

(2006) 08 JH CK 0054**Jharkhand High Court****Case No:** None

Raghunath Manjhi and Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Aug. 29, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 307, 34

Citation: (2007) 1 JCR 34**Hon'ble Judges:** Rakesh Ranjan Prasad, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

R.R. Prasad, J.

Both the appellants were tried for the charge u/s 307/34 of the Indian Penal Code for attempting to commit murder of Somra Manjhi in furtherance of their common intention. On being found guilty they were convicted u/s 307/34 of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for seven years.

2. The case of the prosecution is that Snmra Manjhi (the informant) came to his village home at Burha Behra in the evening at about 6 p.m. on 5.11.2000 and when he did not find his wife and children, he asked about their whereabouts from his mother upon which his mother told him that they had left home in the morning without telling anyone. Thereafter, the informant along with co-villager Somra Manjhi came to his uncle-in-laws house at village Jaroo at about 8 p.m. and met with his uncle-in-law Duryodhan Manjhi from whom he asked about his wife and son. His uncle-in-law told him that they have not come to his place. Upon it, the informant (PW 5) along with his co-villager Somra Manji and Raghunath Manjhi entered into the house of his uncle-in-law in search of them but they did not find them there.

Thereafter, all the three while were returning to their village Burha Behra along with his uncle-in-law Duryodhan Manjhi and reached in the field in between the village Jaroo and Medni they saw 4-5 villagers coming and were raising alarm "chor chor". Upon it many villagers assembled and started assaulting him. His other friend, namely, Somra Manjhi any how managed to flee from there. The villagers caught hold of him and started assaulting with fist, kicks and dandas indiscriminately, as a result of which he sustained injuries over his shoulder, back, legs which started bleeding. They went on assaulting even though he disclosed his identity to the villagers. He among the assailants could identify the appellants only. Thereafter, they brought him to the police station where he could not make any statement as he was unconscious. Thereafter, police sent him to R.M.C.H. for treatment. In course of treatment Dr. Chandra Bhushan Sahay (PW 9) did find dispressed fracture of right side frontal bone which according to him was caused by hard and blunt substance and the injury was grievous in nature. The informant was discharged from the hospital on 13.11.2000 but before that he gave fardbeyan (Ext. 2) on 9. 11.2000 at 10 a.m. upon which a case was registered and the matter was taken up for investigation by the Investigating Officer, Bans Narayan Singh (PW 8).

3. After completion of investigation police submitted charge-sheet against the appellants and, accordingly, cognizance of the offence was taken and in due course when the case was committed to the Court of Sessions, charges were framed to which appellants pleaded not guilty and claimed to be tried.

4. In this case the prosecution examined as many as 11 witnesses, of them Jageshwar Manjhi PW 1, is the brother of the informant, Charan Manjhi, PW 2, nephew of the informant and Keshav Ghatwar, PW 10 are hearsay witnesses as according to them, they came to know that Somra Manjhi was assaulted by the person by taking him as thief. PW 3 Hari Charan Manjhi, PW 4 Ram Prasad Manjhi. PW 6 Mukund Manjhi. PW 7 Muneshwar Manjhi have simply said that they saw some body being taken by the villagers in injured condition. The informant was examined as PW 5. Apart from him. the Investigating Officer PW 10 and the Dr. Chandra Bhushan Sahay, PW 9 seem to be the material witnesses.

5. After closer of the prosecution the accused persons were questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances appearing against them, to which they denied.

6. The case of the defence is that the informant Somra Manjhi, PW 5 along with 3-4 persons came to the house of mukhiya Duryodhan Manjhi and asked for money as extortion and when it was not given Duryodhan Manjhi was being taken towards forest but when alarm was raised, several persons came and caught hold of the informant and was produced before the police at the police station and for that a case was lodged on 5.11.2000 at 8.30 a.m. Defence in support of his case has examined Gopal Chandra Manjhi as DW 1 and Shripad Manjhi as DW 2. Charge-sheet of the said case has also been adduced in evidence as Ext. A.

7. After taking into consideration (he evidences led by the prosecution and the defence, the trial Court did find the appellants guilty and accordingly convicted and sentenced them as aforesaid.

