

(2006) 09 JH CK 0037
Jharkhand High Court
Case No: None

Saharuddin Mian

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 1, 2006

Acts Referred:

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

Citation: (2006) 4 JCR 633

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.P. Singh, J.

The sole appellant Saharuddin Mian has preferred this appeal against the judgment and order dated 7.8.2002 and 8.8.2002 passed by Shri Kumar Kamal, Additional Sessions Judge, F.T.C.-1. Bermo at Tenughat in Sessions Trial No. 326 of 1987 whereby and whereunder the appellant has been convicted u/s 326 of the Indian Penal Code and has been sentenced to undergo R.I. for five years.

2. Brief facts leading to this appeal are that in the morning of 18.11.1986 the informant Sultan Ansari returned to his house in village Barki Punu P.S. Mahuwatand Distt. Giridih after taking bath in village pond to find the appellant along with Asgar Mian standing in front of his house, abusing his father and others. Further stated when PW-4 Alizan Mian eldest uncle of the informant came out of his house, both the accused named above asked others in all fifteen persons to assault him armed variously with Lathi. Bhala, Farsa and swords started assaulting the said Alizan Mian. The informant tried to rescue his uncle when he was also assaulted with sword by accused Samsuddin Mian resulting in cut injury on his right hand including amputation of one finger. Further stated that on alarm raised by the injured persons

Samsuddin Mian and Sikandar Mian came out of the house who was also given blows with sharp cutting weapon, when her aunt Mehurna Bibi tried to save her husband she was also assaulted. According to the informant, accused persons have been carrying grudge against them and earlier also tried to assault them.

3. His statement was recorded by SI G.D. Singh of Mahuwatand on the basis of which Mahuwatand P.S. Case No. 48 of 1986, dated 18.11.1986 was registered under various section including Sections 307, 323, 324, 147, 148 and 149 of the Indian Penal Code against 19 persons. The case of the appellant was committed to the Court of Sessions for trial. During the pendency of the trial, two accused persons died. In all 17 accused persons were charged for offences under Sections 149, 307 and 326 of the Indian Penal Code. Accused Jiyaruddin Mian and Samsuddin Mian were separately charged for these offences while the appellant Saharuddin along with sixteen others were charged jointly for these offences. The defence taken by the appellant and other accused persons was previous enmity due to land dispute and further counter case lodged by them in which they were also assaulted by the informant party resulting in injuries on five persons caused by sharp cutting weapon as well as hard and blunt substance.

4. The learned trial Court after examining the witnesses and protracted trial for sixteen years found and held the appellant guilty u/s 326 of the Indian Penal Code while all others accused persons were acquitted of the charges giving them benefit of doubt. The appellant was also acquitted of the charges under Sections 149 and 307 of the Indian Penal Code.

5. The present appeal has been preferred on the grounds that the learned trial Court has misconstrued the facts on records and failed to appreciate that there was assault from both sides. It is also asserted that in view of the evidence of interested witnesses, contradicting each other, the trial Court should have also acquitted the appellant. It is also asserted that the injuries on Alizan and Mehruna Bibi was not of such nature for which the conviction u/s 326 of the Indian Penal Code was warranted. It is also submitted that as per fardbeyan the offences caused by the appellant does not tally with the injury report (Ext. 1 series). Therefore the appellant who is more than sixty years of age having faced protracted trial of twenty years may also be acquitted of the charges.

6. Learned APP opposed this contention on the grounds that actually assault took place and he has been attributed specific overt act in assaulting Mehruna Bibi and Alizan (PW-3 and 4).

7. I have carefully gone through the materials on record with the submissions made by both sides. The statement of the witnesses were recorded in the year 1991. According to the informant as PW-6, the occurrence took place in which the appellant Saharuddin took leading part and abetted all others accused persons to assault Alizan Mian. He further asserted that Alizan was assaulted by this appellant

with sword resulting in injuries on his head and hand. He further asserted that Saharuddin gave sword blow on his right hand resulting in severance of his middle finger. It is admitted that the assault took place for dispute over a land claimed by this appellant. He specifically stated vide para 17 that only this appellant has assaulted him twice. He denied that Saharuddin has lodged his case earlier than their case. As against this PW-3 injured Mehruna Bibi though named this appellant as one of the assailants giving blows on her and her husband, she has admitted in cross-examination vide para 3 that when she came out none of the assailants was present on the place of occurrence and she cannot say who assaulted whom. PW-4 Alizan Mian similarly named this appellant to have given blow with sword on his head and left hand. He failed to identify any of the assailants except this appellants. He admitted in cross-examination, that the appellant has filed a case against them also for assault etc. for the occurrence of the same day. He denied to identify other assailants than the appellant. In this context PW-1 Tazmul Ansari and PW-5 Samsuddin Ansari named 19 persons to have assaulted his father and others but PW-5 mentioned that all of the 19 persons started assaulting his father and when they tried to save Alizan they were also assaulted. He also named this appellant to have assaulted him with sword on his head and on Kasim. He admitted in para 8 that he reached at the place of occurrence on hearing alarm and after him none of the witness came. He specifically stated in para 10 that they have not given any written information to the police which reached at the place of occurrence after one and half hours. PW-2 is seizure list witness.

8. The learned trial Court has considered all these contradictions in the evidence of the injured persons as well as eye-witness and came to hold vide para 9 that the participation of other 16 accused persons except Saharuddin could not be proved and it further mentions that prosecution has been unable to prove the involvement and participation of all the accused persons as there were general and vague allegations regarding the mere presence of the accused persons. It is not proved that they have participated in the alleged occurrence. The participation of all the accused persons is doubtful. However, believing the story of assault by this appellant resulting in injuries on PW-3, 4, 6 and 7, it has convicted Saharuddin u/s 326 of the Indian Penal Code.

9. In this context, the injury report proved by PW-8 Dr. Vijay Kumar Singh vide Ext. 1 series mentioned that the injuries found on these witnesses except one injury on Sultan Mian regarding missing of middle finger of right hand were simple in nature. All other injuries of Alizan, Mehruna Bibi were lacerated and simple in nature. The injuries found on Sultan, Samsuddin and Sikandar were mentioned incised wounds on non-vital parts of the body and simple in nature. The incident took place admittedly on account of land dispute and this trial has remained pending for sixteen years before the trial Court has found and held the appellant guilty for the offence alleged. However the evidence available on record does not prove beyond all reasonable doubts that middle finger of Sultan was severed because of the sword

assault given by the appellant on him. The prosecution version is that all 10 people were assaulting (he informant party armed variously with sharp cutting weapons in which the appellant was one of them. He has been attributed to have assaulted Alizan Mian and others with sword and the injuries found on them by doctor were lacerated and said to be caused by hard and blunt substance. When the trial has not believed the major portion of the prosecution case and given I he benefit of doubt to all other accused persons, I find it has not given specific reasons to convict the appellant for the offences u/s 326 of the Indian Penal Code.

10. In the facts and circumstances, discussed above, I find and hold that the prosecution has not been able to bring home the charge u/s 326 of the Indian Penal Code against the appellant beyond all reasonable doubts. Accordingly, I find that the present appeal has got merit and it deserves to be allowed. In the result, this appeal is allowed. The appellant is on bail; he is released from the liabilities of his bail bonds.