

(2024) 11 JH CK 0048

Jharkhand High Court

Case No: Criminal Appeal (S.J.) No. 1277 Of 2006

Tetru Marik

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Nov. 19, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 307, 323, 341 504
- Probation of Offenders Act, 1958 - Section 4

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: Sunita Kumari, Prabir Chatterjee

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. Heard Ms. Sunita Kumari, learned Amicus Curiae appearing for the appellants and Mr. Prabir Chatterjee, learned Spl.P.P. appearing for the State.

2. Above named appellants have preferred this criminal appeal challenging their judgment of conviction and order of sentence dated 18.07.2006

passed by learned 4th Additional Sessions Judge, (F.T.C.), Dumka in Sessions Case No. 189 of 2003 / 62 of 2004, whereby and whereunder, the

appellants have been held guilty for the offence under Sections 323 and 341 of the I.P.C. and instead of granting any substantive sentence, the trial

court has given the benefits of Section 4 of the Probation of Offenders Act, 1958 and directed to be released on probation bond for maintaining of

peace and good behaviour for a period of one year and to appear and receive sentence when called upon during such period.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal in a narrow compass is that the informant was living in the house of his mother-in-law and looks after

her property. The father-in-law of the informant has no son, but only daughter. On 14.06.2002, the informant was ploughing the land of his mother-in-

law, at that time, accused persons namely, Dinu Marik, Kailash Marik, Kikiya (Kiya) Devi, wife of Dinu Marik, Jaganwati Devi, wife of Baleshwar

Kapri, Nipan Marik, all are resident of Village " Kapati, P.S. " Hansdiha, District " Dumka, variously armed with lathi, danda came in the field

and asked him to stop to plough the field. The informant told them that the land belonged to his mother-in-law and he has been in possession of this

land since long. Upon this, Dinu Marik assaulted on his head with lathi and the rest accused persons caught hold him and they assaulted with fists, slap

and danda. At the time of occurrence, he raised alarm and after hearing alarm, the villagers reached there and on seeing the villagers, the accused

persons fled away. It is alleged that due to assault, the informant sustained bleeding injuries on his head, left hand, shoulder and other parts of the

body.

4. On the basis of above information, FIR being Hansdiha (Ramgarh) P.S. Case No. 49 of 2002 was registered against the appellants for the offence

under Sections 341, 323, 504, 307/34 of the I.P.C.

5. After completion of investigation, the I.O. of the case has submitted charge sheet under Sections 341, 323, 504/307/34 of the I.P.C. After

submission of charge sheet, the cognizance was taken and the case was committed to the court of Sessions, where the charges were framed under

Sections 307/34, 323, 341 of the I.P.C., to which the appellants pleaded not guilty and claimed to be tried.

6. In order to substantiate the charges leveled against accused person, altogether eight witnesses were examined by the prosecution.

7. Apart from oral evidence of ocular witnesses, following documentary evidences were also adduced.

Exhibit-1 : Fardbeyan.Â

Exhibit-1/1 : Endorsement on the fardbeyan.Â

Exhibit- 2 & 2/1 : Requisition for injury report of the injured persons.Â

Exhibit-3 : Formal F.I.R.Â

Exhibit-4 & 4/1 :Â Injury Report of the injured person.Â

Exhibit-5 : Signature of the informant on fardbeyan.

8. The case of defence is complete denial of the alleged occurrence. They are innocent and falsely implicated in this case.

However, following documentary evidence have been adduced by the defence.

Exhibit-A to A/3 :Â Notices sent by the S.D.M., DumkaÂ in Cr. Misc. Case No. 4/03.

Exhibit-A/4 to A/5 :Â Summons to the accused personsÂ which are issued by the learnedÂ Judicial Magistrate.Â

Exhibit-B :Â Raiyati Khatian.

Exhibit- C :Â CertifiedÂ copy of judgment of P.C.R. Case No.Â 237/03, T.R.Â No. 238/05. Â

Exhibit-D :Â Certified copy of charge- sheetÂ ofÂ Ramgarh (Hansdiha) P.S. Case No. 50/02.

Exhibit-E :Â Certified copy of order dated 2.9.03 ofÂ P.C.R. Case No. 237/03.

Exhibit-F :Â Certified copy of order of S.D.M.,Â Dumka passed in Case No. 262/01. Â

Exhibit-G :Â Order of P.C.R. Case No. 273/02. Â

Exhibit-H :Â Certified copy of F.I.R. of G.R. Case No. 55/02.

9. The learned trial court, after evaluating the evidence available on record, held the appellants guilty for the offence under Sections 323 and 341 of the I.P.C. and sentenced as stated above.

10. Being aggrieved with the impugned judgment of conviction and order of sentence dated 18.07.2006, this Criminal Appeal has been preferred on behalf of the appellants.

11. It appears from the record that appellant nos. 1, 3 and 4 have died, as such, in terms of order dated 11.11.2024, the appeal was abated on behalf of the appellant nos. 1, 3 & 4.

12. Learned Amicus Curiae appearing for the appellant nos. 2, 5 & 6 has submitted that although charges were framed in this case by the trial court

for the offence under Section 341, 323, 307/34 of the I.P.C., but the appellants were held guilty only for the offence under Sections 323 and 341 and

instead of awarding any substantive sentence of imprisonment, they were released under Section 4 of the Probation of Offenders Act, 1958. The

appellants have furnished bond as per direction of the concerned trial court and the period of which has also been expired.

13. It is clearly submitted that there was land dispute between the parties wherein two members of informant party namely, Ugan Rout and Basant

Rout have sustained simple injuries caused by hard blunt substance.

14. It is submitted that since there was assault from both sides due to land dispute. Hence, conviction of appellants was not proper and liable to be set aside.

15. On the other hand, learned APP has opposed the aforesaid contention raised on behalf of the learned Amicus Curiae and submitted that the

injured persons have categorically deposed about causing of injuries by the present appellants due to land dispute. The injury sustained by the

informant party has also been corroborated from the evidence of P.W.-7, Medical Officer, P.H.C. Seraiyahat, therefore, the conviction of the

appellants is based upon the materials available on record, corroborated by medical evidence, which requires no interference by way of this appeal.

Thus, being devoid of merit, this appeal is fit to be dismissed.

16. It appears that the most important evidence for adjudicating this appeal is the evidence of the Doctor P.W.-7.

17. P.W.-7 Dr. Om Prakash, who examined the injured persons. On examination, following injuries were found on the body of the injured Ugan Rout:-

(1) Lacerated wound left parietal region of scalp 1½" x ¾" x 1/8" with clotted blood.

(2) Abrasion with clotted blood on dorsal aspect of left foot 1" x ½".

He has found following injuries on the body of the injured Basant Rout.

(1) An abrasion on right parietal region of scalp ½" x ¼" with reddish brown scab.

18. From the aforesaid evidence, it is crystal clear that the trial court has properly appreciated the evidences available on record. There is no illegality

or infirmity in the impugned judgment of conviction and order of sentence, calling for any interference by this Court. It appears that the learned

concerned trial court has taken lenient view in the matter and instead of awarding substantive sentence to the appellants, released the appellants after

furnishing probation bond for a period of one year and the period of which has also expired.

19. Under these circumstances, the appeal is dismissed.

20. Before imparting, I appreciate the assistance provided by learned Amicus Curiae in this appeal. Payment of Rs. 2,500/- shall be made to the

learned Amicus by the Jharkhand High Court Legal Services Committee on submission of bill.

21. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful and copy of judgment be

also sent to the Secretary, Jharkhand High Court Legal Services Committee for the needful.