

Criminal Appeal (S.J.) No. 67 of 2000 (R)

Against the judgment of conviction and order of sentence dated 25.01.2000 passed by the 1st Additional Sessions Judge, Giridih, S.T. No. 221/1986).

1. Suresh Chand Mittal
2. Rakesh Chand Mittal Appellants
--Versus--
The State of Jharkhand Respondent

For the Appellant: Mr. K.N. Roy, Advocate.
For the Respondent: Mr. Sekhar Sinha, A.P.P.

PRESENT
HON'BLE MRS. JUSTICE JAYA ROY

JUDGMENT

Jaya Roy, J. The appellants have filed this appeal for setting aside the Judgment of conviction and order of sentence dated 25.01.2000 passed by the 1st Additional Sessions Judge- Giridih in S.T. No. 221 of 1986, whereby the appellant has been convicted for the offence under Sections 324 and 323 of the Indian Penal Code and directed to be released under Section 4 of the Probation Offenders Act, 1958, on furnishing security bond of Rs.5000/- (Rupees Five thousand) with two sureties of the like amount each to maintain peace for two years from the date of the Judgment and in default of the condition of the bonds, they shall be called upon to receive the sentence.

2. The prosecution case, in brief is that Mahendra Prasad Sao, who is the resident of Raj Dhanwar, was staying at Kanak Rest House, Giridih for the purpose of construction of boundary wall on his land situated at Chandouri road and on 15.9.85 in the evening at 4.00 P.M. while he was present at his aforesaid land situated at Chandouri road, all the three accused namely Suresh Chand Mittal (appellant no.1) Rakesh Chand Mittal (appellant no.2) and Hukumchand Mittal came there and demanded the balance amount standing dues upon the informant. There was business dealing between the informant and the accused as such of both them were known to each other from before. The informant requested for the accounting but the accused persons became furious,

started abusing and it is alleged that Suresh Chand Mittal (appellant no.1) took out a knife and gave a blow by means of knife on the left side of the chest of the informant, causing injuries. The accused appellant Rakesh Chand Mittal assaulted the informant by means of bricks, causing injury on his shoulder, while Hukumchand Mittal started pressing the neck of the informant in order to kill him, due to which the informant became senseless. The informant could gain sense at Sadar Hospital, Giridih and his fardbeyan was recorded at 10.30 P.M. on 15.9.85 upon which the instant case being Giridih (Town) P.S. Case No. 168/85 under Sections 307, 337 and 323 I.P.C. was registered. After completing the investigation, the charge sheet has been submitted under Sections 307/325//324 and 323/34 I.P.C. against the two appellants and another co-accused namely Hukum Chand Mittal father of two appellants.

3. After taking evidence and considering the material on record, the court below convicted Suresh Chand Mittal under Section 324 I.P.C. and Rakesh Chand Mittal under Section 323 I.P.C. and sentenced both of them to furnish security bond Rs.5000/- with two sureties of the like amount each under section 4 of the Probation of Offenders Act to maintain peace for two years from the date of this Judgment, in default of the condition of the bonds, they shall be called upon to receive the sentence.

4. The prosecution has examined all together nine witnesses in support of its case but no witness is examined on behalf the accused appellant in their defence. P.W.2 Mahendra Prasad Saw (the informant), P.W.1 Zindu Ram, P.W.7 Khiro Mahto, PW.4 Birju Lal, P.W. 5 Suresh Prasad Sahu, P.W. 6 the Doctor namely B.P. Singh, who had examined the informant's injuries and proved the injury report Ext.4, P.W.8 A.S.I. namely Laxman Ram, who had recorded the Fardbeyen of the informant in the Sadar Hospital Giridih, P.W.3 I.O. namely Bagish Chandra Tripathi and P.W.9 Kishori Mohan Prasad, who is not a charge sheet witness.

