

## Awadh Pathak @ Awadhpati Pathak and Others Vs State of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Aug. 14, 2006

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 109, 147, 148, 149, 235

**Citation:** (2008) 1 JCR 127

**Hon'ble Judges:** Narendra Nath Tiwari, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Narendra Nath Tiwari, J.

The appellant Nos. 1 to 3 were tried for the charges under Sections 323, 325 and 109 of the Indian Penal Code

and were found guilty and convicted. However, they have been released on probation and ordered to execute the bonds for keeping peace for the

period of one year. Appellant No. 4 has been found guilty for the offence punishable u/s 323 of the Indian Penal Code and sentenced to undergo

rigorous imprisonment for one year and to pay fine of Rs. 1,000/- and in default to undergo rigorous imprisonment for six months.

2. The prosecution case, in short, is that on 11.3.1993 while the informant was grazing his cattle, the co-villagers, Keshri Kant Mishra, appellant

No. 3, Sarju Mishra, Shri Pati Mishra, appellant No. 2, Awadh Pathak @ Awadhpati Pathak, appellant No. 1, Kishun Kahar, appellant No. 4

started hurling abuses on him; when the informant objected, Keshri Kant Mishra exhorted Kishun Kahar to kill him. Thereupon, Kishun Kahar

gave a "garasa" blow on the head of the informant. The informant sustained injuries and fell down. Six other accused persons then assaulted his

nephew with "Lathi" on different parts of the body. The informant raised alarm, whereupon the co-villagers, namely, Kailash Mishra, Ravindra

Mishra, Brij Kishore and Kanhaiya Mishra rushed to the spot, intervened and rescued them. The reason for the alleged occurrence was said to be

the enmity and litigation between the parties. There was a case against the accused u/s 307 of the Indian Penal Code pending in the Court below

and they were mounting pressure upon the informant to withdraw the case.

3. On the basis of the said report, the case was registered under Sections 147, 148, 149, 323, 324 and 307 of the Indian Penal Code. The case

was investigated by the police. After completion of the investigation, police submitted charge-sheet under Sections 147, 148, 149, 323, 324, 452

and 307 of the Indian Penal Code. However, the trial Court framed charges under Sections 307 and 149 of the Indian Penal Code against the

appellants. Charges were not framed u/s 323 or 235 or 109 of the Indian Penal Code were framed against the accused persons.

4. The prosecution altogether examined eight witnesses. PW 1, Anil Kumar Mishra according to the FIR is a relative of the informant and is not an

eye witness. PW 2, Pradeep Kumar Mishra stated to have reached at the place of occurrence after hearing the alarm PW 3, Shankar Mishra, also

reached to the spot after the alleged occurrence. PW 4, Baldeo Mishra, is the informant as well as the victim. PW 5, Bihari Ram, is a formal

witness and he has proved his signature in the Jardebayan (Ext. 3). PW 6, Champa Banwar, is also a formal witness and he has proved the

signature of the Officer-in-charge (Ext. 4). PW 7, Dr. Nityanand Mandal, is the doctor, but he has not prepared the injury report. PW 8, Dr.

Nand Kishore Jaiswal, who is said to have prepared the injury report, on examination of PW 4, Baldeo Mishra.

5. Learned trial Court on the basis of the said evidences, came to the finding that out of seven accused persons, overt act could be proved only

against four accused persons. Learned trial Court, thus acquitted three accused by giving benefit of doubt but found the appellants guilty of the

charges under Sections 323, 325 and 109 of the Indian Penal Code and convicted them, as hereinabove mentioned.

6. Mr. K.K. Mishra, learned Counsel appearing on behalf of the appellants, assailed the conviction and sentence on the ground that the trial Court

without any cogent evidences on record has erroneously found the appellants guilty u/s 323 of the Indian Penal Code. Learned Counsel submitted

that no independent witness has been examined in support of the prosecution case and the appellants have been seriously prejudiced for non-

examination of the Investigating Officer. According to the FIR, Kailash Mishra, Ravindra Mishra, Braj Kishore and Kanhaiya Mishra were first to

rush to the place of occurrence, but none of the said witnesses have been examined by the prosecution. Learned Counsel submitted that

occurrence took place on 11.3.1993, fardbeyan was recorded on the same day but the FIR was produced before learned Chief Judicial

Magistrate on 15.3.1993. There was no explanation for the delay. Learned Counsel submitted that PW 3, who also said to have been sustained

injuries, has not been examined by any doctor and there is no injury report on record. Learned Court below has convicted the appellant No. 4

holding that he had inflicted "garasa" blow on the victim, PW 4, but no such injury was found by PW 8, Dr. Nand Kishore Jaiswal, who had

examined him. It has been thus contended that the prosecution has miserably failed to establish the charges against the appellants and they have

been erroneously held guilty. The impugned conviction is wholly without legal basis and is liable to be set aside.

7. Learned APP on the other hand, submitted that though there are some contradictions in the evidences of the witnesses, yet the prosecution has

been able to establish the charges against the appellants. He submitted that though doctor has not found any sharp cutting injury on the body of the

victim, PW 4, there are other evidences on record to prove the same.

8. After careful consideration of the submission made by learned counsel and evidences and material on record, I find that according to the

prosecution case made in the FIR, Kailash Mishra, Ravindra Mishra, Braj Kishore and Kanhaiya Mishra were said to have rushed to the alleged

place of occurrence on hearing the alarm raised by the informant. The said witnesses are said to have seen the occurrence. But none of the said

eye-witnesses has been examined on behalf of the prosecution. It has come on the record that out of the said witnesses, Ravindra Mishra died, but

the other surviving witnesses were also not examined by the prosecution. PW 4, Baldeo Mishra is said to be one of the victims and said to have

sustained injuries, but he was not examined by any doctor and as such there is no injury report. In the evidence, the informant and other PWs have

stated that appellant No. 4 had given "garasa" blow on the victim PW 4, but PW 8, Dr Nand Kishore Jaiswal, in his cross-examination has

categorically contradicted and stated that the said injuries caused by any sharp cutting weapon were not found. The doctor has opined that the

injuries found were caused by hard and blunt substance. From the evidence of PW 4, it is evident that both the parties are on litigating terms and

the case is pending in the Court. PWs 1 and 2, who have come to support the prosecution case, are not eye-witnesses and they are the relatives

and tendered witnesses. PWs 3 and 4 are victims, who deposed in support of the prosecution story, but their statements have been contradicted

by the other evidences, including medical evidence on record. PWs 5 and 6 are the formal witnesses; they proved their signatures on the fardbeyan

(Exts. 3 and 4). PW 7 has not proved anything worth mentioning. There is no explanation for non-production of the FIR witnesses, who were said

to have witnessed the occurrence. There is unexplained delay of forwarding the FIR and producing the same before learned Chief Judicial

Magistrate. There is conspicuous absence of the Investigating Officer, whose evidence would have thrown some light to corroborate the other

evidences on record. The absence of the Investigating Officer, as claimed by the appellants, has certainly caused prejudice to the appellants.

9. In view of the situation emerging on record, after the aggregate assessment of the evidences, the prosecution case is shrouded by serious

doubts. Learned trial Court without proper appreciation of the evidences and material on record has erroneously convicted the appellants without

any cogent basis. The conviction and sentence against the appellants is not at all sustainable in law.

10. For the reasons aforesaid, this appeal is allowed.

11. The conviction and sentence of the appellants is set aside. The appellants are found not guilty and they are accordingly acquitted of the

charges. The appellants who are on bail are discharged from the liability of their bail bonds.