

Criminal Appeal (S.J.) No. 541 of 2003

(Against the judgment of conviction and order of sentence dated 27.03.2003 passed by the learned Additional District & Sessions Judge 4th, Palamau at Daltonganj, in Sessions Trial No. 340 of 1990).

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1. Balendra Singh, son of Sri Bhola Singh
 2. Bhola Singh, son of late Shyam Narayan Singh,
 3. Santu Singh, son of Sri Bhola Singh.
- All residents of village Bidra, Police Station Panki, District Palamau.

.....
Appellants.

Versus

The State of Jharkhand Respondent

.....
P R E S E N T

HON'BLE MR. JUSTICE ANANDA SEN.

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For the Appellants: Mr. A. K. Chaturvedi, Advocate.

For the State : Mr. Arun Kumar Pandey, Add.P.P.

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Ananda Sen, J.: All the appellants have been convicted for committing offence under sections 323 and 341 of the Indian Penal Code. Further appellant no.1 has been convicted for committing offence under sections 379 and 304 part (II) of the Indian Penal Code. The appellant nos. 2 and 3 have been released under section 360 of the Code of Criminal Procedure after executing bonds, but the appellant no.1 has been sentenced to undergo S.I. for one month for the offence under section 341 I.P.C., R.I. for one year for the offence under section 323 I.P.C., R.I. for three years for the offence under section 379 I.P.C. and R.I. for three years for the offence under section 304 part (II) I.P.C. The judgment of conviction dated 27.03.2003 and the order of sentence passed on the same date in S.T. No. 340/1990 by Sessions Judge, Palamau at Daltonganj, is under challenge in this criminal appeal.

2. Prosecution case, in brief, is that P.W.4 (informant) in his fardbeyan, which forms the F.I.R., has narrated that on 02.12.1988 at about 8 P.M., he closed his grocery shop and was on the way to his house, when these three appellants along with one Ramadhar Singh (now dead) tried to force the informant to open the shop. On his refusal the informant was assaulted by fists and slaps and Ramadhar Singh is alleged to have taken out Rs. 1500/- from his pocket. The informant started fleeing away from the place of occurrence, but he was chased and when he reached in front of his house he was again assaulted by all the accused persons. The mother of the informant Indu Devi (deceased) came to intervene but she was pushed by the appellant no.1 as a result of which she fell down and became unconscious. It is further alleged in the fardbeyan that this appellant no.1 snatched the golden chain from the neck of Indu Devi and thereafter all the appellants fled away. Indu Devi was taken to the hospital in unconscious state.

3. On the basis of the aforesaid fardbeyan the police registered Panki P.S.

Case No. 93 of 1988 for the offence under sections 341, 323, 307, 379/34 I.P.C. against all the accused persons. Indu Devi died after institution of the F.I.R..

4. Charge sheet was submitted after completion of investigation for offence under sections 302, 341, 323, 379/34 I.P.C.. Cognizance was taken and the case was committed to the Court of sessions for trial. Charges were framed under sections 341, 323, 379, 302/34 I.P.C. against accused Balindra Singh and charges under sections 341, 323, 302/34 I.P.C. were framed against accused Bhola Singh and Santu Singh, to which the appellants pleaded “not guilty” and claimed to be tried.

5. In order to prove the charges framed against the accused persons, the Prosecution has examined altogether 9 witnesses on its behalf; out of whom P.W.1 is Nandu Prasad Gupta (informant's brother), P.W.2 is Shambhu Prasad Sao (brother of the informant), P.W.3 is Pursotam Kumar Gupta, P.W.4 is Bindu Prasad Gupta (informant), P.W.5 is Sarswati Devi, P.W.6 is Gauri Sahu, P.W.7 is Dr. Amar Kumar Mishra, P.W.8 is Dr. Ajit Kumar Chaudhary and P.W.9 is Nanddeo Yadav. However, be noted that the Investigating officer of the case has not been examined by the prosecution.

6. After closure of the witnesses of the prosecution, the accused persons were examined under section 313 of the Code of Criminal Procedure. No evidence was led on behalf of the accused.

7. The trial Court after analyzing the evidence and after going through the record of the case convicted all the appellants for committing offence under sections 323 and 341 of the Indian Penal Code. Appellant no.1 was further convicted for committing offence under sections 379 and 304 part (II) of the Indian Penal Code. Appellant nos. 2 and 3 were released under section 360 Cr.P.C. after execution of bonds, but the appellant no.1 was sentenced to undergo S.I. for one month for the offence under section 341 I.P.C., R.I. for one year for the offence under section 323 I.P.C., R.I. for three years for the offence under section 379 I.P.C. and R.I. for three years for the offence under section 304 part (II) I.P.C.