5. The defence of the appellant is total denial of the alleged occurrence as the appellants have filed a Money Suit against the

informant i.e. Money Suit No. 240 of 1985 filed in the Court of Ist Civil Judge, Kanpur against the informant for realization of a sum of Rs.65,643/- with interest due to this, the informant has falsely implicated the appellants including their father Hukumchand Mittal in this case. To support his contention, appellants have filed the certified copy of a petition filed in said Money suit which is marked as Ext.-A. aforesaid Money Suit which is marked as Ext. A. Therefore, admittedly there is enmity between the appellants and the informant.

6. The learned counsel for the appellants, has submitted that the only eye witness of the alleged occurrence is the informant/ injured himself as P.W.-2. Therefore, his evidence is to be considered very cautiously. He has pointed out numbers of contradictions in his evidence as the witness could not even established the place of occurrence as in Para 9 of the cross-examination, he stated "Assault was committed at the place, where he was playing radio, he fell down there, it was a Parti land" P.W.3 B.C. Tripathi, I.O. in last para of cross examination has stated that in the compound of informant there is situated one constructed room in east south corner inside that room, occurrence of assault took place. He has further pointed out that. The informant in his evidence has stated that the Suresh Chand Mittal (appellant no.1) had given a knife blow on the left side of his chest causing injury, Rakesh Chand Mittal (appellant no.2) had assaulted by means brick causing on his shoulder while Hukumchand Mittal pressing his neck in order to kill him. But in his cross examination he has given the manner of the alleged occurrence in other way. Furthermore, according to the evidence of P.W.7, he and the Zindu Ram brought the informant to the Government Hospital Giridih for his treatment but the Doctor P.W.6 he has stated in his evidence that the injured was brought by the police. Furthermore, according to the Doctor's evidence as stated in para 20 of his evidence that injury no. 1 may be possible on fall on any sharp edged substance and the rest of the injuries are also possible by fall on hard substance. The counsel of the appellant has further pointed out that no x-ray plate has been made Exhibit. Therefore, it is doubtful any x-ray was done or not in the respect of injury no.2. which casts a doubt regarding the nature

of the injuries received by the informant as without any x-ray report, dislocation of shoulder joint cannot be opined.

7. The counsel of the appellants, has further contended that the court below has disbelieved the part of the evidence of the informant in respect of the accused Hukumchand Mittal and acquitted him from the aforesaid charges. Therefore, when the part of the evidence of the informant is disbelieved and as the informant is only eye witness of the occurrence, the court should not convict the other accused only on the basis of the evidence of such witness as he cannot be considered as a trust worthy witness. It is also submitted that the appellant no.1 is practicing lawyer at Kanpur.

8. The learned counsel for the State has submitted that the P.W.2 is the informant and he has specifically stated about these two appellants in his evidence but he has accepted that there are numbers of contradictions in his statements regarding the manner of the occurrence. He could not point out that any other witness has stated about the appellants.

9. From the record, I find that none of the witnesses has stated that the informant has mentioned the name of the appellants before them as his assailants. Informant has only stated before them that one Seth of Kanpur assaulted him. The P.W.6 the Doctor has not stated about the X-ray neither any X-ray plate was produced before the Court and marked as Exhibit. Furthermore, as the entire conviction is practically based upon the evidence of P.W.2 (the informant) and the trial court has already disbelieved his part of the evidence and acquitted another co-accused namely Hukumchand Mittal and there are numbers of contradictions even regarding the place of occurrence, this witness cannot be considered as trust worthy witness. Admittedly, there is an enmity between the informant and appellants in respect of some amounts for which the appellants are already filed the Money Suit against the informant i.e. Money Suit No. 240 of 1985. In my view, one cannot be convicted on the basis of the evidence of such type of witness. Therefore, I acquit both the appellants giving benefit of doubt from the charges framed against them and set aside the Judgment and order of conviction.

dated 25.01.2000 passed in S.T. No. 221 of 1986 by the Ist Additional Sessions Judge, Giridih. Accordingly this application is allowed and the appellants are discharge from their liability of their bail bonds.

(Jaya Roy, J)

Jharkhand High Court, Ranchi
Dated, 6th October, 2009
Anit/N.A.F.R.