

(2009) 11 JH CK 0067

Jharkhand High Court

Case No: Criminal Appeal No. 585 of 2002

Kamta Prasad Saw, Bhagwan
Saw, Rajesh Saw @ Rajesh Kumar
and Nagendra Kumar Gupta

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Nov. 11, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 323, 34, 341, 379

Citation: (2010) 58 BLJR 311

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Advocate: Bijoy Kumar Sinha, for the Appellant; Gupta, APP, for the Respondent

Judgement

Pradeep Kumar, J.

This appeal is directed against the judgment of conviction and sentence dated 5.9.2002 passed by Sri R.K. Srivastava, Additional District & Sessions Judge, F.T.C. 3rd, Bokaro in Sessions Trial No. 112/1995 by which judgment the learned Sessions Judge found the appellant No. 1, Kamta Prasad Saw guilty u/s 323 of the Indian Penal Code read with Section 323 of the Indian Penal Code and sentenced him to undergo R.I. for 3 years u/s 307 of the Indian Penal Code and S.I. for 6 months. He also found the other appellants, guilty u/s 323 and sentenced them to undergo S.I. for 6 months.

2. It is submitted by the learned Counsel for the appellant that there is no evidence that the appellant No. 1, Kamta Prasad Saw attempted to commit murder of the informant even the doctor (P.W.3), who examined the informant and opined that the injuries found on the person of the informant, Kamlesh Kumar Singh were simple in nature and the said injuries could not have been given by danda. In that view of the matter, his conviction u/s 307 of the Indian Penal Code is bad in law and fit to be set

aside.

3. On the other hand, learned Counsel for the State while opposing the prayer and submitted that there is sufficient evidence that all the appellants entered into the shop of the informant and started throw his articles belonging the shop and on protest they assaulted the informant.

4. After hearing both the parties and going through the prosecution case, I find that the prosecution was stalled on the basis of a First Information Report given by Kamta Prasad (P.W.5) the informant. He stated that on 4.3.95 at about 2.00 P.M. all the appellants entered into his shop and after breaking the lock of the shop they started to throw the articles kept in the shop whereupon he made an objection the informant was assaulted by all of them and it is alleged that Kamlesh Sao caught hold of his neck and was pressing his neck while another accused, Nagendra Gupta (appellant No. 4) took Rs. 500/- from his pocket and other accused persons also assaulted him with fist and danda.

5. On the basis of the said written report the police registered a case under Sections 341/323/307/379/34 of the Indian Penal Code and after investigation the police submitted charge-sheet whereupon cognizance was taken by the learned Magistrate and committed the case to the court of Sessions. 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. Lastly the case was finally tried by Additional District & Sessions Judge. F.T.C. IIIrd, who passed the judgment as aforesaid.

6. It appeals that in course of trial the prosecution has examined 5 witnesses. P.W.1, Pramod Kumar Singh, P.W.2, Krishna Mishra, P.W.3, Dr. P.H. Roy, who has examined the victim, P.W.4, Manoj Kumar Singh, P.W.5, Kamlesh Kumar Singh the informant.

P.W.1, Pramod Kumar Singh stated that he only saw that Kamlesh Kumar Singh is being assaulted by some persons by fist and danda. He identified Kamlesh Prasad Singh. He also stated that there is a dispute between the parties with regard to the shop.

P.W.2, Krishna Mishra also stated that he saw that Kamlesh Kumar Gupta is being assaulted by Rajesh Kumar with lathi and one or two persons were taking money from the waist. He also stated that he does not know that there is dispute between the parties with regard to that shop where the trial was held and the appellant was found guilty as aforesaid.

P.W.3, Dr. P.H. Roy, who found only one abrasion on the lower lip 1 1/2" x 1/2" and swelling on different part of the body and opined that the injuries were simple in nature and such injuries can be caused even by falls.

P.W.4, Manoj Kumar Singh stated that when he reached the place of occurrence he saw four persons assaulting Kamlesh Kumar Gupta and their names as Bhagwan

Sao and Rajesh Kumar, but he did know the name of two persons. He has categorically stated that they have assaulted Kamlesh Kumar Gupta with fists and fats. Thereafter he stated that out of four one person sat on the chest whose name was as Kamta Prasad. On inquiry he came to know that the accused persons were claiming the land.

P.W.5, Kamlesh Kumar Singh (informant) received injuries at the occurrence and there was a counter case also. He has supported this case when he was examined as P.W.5

7. After hearing both the parties and going through the record, I find that except the informant none of the witnesses have stated that Kamta Prasad Sao was trying to commit murder of the informant rather he was also one of the persons who was assaulting the informant. All the witnesses have stated that the assault was made by fists or by danda while P.W.3 very clearly stated that they were assaulting the informant only by fists. In that view of the matter, the conviction of one of the appellant, Kamta Prasad Sao in absence of any injury report and that injuries were dangerous to life or that injuries were specifically caused by the accused, his conviction u/s 307 of the Indian Penal Code is bad in law and fit to be set aside. However, all the witnesses have supported the fact that the informant was assaulted by fist and danda and hence, conviction of all the appellants u/s 323 of the Indian Penal Code is sustained.

8. Since, it appears from the evidences of the witnesses that all the appellants had purchased the said property and they were claiming right over the same, due to which the incident took place. In that view of the matter, since the appellants have undergone through the rigor of trial and appeal since 1995, now about 14 years and it was their first offence. In that view of the matter, the period already undergone by them during trial and the harassment undergone by them is sufficient punishment u/s 323 of the Indian Penal Code.

9. The appeal is allowed in-part.

10. The appellants, who are on bail they are also released from the bondage of their bail bond.