

(2006) 11 JH CK 0014
Jharkhand High Court
Case No: None

Somra Sahu and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Nov. 29, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 147, 148, 149, 307, 323

Citation: (2007) 2 JCR 110

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.P. Singh, J.

This appeal is directed against the judgment of conviction and order of sentence dated 29.7.2002 and 30.7.2002 passed by the Additional District and Sessions Judge, Fast Track Court, Gumla in Sessions Trial No. 196/2002, whereby and whereunder the learned Sessions Judge convicted the appellants under Sections 307/34 IPC and sentenced them to undergo RI for three years and u/s 148 IPC to undergo RI for two years. However, both the sentences were directed to run concurrently.

2. The brief facts leading to this appeal are that the informant Lal Mohan Sahu was taking his supper in the night of 30.4.2001 in his house situated in Mauja Sursuriya, PS Gumla, when all the appellants came there and asked him to come out of the house. As further stated, he went out of the house and then appellants took him at the point of Bhujali, Balua and lathi towards the house of witness Mohan Sahu, PW 2 situated at a distance of 500 yards. According to the Informant, when he reached in front the house of PW 2, appellant Somra assaulted him with lathi on his leg, after which he fell down. Then appellant Jhallu Sahu gave a blow on his head with Bhujali and appellant Faula Sahu with Balua on his right hand. It is further stated that he was repeatedly assaulted by other appellants, on which he raised alarm then his son

PW 1 Chaitan Sahu and other witnesses arrived and saved him PW 2 also arrived and saw the occurrence. The informant was taken to Sadar Hospital, Gumla in the night, where his statement was recorded by Gumla police in the morning at 6 AM. On the basis of which Gumla PS case No. 115/2001 was registered under Sections 147, 148, 149, 323, 307 IPC. Police investigated the case and finally submitted charge sheet against all the appellants. The appellants were charged for the offences, to which they pleaded not guilty and claimed false prosecution on the basis of a case lodged against the informant and other witnesses, vide PC Case No. 4/2001, Ext. A. However, the trial court found and held all the appellants guilty of the offences and sentenced them as aforesaid.

3. The present appeal has been preferred on the ground that the learned trial court has committed a mistake of fact ignoring the defense version. It is also asserted that before the alleged occurrence in the night of 30.4.2001, the wife of appellant Faula Sahu has lodged a case u/s 379 and 452 IPC against the informant and the present case was lodged just to counter this allegation. It is also submitted that even the materials on record do not support the prosecution case. The learned counsel for the appellant, Mr. Sunil Kumar drew my attention towards the contradictory statements of eye witnesses and the informant in this context.

4. I have anxiously considered the statements along with materials available on record. It is admitted fact on record that the informant though called out by the appellants from his house, had taken to the house of PW 2 before assault was started. The informant has alleged that on the alarm raised by him, PWs 1,2,3 and 4 arrived there to witness the occurrence. According to the informant this occurrence took place because of continuation of dispute between him and the appellants. He further asserted that as the court has decided the land dispute in his favour, the appellants committed this assault out of vengeance. However, he admitted, vide para 23, that for the occurrence of same day a false case has been lodged against him by the appellants, which was pending at the time of his statement. As such, it is apparent that the parties are filing criminal cases against each other.

5. In this context the contradictions brought on record by the learned counsel for the appellant has to be considered. The informant has asserted that he was called out from his house by the appellants and then taken in front of the house of Mohan Sahu, the nephew of the informant situated at a distance of 500 yards. The informant has further admitted that when the appellants forced him to come out from his house, his wife was present but they did not raise any alarm and he went with the appellants for 500 yards, thereafter assault took place. The informant further admitted that all the witnesses examined in the present case were related with him. PW 2 Mohan Sahu asserted in his examination in chief to have seen the assault himself. But at the same breath he mentioned that on halla raised by the injured informant he arrived at the PO. He further contradicted himself, vide para 11 and 12 when he admitted that by the time he came out of his house, appellants

have fled away and the informant was lying injured. According to this witness, none has arrived before him and PW 1 came after him. If the appellants have already fled away by the time PW 2 reached at the PO, the chances of other witnesses to witness the occurrence is not possible. Further PW 1 Chaltan Sahu, son of the informant, asserted that he heard the appellants calling the informant and came out of his house to follow them to witness the entire occurrence. He admitted in cross examination that his house was situated in front of the house of the informant. He admitted in para 20 when heard alarm raised by his father, he was present in his father's house. He further admitted that he did not try to save his father and when he reached at the PO the appellants have fled away. This witness has admitted, vide para 26 that his father has compromised with the appellants.

6. PW 3 Birsa Sahu and PW 4 Sukra Sahu are other two witnesses who arrived at the PO on halla raised by the informant. They saw the informant fallen in injured condition before the house of PW 2. PW 4 similarly arrived at the PO on halla to find that PW 5 was lying injured. So they are hearsay witnesses of the occurrence. The contradictory version of PWs 1 and 2 further creates a reasonable doubt in the correctness of the allegation.

7. PW 6 Dr. M.K. Singh examined the informant in the early hours of 1st May, 2005 and found six injuries, out of which injury No. 2 was opined to-be grievous and other injuries were simple in nature. PW 7, the IO, asserted that the witnesses examined before him have disclosed land dispute as the motive for this assault. However, he has not seen any papers in this context. He admitted in para 15 that all the witnesses were examined by him at the hospital itself and none was examined in village at and at the PO. The prosecution therefore, depending upon the statement of PWs 1,2,5, has to be scrutinized particularly in view of admitted criminal case pending between the parties. The informant has admitted in para 20 that he has already fought ten criminal cases with the appellants. He further admitted that the appellants made him accused for an occurrence of the same day, vide Ext. A, a complaint case filed by the wife of the appellant Faula Sahu for assault and theft, which was later on registered as GR Case No. 409/2001. The contradictory statement regarding the presence of PWs 1 and 2 as eye witnesses of the occurrence becomes doubtful when the informant admitted that he did not raise alarm till the assault started near the house of PW 2. He further admits that firstly PW 2 arrived and thereafter PW 1. PW 1, the son of the informant, though following him right from his house for 500 yards, did not try to intervene or save his father in spite of assault taking place in his presence. All these facts creates a reasonable doubt in the manner in which assault took place.

8. I have gone through the impugned judgment and find that the learned lower court in spite of apparent contradictions in the statements of interested witnesses, relied upon the prosecution story. In the facts that the informant was taken out of his house by the appellants without any protest, if his son PW 1 was also inside the

house along with his mother, as soon as the appellants forced the informant to come out of his house, they had all occasions to raise alarm. It is also found from the records that the distance between the house of the informant and PO is 500 yards which passes through the village. Further the assault taking place in front of the house of PW 2, the nephew of the informant.

9. In my considered view, it is not possible that the appellants would begin with the assault only after covering this distance. If they have come armed and got the informant out of his house, they could have started assaulting him immediately, inside the house or in front of his house. The statements of PWs 1,2 and 5 therefore, cannot be relied upon regarding the manner in which assault could have taken place.

9. Having considered the above mentioned facts and circumstances and the apparent contradictions in the statements of informant and PWs 1,2 and 5, I find that the prosecution could not bring home the charges against the appellants beyond reasonable doubt. Accordingly I find and hold that the present appeal has got merit in it and deserve to be allowed.

10. In the result, this appeal is allowed and appellants are acquitted of the charges levelled against them. Since the appellants are on bail, they are discharged from the liability of their bail bonds.