

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 654 of 2010

Rusani Devi

.....Petitioner

Vrs.

1.The State of Jharkhand
2.Ranjeet Mirdha @ Ramjeet Mirdha
3.Laxman Mirdha
4.Babulal Mirdha
5.Deo Narayan Mirdha

..... Opposite Parties

**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE RATNAKER BHENGRA**

For the Petitioner : Mr. Manoj Kumar Sah

For the Opposite Parties : A.P.P.

09/30.04.2018 Heard learned counsel for the petitioner and learned A.P.P. representing State.

2. Petitioner seeks special leave to appeal under Section 378(4) of the Criminal Procedure Code against the judgment of acquittal dated 23.04.2010 passed in P.C.R. Case No. 766 of 2005 / T.R. No. 163 of 2010 by the learned Court of Judicial Magistrate 1st Class, Godda where under the accused persons / opposite party nos. 2 to 5 herein have been acquitted of the charges under Section 323, 341 and 379 of the Indian Penal Code.

3. The brief case as made out in the complaint petition filed on 14.05.2005 *inter alia* alleges as follows:- On 12.11.2005 at 5.00 a.m. the accused persons armed with deadly weapons trespassed into the house of the complainant situated at Mouza Amjhor. They hurled abuses on her naming her as 'Dian' (Witch) and threatened to force her to drink human waste. On objection being made, she was assaulted by the accused persons. Her husband raised alarm as a result of which witnesses gathered. The accused persons while escaping threatened the complainant to leave the village. They also took away utensils worth Rs.400/- from her house. The dispute could not be resolved through panchayati, as such complaint was lodged.

4. After solemn affirmation of the complainant and inquiry, learned Trial Court finding *prima facie* case under the aforesaid sections, summoned the accused persons where after charges were framed under the aforesaid sections. After the appearance of the accused, the accusation of charges were explained to them, to which they pleaded not guilty and claimed to be tried.

5. The complainant had examined 3 witnesses during trial. P.W.1, Sukhdeo Mirdha is the husband of the complainant; P.W.2, Kalicharan Mirdha is the 'gotia' and P.W.3 is the complainant herself. The defence had exhibited the settlement deed of mouza Amjhor as Exhibit 1. After evidence of the complainant, statement of the accused were recorded under Section 313 of the

Criminal Procedure Code on 14.07.2009, which was of complete denial.

6. P.W.1 in his oral testimony stated that 5 accused persons Ranjeet Mirdha, Babulal Mirdha, Laxman Mirdha, Deonarayan Mirdha, Arjun Paswan and Suresh Mirdha, all trespassed into the house of his sasural armed with lathi and danda. They assaulted his wife, abused her and called her 'Dian' (Witch), who had eaten their mother. Ranjeet abused her by saying that she had eaten their father also. They threatened to kill her. The accused persons made an attempt to force his wife to drink human waste. On alarm raised by the wife witnesses came to the house. He was also assaulted but did not sustain serious injury. His wife was the sole daughter of her father and had received land by virtue of that. They had been cultivating the said land, however, the accused persons were forcibly trying to dispossess them. He had claimed to identify the accused persons.

7. P.W.2 deposed that while he was sitting on varendah of his house on the said date, he saw Ramjeet, Babulal, Laxman, Deonarayan, Arjun, in total 5 to 6 persons armed with lathi and paina trespassed into the house of the complainant, which was opposite to his house. They abused her as 'Dian' and raised allegation that she had eaten their whole generation. They assaulted her with lathi. Though a panchayati was called, but the accused did not turn up. He deposed that husband of the complainant was also there and the accused persons also abused him. They made an attempt to force her to drink human waste. The accused persons were involved in dispossessing the complainant from her land which she had inherited as only daughter of her father. The accused persons were his 'gotias'.

8. P.W.3 had supported her version in her deposition. She further stated that she had inherited the land from her father being the sole daughter. Her father and uncle had partitioned their land in their life time.

