Singh was also acquitted from the charges under section 379 of the Indian Penal Code, but conviction of accused Arun Singh and Tarun Singh under sections 323/353 were affirmed. However, both the accused were released after due admonition as indicated above. Hence, this appeal against the acquittal of Ghuran Mandal.

4. Mr. Hardeo Prasad Singh, learned counsel appearing for the appellant State of Jharkhand, while assailing the judgment of acquittal of the sole respondent Ghuran Mandal as perverse and bad in law, seriously contended that the Appellate Court committed grave error in holding that the views expressed by the Trial Judge was perverse and not plausible one, though the learned trial Judge has scrutinised the evidence in detail and the findings recorded was reasoned one. It was further contended that reason scribed by the Appellate Court for taking a different view is not sound in as much as there is no proper consideration of the evidence which is obligatory on the part of the appellate court to do, when dislodging the finding recorded by the trial court. It was also submitted that where two views are possible, the Appellate Court should not have interfered with the order of conviction. Mr. Singh emphatically argued that the respondent was the first person from whom the informant had enquired about the existing drain where after three sons of Ghuran Mandal came and assaulted the informant and two other persons, who were public servant and

thereby caused obstruction in discharge of their duties. But the Appellate Court after considering the evidence acquitted the respondent-Ghuran Mandal.

5. Mr. Gautam Kumar, learned counsel appearing for the respondent submitted that none of the witness has testified that respondent-Ghuran Mandal had made any obstruction in discharge of official duty of the informant and other Government officials or even assaulted either the informant or any other person. Since, there is no perversity in the judgment of acquittal, this court cannot interfere with the findings of acquittal.

6. Before I proceed to consider the evidence and rival contention raised by the learned counsel for the parties I would like to recapitulate the law settled by the Hon"ble Supreme Court in several judgments pertaining to an appeal against acquittal.

7. In the case State of Rajasthan v. Abdul Mannan, (2011) 8 SCC 65, the Hon"ble Supreme Court while dealing with the power of Appellate Court in case of acquittal, in para 12 held as follows :

" As is evident from the above recorded findings, the judgment of conviction was converted to a judgment of acquittal by the High Court. Thus, the first and foremost question that we need to considered is, in what circumstances this Court should interfere with the judgment of acquittal. Against an order of acquittal, an appeal by the State is maintainable to this court only with the leave of the court. On the contrary, if the judgment of acquittal passed by the trial court is set aside by the High Court, and the accused is sentenced to death, or life imprisonment or imprisonment for more than 10 years, then the right of appeal of the accused is treated as an absolute right subject to the provisions of Article 134(1)(a) and 134(1)(b) of the Constitution of India and Section 379 of the Code of Criminal Procedure, 1973. In light of this, it is obvious that an appeal against acquittal is considered on slightly different parameters compared to an ordinary appeal preferred to this Court."

8. In the aforesaid judgment, the Hon"ble Supreme Court has considered the distinction between the statutory appeal and legislative intent and held that appeal against acquittal has to be considered on slightly different parameters compared to an ordinary appeal preferred to court. In case at hand, it is noticeable that the Appellate Court while dislodging the reasons and substituting the findings has re-appreciated the material evidence of all the prosecution witnesses brought on record to come to the conclusion that the view taken by the learned trial Judge is neither plausible nor a reasonable one.

9. It is well settled principle of law that while dealing with the judgment of acquittal, the Appellate Court must consider the entire evidence available on record, so as to arrive at a finding as to whether views of the trial court and the first appellate court were perverse and otherwise unsustainable. The Appellate Court should not ordinarily set aside a judgment of acquittal.

10. I have gone through the entire evidences available on record and I find that the informant Mahipal Singh Yadav, who was examined as P.W.6 has testified that he along with the Ward Commissioners and other Government officials visited the place of occurrence, which is the drain in front of the house of Ghuran Mandal for inspection and called Ghuran Mandal. The said Ghuran Mandal made a mockery of the direction of the Deputy Commissioner and when he refused to hear the informant, he was asked to go inside the house and rethink over the issue but in the meantime three sons of the accused Ghuran Mandal came and assaulted the informant and when two other officials Nirmal Kumar Mukherjee and Baban Pathak tried to save him, the accused assaulted them also. So, there is no evidence on record to show that respondent Ghuran Mandal had assaulted the informant or any Government official or obstructed in discharge of their official duty. Even other witnesses have also testified in the same manner and corroborated the evidence of the informant. It is true that said accused Ghuran Mandal ignored the direction given by the Deputy Commissioner but that alone can not constitute an offence. The appellate court while dealing with the evidences on record has considered the evidences in right perspective and acquitted the respondent.

11. In my opinion, the view taken by the Sessions Judge, as appellate court is neither unreasonable nor perverse. Hence, I do not find any plausible ground or evidence on record to interfere with the judgment of acquittal passed by the learned Appellate Court.

12. For the reasons aforesaid, I do not find any merit in this acquittal appeal. Hence, this appeal is dismissed.