8. Aggrieved by the said judgment, this instant criminal appeal has been preferred by the appellants.

9. I have heard the learned counsel for the appellant and the Addl. P.P. for the State and have gone through the entire record.

10. Mr. A.K. Chaturvedi, learned counsel appearing for the appellants submits that by no stretch of imagination the appellant no.1 could have been convicted under section 304 part (II) I.P.C. He further submits that there is no evidence that there was any intention on the part of the appellant no.1 to commit murder of the deceased. He further submits that as per evidence of P.W.6 the appellant has only pushed the deceased, who fell down and thereafter became

unconscious and later on died. He further submits that this action cannot come within the purview so as to convict the appellant under section 304 part (II) of the Indian Penal Code. He further submits that there is no eye witness save and except P.W.4, who is the informant and the other witnesses, who have been examined in this case have not seen the occurrence. He further submits that P.W.5, who claims to be the eye witness, in course of examination before the learned trial Court, has been declared hostile by the prosecution. He further submits that P.W.4 is not a reliable witness as he narrated a story in his evidence, which is not the prosecution case. He further submits that the evidence of the Doctor also suggests that the appellant no.1 could not have been convicted under section 304 part (II) of the Indian Penal Code. He submits that so far offence under section 379 I.P.C. is concerned, it is only the informant, who has narrated that the golden chain was snatched from the neck of Indu Devi while she was in an unconscious state. He further submits that save and except the said statement there was nothing to prove the snatching of a golden chain, so conviction under section 379 I.P.C. is not sustainable. He further submits that P.W.7, who is the Doctor and has examined both P.W.4 and Indu Devi at the first instance, did not saw any external injury on the person of Indu Devi, this also weakens the case of the prosecution. Lastly he submits that the judgment is absolutely bad and is liable to be set aside.

11. Learned Addl. P.P. on the other hands submits that there are sufficient evidence against this appellant and the conviction under section 304 part (II) and under section 379 I.P.C., so far appellant no.1 is concerned, is just and proper. He further submits that P.W.4 has stated that the deceased was assaulted by stick and blows resulting in her death, which is sufficient to convict this appellant no.1 under the aforesaid charges. He further submits that golden chain was snatched from the neck of the deceased by this appellant no.1 and this is the deposition of P.W.4. He further submits that from the evidence adduced by the prosecution, the appellants cannot be acquitted and this appeal lacks merit, which is liable to be dismissed.

12. As mentioned earlier 9 (nine) witnesses have been examined on behalf of the prosecution to prove the case. P.Ws. 1 and 2 are two sons of the deceased. They are not eye witnesses to the assault. These two witnesses narrated that after hearing hue and cry they reached at the place of occurrence and saw the appellants fleeing away from the place and their mother was lying in unconscious state. P.W.2 further states that at the time of occurrence he was at his own shop. Similar is the statement of P.W.1. P.W.3, who are the nephew of Indu Devi. They also reached the place of occurrence after hearing hue and cry. They also state that they saw these appellants fleeing away from the place and his aunt was lying on the ground. P.Ws. 1, 2 and 3 state that they have heard

about the occurrence from P.W.4. He stated that the appellant no.1 has snatched the golden chain from the neck of the deceased. Thus, from the evidence of these P.Ws., it is clear that they have not seen the assault either upon the informant or upon the deceased Indu Devi. They have heard about the same from P.W.4. P.W.4 is the informant himself. He has supported the statement given before the Police and stated that he was assaulted while he was returning after closing the shop by the appellants. He has further stated that he was chased and when he reached at his house, he was again assaulted by the appellants. His mother intervened and the appellant no.1 pushed her resulting in her fall. After the fall she became unconscious and thereafter appellant no.1 has snatched the golden chain from her neck and fled away. In his cross-examination at para 21 he has stated that his mother Indu Devi was assaulted by fists and rod. He further stated that because of the said assault there were marks on her cheek and on her head. In paragraph 22 he further stated that no outsider came when assault was going on and there was no independent witness to the said assault. P.W.5 has been declared hostile as she has given absolutely a different picture. P.W.6 is a co-villager Gauri Sahu, who did not see the occurrence, but saw Indu Devi lying in unconscious state and he heard the entire occurrence from P.W.4. P.W.7 is the Doctor, who treated Indu Devi and P.W.4 at the first instance. He categorically stated that he has not seen any external injury or mark of violence on the body of Indu Devi, though she was in unconscious state. He only found scratch on both knees 1 cm x 1 cm, which was simple in nature. P.W.8 is the Doctor, who conducted postmortem examination upon the dead body of the deceased Indu Devi. He did not find any evidence of external injury. He opined that the cause of death is internal head injury. P.W.9 is a formal witness, who only proved the formal F.I.R.

