
Budhi Nath Murmu, Munshi Marandi, Masuda Kisku and Guru Kisku Vs The State of Jharkhand

None

Court: Jharkhand High Court

Date of Decision: April 13, 2009

Acts Referred:

Penal Code, 1860 (IPC) " Section 307, 324, 34, 342, 379

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Prashant Kumar, J.

This appeal is directed against the judgment of conviction and order of sentence dated 26.10.2002 passed by 5th

Additional Sessions Judge, F.T.G-II, Godda in Sessions Case No. 56 of 2002, whereby and whereunder appellants were convicted under

Sections 342, 324 read with Section 34 of the I.P.C and sentenced to undergo rigorous imprisonment for two years for the offence under Sections

324/ 34 of the I.P.C. and rigorous imprisonment for one year for an offence under Sections 324/ 34 of the I.P.C.

2. The case of prosecution, in short, as per the F.I.R. lodged by one Suban Hembrum, is that on 25.01.1988 while he was returning home from

market and reached near Amuak Teli Tola, appellants surrounded him. Thereafter, Masuda Kisku (appellant No. 3) assaulted him with tangi, due

to that he received injury on his head and fell down. It is further alleged that all the accused persons took away Rs. 700/- from his pocket. It is

also stated that other appellants assaulted him with slap and fist.

3. On the basis of aforesaid information, Podaiyahat P.S. Case No. 007 of 1988 under Sections 342, 324, 379, 307/ 34 of the I.P.C. instituted

and police took up investigation. It appears that after investigation, police submitted charge-sheet against the appellants under Sections 342, 324,

379, 307/ 34 of the I.P.C. It further appears that after cognizance, the case committed to the court of Sessions as the offence u/s 307 of the I.P.C.

is exclusively triable by the court of Sessions.

4. After commitment, learned Assistant Sessions Judge, Godda vide his order dated 20.08.1996 framed and explained the charges to the

appellants under Sections 342, 324, 379, 307/ 34 of the I.P.C. to which the appellants pleaded not guilty and claimed to be tried. Thereafter

prosecution examined altogether three witnesses in support of its case. The court below, after considering the evidence available on record

convicted and sentenced the appellants as aforesaid. Against that the present appeal filed.

5. While assailing the aforesaid judgment of learned court below, Sri. Jai Prakash Jha, learned senior counsel, appearing for the appellants, submits

that there is absolutely no evidence to show that the informant was assaulted by the appellants. It is submitted that two witnesses of fact i.e. P.W.2

and P.W.3 were declared hostile by the prosecution, as they have not supported its case. P.W.-I is the doctor, who has not stated anything about

the facts of the case. It is submitted that the learned court below observed that it is for the prosecution to prove the case beyond the shadow of all

reasonable doubt, but in spite of that it convicted the appellants without any evidence. It is submitted that learned court below knowingly passed the

present illegal order, thus, the same cannot be sustained.

6. Sri. Tapas Roy, learned Additional P.P., after going through the record of the case, had fairly stated that in the instant case there is absolutely no

evidence against the appellants.

7. Having heard the submission, I have gone through the record of the case. As noticed above in the instant case, three witnesses examined by the

prosecution. P.W.-I Dr. Bindeswar Panjiyara deposed that on 26.01.88, he medically examined Suban Hembrum and found one incised wound on

his skull. According to him, the said injury is simple in nature, caused by sharp cutting weapon. This witness has not stated as to how Suban

Hembrum received injury. He has not taken the names of appellants as a assailant of Suban Hembrum.

8. P.W.2 and 3 Munsu Murmu and Bitia Marandi have been declared hostile by the prosecution. They stated that they have no knowledge about

the occurrence. Thus, their evidence have of no help to the prosecution. No other witnesses examined by the prosecution. Thus, I find that there is

absolutely no evidence to show that informant was assaulted by the appellants. From perusal of impugned judgment, I find that learned court below

convicted the appellants on the basis of facts stated in the First Information Report. It is worth mentioning that content of First Information Report

has not been proved in this case because the I.O. and informant were not examined by the prosecution. It is well settled that the First Information

Report is not a substantive piece of evidence and it cannot become the basis of conviction. Thus, I find that the learned court below has committed

serious illegality in using the contents of First Information Report for convicting the appellants.

9. As noticed above since there is no evidence to show that informant was surrounded and assaulted by the appellants, I conclude that the

conviction of the appellants under Sections 342, 324 read with Section 34 of the I.P.C. is illegal, therefore cannot be sustained.

10. In the result, this appeal is allowed. The impugned judgment of conviction and order of sentence is set aside. The appellants are acquitted from

the charges levelled against them. They are also discharged from the liabilities of the bail bonds furnished by them.