(2009) 10 JH CK 0030

Jharkhand High Court

Case No: None

Om Prakash Ojha, Shiv Prakash Ojha and Shashi Bhushan Tiwari		APPELLANT
	Vs	
The State of Jharkhand		RESPONDENT

Date of Decision: Oct. 13, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 307, 323, 326, 34, 379

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pradeep Kumar, J.
Heard learned Counsel for the appellants and learned Counsel for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 18.05.2002 passed by Siiri Gautam Mahapatra, Additional Sessions Judge, F.T.C.-IV, bokaro, in Sessions Trial No. 116 of 1998 by which judgment learned Additional Sessions Judge found the appellants guilty under Sections 326/34 and sentenced them to undergo R.I. for three years.

4. It is submitted by learned Counsel for the appellants that the prosecution case was started against Om Prakash Ojha along with two appellants Shiv Piakash Ojha and Shashi Bhushan Tiwari stating therein that they had gone to the shop of the informant Manoj Kumar Tiwari then Om Prakash Ojha assaulted him with sword by which the informant received injury on his head which has not been proved beyond reasonable doubt, as independent witness P.W. 1 Umesh Mishra has not supported the said fact and the injury report which has been the basis of conviction u/s 326 of the Indian Penal Code is doubtful, document since it has been admitted by the LO. in his evidence at Para 30 that the injury report which was forwarded by him bears the name of Mahesh Kumar

Tiwari, which was subsequently cut and Manoj Tiwari has been altered. The defence has brought Ext. B to prove that even in the hospital registered the person who was examined was Mahesh Tiwari not the informant Manoj Kumar Tiwari. Moreover he has relied on the finding of Chief Judicial Magistrate before whom the informart was produced, since he was accused in the counter case, Balidih P.S. Case No. 97 of 1996 and on the very next day of the occurrence the Chief Judicial Magistrate found no injury on the head and in that view of the matter the injury report is a doubtful document and can not be relied.

5. On the other hand learned Counsel for the State has opposed the prayer and submitted that the doctor who was examined as P.W.4 has proved the injury report and stated that he had examined the informant and found head injury which was grievous in nature.

6. After hearing both the parties and going through the record, I find that the informant Manoj Kumar Tiwari stated that on 30.10.1996 at about 5.00 P.M. in the evening he was sitting in the Spare Parts Shop at Balidih then accused Om Prakash Ojha and Shi Prakash Ojha camp and started rebuking with regard to the previous enmity and said that then will destroy him then suddenly accused Om Prakash Ojha brought out sword and given sword blow on the head and caused injury. Other accused persons also assaulted him with lathi. Subsequently, Shiv Piakash Ojha took Rs. 2000/- from shop''s counter. On bulla Dalkeshwar, Mithilesh and others came there then accused persons fled away.

7. On the basis of said written report Balidih P.S. Case No. 96 of 1996 under Sections 307, 323, 379, 476/34 Indian Penal Code was registered and after investigation police submitted charge sheet against accused persons.

8. Since, the case was exclusively triable by the Court of Sessions the learned Chief Judicial Magistrate after taking cognizance of the case committed the same to the Court of Sessions and subsequently the case was transferred to the Court of Additional Sessions Judge, F.T.C. -IV, Bokaro who tried the case and found the three appellants guilty u/s 326/34.

9. It is important to note that during trial prosecution examined five witness P.W. 1 Umesh Mishra, P.W. 2 Hari Lal Sharma, P.W. 3 Manoj Kumar Tiwari, P.W. 4 Jai Sukunda Tirki, P.W. 5 Anand Bihari Sharma. The defence also examined one witness namely Ram Naresh Kumar.

10. Although the informant Manoj Kumar Tiwari who was also examined as P.W. 3, as give in the F.I.R., stated the on 30.10.1996 three accused persons came to his shop rebuked and Om Prakash Ojha gave a sword blow on his head causing bleeding injury and others assaulted him with lathi causing injury on his ringers. He stated that they also took Rs, 2000/- from his shop. He was treated at Jaina More referral hospital and during cross-examination he submitted that there was counter case also, in which hp was taken into custody and in the counter case compromise was entered between the parties. It

appears that although informant has named two persons who were neighboring shop keepers i.e. Dalkeshwar and Mithilesh. During trial both Dalkeshwfir and Mithilesh were not examined, however an independent witness P.W. 1 Umcsh Mishra was examined who stated that on 23.10.1996 at about 5.00P.M. in the shop of Manoj Kumar Tiwari, three accused persons came and assaulted him with lathi and danda in which Manoj Tiwari had received injure. In his cross-examination he also stated at Para 14 that earlier accused Om Prakash Ojha filed a case against Manoj Tiwari. P.W. 2 Hari Lai Sharma stated that assault took place by lathi and danda. P.W 4 has proved the injury report Ext.2 who has said to be the informant Manoj Tiwari but the I.O. P.W. 5 admitted that the injury which was forwarded by him by the name of one Mahesh Kumar Tiwari which was subsequently cut and corrected as Manoj Kumar. It is important to note that defence has brought on record certain documents, as the judgment of Sessions Trial No. 394 of 1998 in which Manoj Tiwari and Jai Narayan Tiwari were tried for an offence u/s 307/323 of the Indian Penal Code and on the basis of compromise they were acquitted. They have also brought on record Ext. D which shows that in Balidih P.S. Case No. 97 of 1996. On 31.10.1996 the informant Manoj Kumar Tiwari who was accused in that case was produced before the Court. Court has found while forwarding him to jail custody that he has injury only on his right and left fingers as well as on the back and shoulders. He was forwarded to jail with a direction to the jail doctor to give treatment.

11. Thus after going through the prosecution witness I find that the prosecution case that sword blow was given by Om Prakash Ojha in presence of accused Shiv Prakash Ojha and Shashi Bhushan Tiwari has been supported only by the informant. P.W. 3 Manoj Kumar Tiwari and other eye witnesses P.W. 1 as also P.W. 2 have not supported the said case and the injury report relied by the Trial Court is not free from doubt as discussed above. Since injury report which was forwarded by the I.O. he has forwarded in lie name of Mahesh Tiwari as has been proved by the witness as Ext. B also in hospital register shows name of Mahesh Kumar Tiwari. Moreover, the informant was produced before the C.J.M. on the ï¿½ other next date and as per the order sheet of Baildih P.S. Case No. 97 of 1996 Ext. D the Chief Judicial Magistrate round no injury on the head which makes the prosecution case with regard to assault on the head by sword doubtful and the benefit of doubt must come to the accused persons.

12. Accordingly, all the three accused persons are given benefit of doubt and acquitted from the charges u/s 326/34 of the Indian Penal Code. Accordingly, this appeal is allowed and the judgment and sentence passed by Shri Gautam Mahapatra, Additional Sessions Judge, F.T.C.-IV, Bokaro, in Sessions Trial No. 116, of 1998 is set aside. The appellants are on bail. They are released from the liability of their bail bond.