9. The prosecution witnesses were cross examined by the defence. The defence also pointed out that P.W.1 had refused to disclose as to who are the owner of the land. The accused persons resided at village Ghatiyari, as also the husband of the complainant, while the village Amjhor, which is said to be the place of occurrence is half an hour distance from that place. P.W.2 had admitted about the dispute with regard to the partition of the land between the complainant and the accused, which is 3-4 years old. The complainant had been demanding her right over the portion of the land. The complainant after her marriage had gone to her in-laws house and that the accused persons were refusing to give share of her land. P.W.3 in her statement had accepted that after hulla and after one hour, her husband reached the place of occurrence. She had claimed to be the resident of Amjhor while P.W.1 and 2 had stated that she was staying along with her husband. The defence had relied upon

Ext. A, which disclosed that the accused persons had right and possession over the disputed land and that the complainant had filed false and frivolous complaint in order to put pressure on the accused persons to settle the dispute which is civil in nature. In these facts and circumstances, accused had prayed for their acquittal.

10. The learned Trial Court considered the evidences on record and on each of the charges found that prosecution had failed to establish the ingredients of the offences. In respect of allegation under Section 341 of the I.P.C it was held that none of the prosecution witnesses had disclosed the manner in which, the complainant or her husband were restrained by them. In respect of offence under Section 323 of the I.P.C also, the learned Trial Court found that P.W.1, husband had made a vague allegation that both of them were abused without giving any specification of the assault. Name of none of the accused in particular was taken as to the assault committed. P.W.3 complainant had also deposed in general terms that accused persons trespassed into her house and assaulted them without disclosing who assaulted whom with what weapon. There is no medical evidence on record to corroborate the allegation of injury. They also failed to disclose the nature of the injury and on which part of body. The offence under Section 323 was also not established. In respect of remaining charge under Section 379 of the I.P.C, learned Trial Court found that husband P.W.1 did not disclose about the theft of any valuables out of the house. He had only deposed that all the accused persons took away bucket without specifying the name of the person who took away the bucket. P.W.2 did not disclose theft of any valuable articles. Even though P.W.3 disposed about taking away of bucket worth Rs.400 but she failed to disclose name of any specific person. Thus, instant charge also remained unsubstantiated by any cogent evidence. Accordingly the accused were acquitted of the aforesaid charges.

11. Learned counsel for the petitioner has questioned the findings of the learned Trial Court, more particularly in relation to findings under Section 341 of the I.P.C. i.e., unlawful restraint. He has submitted that the learned Trial court had accepted that there was trespass in the house of the complainant but erroneously it has held that charge was not established. The evidence on record can be considered by the learned Appellate Court if special leave to appeal is granted.

12. Learned A.P.P. has opposed the prayer for special leave to appeal. He has submitted that merely because of the fact that different view could be taken on the material evidence on which the learned Trial Court had rendered the findings of acquittal, is not the ground to allow the findings of acquittal to be disturbed. The judgment is well reasoned and does not require any interference.

13. We have considered the submission of the learned counsel for the parties and discussion on the material evidence by the learned Trial Court in the impugned judgment. Apparently, petitioner and the accused persons are 'gotias' and there was a dispute relating to the land between them, which the petitioner claimed to have been partitioned between her father and her uncle in their life time. As per the statement of P.W.1, Husband, the complainant was in his in-laws house. The accused persons on the other hand claimed to be resident of village Ghatiyari, which is half an hour distance from the place of occurrence. Though the incidence is stated to be of the early morning and witnesses had gathered on hulla being raised, but apart from P.W.2, who is also nephew and 'gotia' of the father of the Complainant, no other independent witness came to support the cause of the petitioner. P.W.2 had stated that the accused persons were also 'gotias'. The allegations were general in nature and not specifically established as against any of the accused persons. In totality, the learned Trial Court had sufficient reason to hold that the prosecution had failed to establish the charges beyond shadow of all reasonable doubts.

14. In such circumstances, we do not find any reasons to allow special leave to appeal to the petitioner to challenge the impugned order before the learned Appellate Court. Accordingly, the instant petition stands dismissed.

(Aparesh Kumar Singh, J.)

(Ratnaker Bhengra, J.)

A.Mohanty