13. Thus, from the evidence it is apparent that P.Ws. 1,2,3 and 6 are not the eye witnesses to the incident. They only saw these appellants fleeing away from the place of occurrence and Indu Devi lying on the ground in unconscious state. They have heard the entire story from P.W.4. The entire case hinges upon the evidence of P.W.4. P.W.4 stated that there was assault in front of his shop and when he reached near his house he was also assaulted. His mother Indu Devi came to intervene, but she was pushed by the appellant no.1 resulting in her fall and became unconscious. He further stated that P.W.5 has also seen the occurrence. This was his statement in examination-in-chief. In cross-examination he gives a different version so far as the assault on his mother Indu Devi is concerned. He states that Indu Devi was assaulted and beaten by stick and blows and there was mark of assault on her cheek and on her head, but this version was not there in the fardbeyan. This witness has improved the story while deposing before the Court on the point of assault on his mother. The

Doctors P.W.7 who treated Indu Devi and P.W.8, who conducted the postmortem upon the dead body of the deceased did not find any external injury on the person of Indu Devi.

14. Thus, the statement of this P.W.4 on the point of assault is not corroborated by any medical evidence. Further this P.W.4 tried to improve the case, which creates doubt on the testimony of P.W.4 on the point of assault on his mother. Thus, I find that this witness (P.W.4) is not wholly reliable on the point of assault on his mother. Thus, there is a doubt as to how Indu Devi fell down and became unconscious. On this point the evidence of P.W.4 cannot be believed and cannot be relied upon. Similarly on the point of snatching of golden chain from the neck of the deceased is concerned, there is no corroborative evidence. P.W.5 would have been the best evidence, but she has been declared hostile as she has given altogether a different version which is not in the F.I.R. nor supported by any other witnesses.

15. Therefore, I find that there is no sufficient evidence to convict the appellant no.1 for the charges under sections 379 of the I.P.C. and under section 304 part (II) I.P.C.

16. So far as section 323 I.P.C. is concerned, I find that there are sufficient evidence that P.W.4 was assaulted by fists and slaps in front of his shop and thereafter on chase he was also assaulted in front of his house. There is nothing to disbelieve this part of the evidence given by P.W.4 that he was assaulted by this appellant by fists and slaps. The evidence of P.W.7 (Doctor) is also clear that he found simple injury and scratch mark on the person of P.W.4. Thus, I hold that these appellants were rightly convicted under section 323 I.P.C.

17. So far section 341 is concerned, from the evidence of the witnesses, I find that ingredient of section 341 I.P.C. is absolutely lacking in this case. None of the witnesses have stated that P.W.4 was obstructed or prevented from proceeding in the direction in which he tried to proceed and was wrongly obstructed. It is the prosecution case that while returning home he was assaulted and after assaulting P.W.4 the appellants fled away. Thus, from scrutinizing the evidences, I find that the conviction of the appellants under section 341 I.P.C. is also bad as there is no evidence to convict them under the aforesaid section. Further I hold that this appellant no.1 could not have been additionally convicted under sections 379 and 304 part (II) of the I.P.C.

18. Thus, the conviction of all the appellants under section 341 I.P.C. is set aside and they are acquitted from the charge under section 341 I.P.C.. The appellant no.1 is also acquitted from the charges under sections 379 and 304 part (II) of the Indian Penal Code.

19. So far section 323 of the Indian Penal Code is concerned, all the appellants stand convicted under section 323 of the Indian Penal Code. The

appellant no.1 had already remained in custody for 9 months and 24 days, thus, his sentence is modified to the period, which he had already undergone. So far other appellants are concerned, the sentence as imposed by the learned trial Court will remain the same.

20. With the aforesaid observation and modification, this appeal is partly allowed.

(Ananda Sen, J)

High Court of Jharkhand at Ranchi,
Dated 30th May,2017
NAFR/Sharma