

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision No.1288 of 2017

1. Bagha Dhobi
2. Surendra Kumar Mahto ... Petitioners
-Versus-
The State of Jharkhand ... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Akhouri Awinash Kumar, Advocate
For the State : Mr. Bhola Nath Ojha, APP.

ORAL ORDER

Order No.13

Dated 30th November, 2022

The present Criminal Revision has been filed on behalf of the petitioners by challenging the judgment dated 21.08.2017 passed by the learned Additional Sessions Judge-II, Giridih in Criminal Appeal No.62 of 2011, by which, the said Criminal Appeal has been dismissed and thereby affirming the judgment of conviction and order of sentence dated 03.12.2011 passed by Sri Avinash Kumar Dubey, learned Judicial Magistrate, 1st Class, Giridih in connection with G.R No.1571 of 1999, corresponding to T.R No.63 of 2011, by which, the petitioner has been convicted for the offences under Section 341/323/34 of the IPC and they have been sentenced to undergo Simple Imprisonment for a period of fifteen (15) days for the offence under Section 341/34 of the IPC and Simple Imprisonment for a period of six (06) months for the offence under Section 323/34 of the IPC. However, all the sentences have been directed to run concurrently.

2. Heard Mr. Akhouri Awinash Kumar, learned counsel for the petitioners and Mr. Bhola Nath Ojha, learned counsel for the State.

3. As per the FIR, the petitioners are alleged to have assaulted the mother of the Informant by means of lathi & Katta causing injury to her forearm and leg.

4. Mr. Akhouri Awinash Kumar, learned counsel for the petitioners has submitted that judgments and order passed by the learned Courts below are not sustainable in the eyes of law. It is further submitted that the charges were framed against these petitioners under Sections 447, 341, 323, 326, 504/34 of the IPC. However, the learned Judicial Magistrate, 1st Class, Giridih had acquitted the petitioners for the offences under Section 447, 326, 504 read with Section 34 of the IPC. It is further submitted that the petitioners are old aged persons and the petitioner no.1 is aged about more than 70 years and hence, petitioners may be released on furnishing bond.

5. On the other hand, learned APP has opposed the prayer of the petitioners and has submitted that petitioners have got three criminal antecedents bearing Complaint Case No.795/99. It is further submitted that though the petitioners had assaulted the mother of the Informant causing injury on her person, but the learned Trial Court has acquitted the petitioners for the offences under Section 447, 326, 504 read with Section 34 of the IPC but has held guilty them under Sections 341, 323/34 of the IPC and all the prosecution witnesses have supported the case of the petitioners.

6. Perused the records of this case and considered the submission made on behalf of the parties.

7. It appears that the FIR was lodged on 31.08.1999 under Sections 323, 341, 447, 504/34 of the IPC by the Informant against both the petitioners for the occurrence taking place on 31.08.2019.

8. It transpires that the charges were framed against the petitioners on 09.01.2007 for the offence under Sections 447/34, 341/34, 323/34, 326/34 & 504/34 of the I.P.C to which they pleaded not guilty and claimed to be tried and the trial has began.

9. During trial the prosecution has got examined six (06) witnesses which are as follows:-

- (i) P.W.1 is Nunulal Saw,
- (ii) P.W.2 is Arjun Prasad,
- (iii) P.W.3 is Chotu Lal Gupta,
- (iv) P.W.4 is Gulzari Devi,
- (v) P.W.5 is Arbind Kumar, and
- (vi) P.W.6 is Ramakant Prasad.

10. The prosecution has also proved the following documents on Exhibits:-

- (i) Ext.1 is Endorsement of Fardbayan,
- (ii) Ext.1/1 is signature of Arbind on Fardbayan,
- (iii) Ext.2 is the Formal FIR,
- (iv) Ext.3 is the signature of Ramlochan Tiwary on seizure list,
- (v) Ext.4 is the signature of dcotro on injury report,
- (vi) Ext.5 is C.C. of Judgment dated 30.11.2007 in Cr. Appeal No.107/03, and
- (vi) Ext.6 is C.C. of Judgment dated 17.10.2011 in Cr. Appeal No.21/09.

11. It transpires that the learned Judicial Magistrate, 1st Class, Giridih has acquitted the petitioners for the offences under Section 447, 326, 504 read with Section 34 of the IPC, but the learned Magistrate has convicted both the petitioners for the offences under Section 341/323 read with Section 34 of the IPC.

12. From perusal of the evidence of P.W.6, it transpires that the injury report has not been proved by the Doctor rather it has been proved by the Health Worker and as such, the injury on the person of the informant is not validly proved by a competent witness and hence, injury report i.e, Ext.4 is not proved.

13. It further appears that the occurrence took place in the year 1999 and around 22 years have passed and hence, there is no need to send the petitioners to the jail.

14. It also transpires from the record that the petitioner No.1 namely, Bagha Dhobi is an old aged person.

15. Considering the long protracted trial and mental agony and on the facts and circumstances of this case, the conviction of the petitioners for the offences under Sections 341, 323/34 is upheld, however, the sentence of the petitioners is modified by giving them the benefits of Section 4 of the Probation of Offenders Act, 1958 and as such the sentences of the petitioners is modified to the extent that the petitioner No.1 namely, Bagha Dhobi and the petitioner No.2 namely, Surendra Kumar Mahto are directed to be released on furnishing personal bond of Rs.5,000/- each for a period of one year before the learned Court below.

16. Thus, this Criminal Revision No.1288 of 2017 is hereby, dismissed with the modification in sentence as mentioned above.

(Sanjay Prasad, J.)

Raja