

(2009) 12 JH CK 0010
Jharkhand High Court
Case No: None

Md. Azad Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Dec. 18, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 323, 324, 34, 448
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(ii), 3(xi)

Citation: (2011) 7 RCR(Criminal) 1516

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pradeep Kumar, J.

This appeal is directed against the judgment of conviction and order of sentence dated 16.7.2002 passed by Shri Sita Ram Mahato, Special Judge-cum-1st Additional Sessions Judge, Deoghar in Special Case No. 76 of 1997, by which judgment he found the appellant guilty under Sections 448, 323, 324, 307/ 34 of the Indian Penal Code and Section 3(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to under S.I. For 6 months.

2. It is submitted by the learned Counsel for the appellant that the prosecution has failed to prove the prosecution case and trial court finding that no case is made out against him and hence acquitted the appellant under Sections 307 of the Indian Penal Code and 3(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 , but in absence of any evidence wrongly convicted the appellant under Sections 323 of the Indian Penal Code and Section 452 of the Indian Penal Code.

3. Learned Counsel for the State has supported the case.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan recorded at Sainik Hospital, Madhupur on 26.2.1992 by S.I.A.K. Singh wherein the informant stated that on 26.2.1992 at about 7.30 P.M. in the evening when she was preparing food in her house and her son, Umesh Das was reading in the light of earth lamp and the doors of the house were open. In the meantime, the accused-appellant, Azad Ansari entered into her house and he caught hold of her and gave a "Bhujali" blow on her hand. On hearing "Hullah" her son came then he also received injury on his face and he fell down thereafter the accused-appellant fled away.

5. On the basis of said fardbeyan the police registered a case u/s 448, 323, 324, 307 of the Indian Penal Code and Section 3(ii) of the SC/ST (Prevention of Atrocities) Act. Since the case was exclusively triable by a Court of Sessions the learned Magistrate after taking cognizance of the case, committed the same to the Court of Sessions and lastly the case was tried by Special Judge-cum-1st Additional Sessions Judge, Deoghar, who found the appellant guilty as aforesaid.

6. It appears that in course of trial the prosecution has examined as many as 5 witnesses. P.W.1, Nandi Das; P.W.2, Shambhu Prasad Yadav; P.W.3, Umesh Das; P.W.4, Kamali Devi is the informant and P.W.5. Baleshwar Das.

7. It is important to note that no doctor nor I.O. were examined in this case. P.Ws. 1 & 2 were tendered for cross-examination and they stated that at the time of occurrence they met the accused-appellant in between 7 to 9 P.M. when the accused was sitting at Madhupur Chowk and the prosecution case is not correct.

P.W.3, Umesh Das is the son of the informant. He stated that on the date of occurrence at about 7.30 P.M. in the evening that his mother was preparing food and he was reading book just by her side then the accused-appellant entered into her house and caught hold of her mother and gave a "Bhujali" blow on her hand. When he went to save her then the accused-appellant also assaulted him.

In his cross-examination, he stated that the accused resides just by his house and the informant is going to his house through the road which passes in front of the accused's house and the accused-appellant always objects to enter into that road. He also admitted that he had no torch in his hand at the time of occurrence and it was a dark night.

P.W.4, Kamali Devi, is the informant lady. She also supported her statement given in the F.I.R. And stated that on the night of occurrence at about 7.30 P.M. in the evening when she was preparing food and her son was studying then the accused entered into her house and gave a "Bhujali" blow on her hand. When her son interrupted he was also assaulted.

In her cross-examination, she stated that she enters into her house from the public road. She denied, in her cross-examination, that her entry is through the house. She

also denied that her husband commits theft of railway property and returned in the night, which is being objected by the accused-appellant, hence this case has been lodged.

P.W.5, Baleshwar Das is only formal witness, who has proved the injury report.

8. Thus, from the evidences, I find that since no doctor was examined to prove the injury report, the Court has already acquitted the the appellant from the charges u/s 307 of the Indian Penal Code and Section 3(xi) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. As far as under Sections 323 of the Indian Penal Code and Section 452 of the Indian Penal Code are concerned, I find that not a single independent witness and neighbouring witness were examined by the prosecution case and P.W. 3, the son of the informant has admitted that there was no torch in his hand and it was a dark night. He also admitted that there is a dispute between them and the accused with regard to entry to the informant's house and his family member enter through the house of the accused-appellant. He also admitted that the railway has filed a case against his father.

9. In absence of any independent witness and admitted case of enmity between the parties the prosecution case has become doubtful and hence the appellant is giving benefit of doubt and acquitted from the charges.

10. The appeal is accordingly allowed and judgment of conviction and order of sentence dated 16.7.2002 passed by Shri Sita Ram Mahato, Special Judge-cum-1st Additional Sessions Judge, Deoghar in Special Case No. 76 of 1997 is set aside.

11. The appellant is on bail. He is discharge from the liability of his bail bond.