

Raj Kishore Yadav Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 28, 2025

Acts Referred: Indian Penal Code, 1860 â€” Section 34, 300, 307, 323, 324, 326, 341, 435, 436, 451, 504

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: Dilip Kr. Prasad, Shweta Singh

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. Heard learned counsel for the parties.

2. The present appeal is directed against the judgment of conviction dated 09.08.2006 and order of sentence dated 11.08.2006 passed by learned 3rd

Additional District & Sessions Judge, Dumka (F.T.C.) in Sessions Case No. 348 of 2003, whereby and whereunder the appellants have been

convicted for the offence under Sections 307 of the I.P.C. and sentenced to undergo R.I. of seven years along with fine of Rs. 2,000/- each with

default stipulation. One of the co-accused namely, Nand Lal Yadav has been given benefit of doubt and has been acquitted from the charge.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that on 21.07.2003, informant Mahadev Yadav along with his daughter Gorbi Devi and Bhaigna

Rajesh Yadav and brother Sahdev Yadav were returning from Gangwara Hatia and reached near the house of above appellants then they stopped

them and asked as to why they have cultivated Kaaibara land and sown Arhar, inspite of their forbed to cultivate the land till the decision of the Court.

Upon this, the informant replied that he has sown in his share of the land. Meanwhile, all the accused persons started abusing in filthy language. It is

further alleged that Jagdish and Raj Kishore rushed armed with farsa in their hands with intention to kill the informant party and Jagdish gave a farsa a

blow on Gorbi Devi and accused Raj Kishore gave farsa a blow on Sahdev Yadav. Nandlal Yadav had a lathi on his hand. He also started assaulting

them with lathi, anyhow the informant party saved themselves raising alarm, then several villagers assembled and accused fled away. The injured

persons were brought to police station and thereafter to Hospital. It is alleged that the motive behind the above occurrence is long drawn land dispute

between the parties for seven years.

4. The fardbeyan of the informant was sent to Ramgarh police station for institution of case. Accordingly, Ramgarh (Hansdiha) P.S. Case No. 60 of

2003 for the offence under Sections 341, 323, 324, 326, 307, 504 / 34 of the I.P.C. was instituted.

5. After completion of investigation, charge sheet was also submitted for the aforesaid offences. The learned CJM, Dumka took cognizance of

offence and committed the case to the court of Sessions. The accused persons denied the charges and claimed to be tried.

6. After conclusion of trial, appellants have been held guilty and sentenced as stated above.

7. Learned counsel for the appellants assailing the impugned judgment and order has submitted that admittedly there were two injured persons in this

case.

8. It is further submitted that the prosecution has altogether examined 08 witnesses. Apart from oral evidence, the prosecution has proved following

documentary evidences:-

Exhibit-1 : Signature of informant on fardbeyan.

Exhibit-2 : The injury report of Sahdev Yadav. The injured Sahdeo Yadav was examined at P.H.C. Saraiyachat on 21.07.2003 at about 10:00 PM and

following injuries were found on his person: - An incised wound on left side of lower part of neck oblique in direction with red clotted blood size 5 1/2" x

1 1/2", 1 1/2" x 1 1/2", 1 1/4" x 1 1/4", cut vessels and muscles and muscles were seen.

The injury is opinioned to be simple in nature and caused by sharp cutting weapon within six hours. Exhibit-3 : The injury report of Gorbi Devi. The

injured Gorbi Devi has also sustained one incised wound on left temporal region of scalp involved root of neck size 5 1/2" x 1" x 2" with profuse

bleeding. Vessels were cut with bleeding from left ear.

Opinion regarding injury was reserved and patient was referred to Sadar Hospital, Dumka for further management.

The Doctor has also opined that the above injury was caused by sharp cutting weapon, but no supplementary injury report was brought on record to

ascertain the exact nature of injury. Therefore, there was no mighty blow indicating the intention of appellants to kill the injured persons.

9. It is further submitted that the defence has also examined two witnesses and relied upon two documentary evidence, which are as follows: Exhibit-

A is C.C. of Khatian slip with respect to disputed land, which shows that both the parties are descendants of common ancestor and Raiyat. Exhibit-B

is C.C. of judgment dated 10.12.2004 passed by Sri Ashok Kumar Chand, the then 1st Additional Sessions Judge, Dumka in Sessions Case No. 162/97

/ 31/04, wherein informant party were prosecuted for the offence under Sections 436, 341, 323, 451 of I.P.C. and convicted and sentenced for the

offence under Sections 435/34, 323, 451 of the I.P.C. As a matter of prior litigation between the parties and land dispute, the scuffled has been taken

place. Therefore, the conviction of the appellants for the offence under Section 307 of the I.P.C. for individually causing one blow to the injured

persons with moderate force is not attracted the offence under Section 307 of the I.P.C.

10. It is further submitted that at best, the appellants might have committed offence under Section 324 of the I.P.C. There is no repeated blow and the

injuries are also not sufficient, which the offenders know to be likely to cause death. The appellants have remained in custody for near about one year

during trial and post-conviction and for the offence under Section 324 of the I.P.C., a person shall be punished with imprisonment for a period of three

years, or with fine. The occurrence is of the year 2003 more than two decades have elapsed and the appellants have suffered the agony of trial for

long period. The appellants have not indulged in any other criminal activities and hence they may be released after reducing the sentence to the

imprisonment already undergone by them during trial of the case.

11. Learned APP defended the judgment on merits, but no serious objection has been raised on the point of quantum of sentence.

12. I have gone through the record the case along with impugned judgment in the light of contentions raised on behalf of both side.

13. It appears that the prosecution has been able to prove the injuries sustained by informant and his daughter Gorbi Devi, who have sustained simple

injuries caused by sharp cutting weapon by the present appellants. The nature of injuries has not been definitely opined by the Doctor in respect of the

Gorbi Devi due to non-proving of supplementary injury report. The genesis and manner of occurrence as well as injury inflicted by the present

appellants does not warrant to invoke the offence under section 307 of the I.P.C., the ingredients of which corresponds to ingredients of offence of

murder defined under Section 300 of the I.P.C. which is absolutely lacking in this case.

14. In my considered view, the appellants may be held guilty for the offence for the offence under Section 324 instead of Section 307 of the I.P.C.

15. Accordingly, the impugned judgment of conviction of the appellants for the offence under Section 307 of the I.P.C. is altered to the offence under

Section 324 of the I.P.C.

16. It further transpired that the appellants have undergone some months custody during investigation / trial and post-trial of this case, which appears

to be sufficient punishment for the offence committed by them.

17. Therefore, this appeal is dismissed on merits with alteration of findings and sentenced as stated above.

18. Appellant is on bail, as such he is discharged from the liability of bail bond. Sureties are also discharged.

19. Pending I.A., if any, stand disposed of.

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