8. Learned Counsel appearing for the appellants submitted that occurrence never occurred in the mariner as has been narrated by the PW 5, rather occurrence took place as has been stated by the defence witnesses and also find mentioned in Ext. A which is the charge-sheet based on the first information report lodged on 5.11.2000 itself by Duryodhan Manjhi and that informant can never be taken to be trustworthy witness as the evidence given by him regarding place of occurrence and the manner of occurrence is not consistent with his earlier statement and that his evidence regarding manner of occurrence also does not find corroboration from the medical evidence as well as injury report (Ext. 4) and hence trial Court did committed illegality in convicting and sentencing the appellants.

9. Heard learned Counsel appearing for the State.

10. Having heard counsel for the parties and on perusal of the records, I do find that none except the informant has come forward to support the case of the prosecution. Therefore, it is to be considered as to whether PW 5 is trustworthy or not. PW 5 in his evidence has testified that when he came to his village home, he did not find his wife and children at home and when he asked about their whereabouts from his mother, his mother told him that they without informing anyone had left home in the morning. Then he came to his in-law's house where he did not find them and then came to the house of his uncle-in-law (Duryodhan Manjhi) where he also did not find them. Then he asked his uncle-in-law to show the way which leads to his maternal uncle's house and when Duryodhan Manjhi came out of the boundary of the house with him, villagers all on a sudden assembled and started raising hulla of "chor chor" and when he tried to disclose his identity, Duryodhan Manjhi ordered to kill him and upon it the appellant Raghunath Manjhi assaulted with tangi on his head and then Santu Manjhi assaulted on his head with danda and other persons to whom he did not identify also assaulted him indiscriminately. When the statement of this witness as recorded in his fardbeyan (Ext. 2) is taken into consideration in the light of the testimony so may discrepancies get surfaced on the material points. In this regard it be stated that this witness in his first information report has stated that when he along with his other two fellows as well as with Duryodhan Manjhi came to a field in between village Jaroo and Medni, villagers came and by raising alarm of "chor chor" assaulted him, but in the evidence as has been noticed above, this witness has stated that he was assaulted near the house of Duryodhan Manjhi. Further, it is noted that this witness in his first information report has stated that all the persons of the villages assaulted him with fist, kicks and dandas indiscriminately whereas in his evidence he has said that the appellant Raghunath Manjhi assaulted on his head with tangi and Santu Manjhi assaulted him with lathi. Whereas the doctor in course of examination found only dispressed

fracture of right side frontal bone. No other injury was found on the person of the PW 5, though he in his statement made in the fardbeyan as well as in his evidence has stated that he was assaulted indiscriminately on several parts of the body and has gone further to say in the first information report that all the injuries caused on the body was bleeding. Taking into consideration this aspect of the latter as well as the case of the defence PW 5 does not seem to have come with the true story. Further I do find that PW 5 in his statement made in the fardbeyan has said that while he along with two others, namely, Somra Manjhi (other than informant) and Raghunath Manjhi were coming together, villagers came and accosted him whereas Somra Manjhi succeeded in taking to his heel. But the said Somra Manjhi as well as Raghunath Manjhi have not been examined, though they appeared to be material witnesses. No explanation has been given on behalf of the prosecution for non-examination of the said witnesses. Further I do find that some of the witnesses, namely, Hari Charan Manjhi PW 3. Ram Prasad Manjhi PW 4, Muneshwar Manjhi PW 7 though are hearsay witnesses but they have disclosed about the time of occurrence in between 11-11.30. But according to PW 5 the occurrence took place in between 7-8. Thus all these discrepancies emanating from the evidence of PW 5 show that PW 5 has not come forward with a true version and hence his evidence is not reliable at all. In the event prosecution can be said to have failed to establish charges levelled against the appellants.

11. Under the circumstances. I do not find that the trial Court has wrongly convicted the appellants u/s 307/34 of the Indian Penal Code and the judgment of conviction and order of sentence is set aside and the appellants are acquitted and are discharged from the liability of the bail bonds.

12. In the result, this appeal is allowed.