

Jharkhand High Court

Chandreshwar Nonia @ Chandeshwar ... vs State Of Jharkhand on 12 September, 2006

Equivalent citations: 2007 (1) JCR 530 Jhr

Author: D Sinha

Bench: D Sinha

ORDER D.K. Sinha, J.

1. The present criminal Revision Application has been directed against the judgment and order of Constitution passed by Sri Rai Satish Bahadur, Additional Sessions Judge, FTC II, Dhanbad in Criminal Appeal No. 171/1996 on 15.10.2004 whereby and whereunder the appeal of the petitioner was dismissed confirming the judgment and order passed by Sri Surendra Prasad Pandey, Judicial Magistrate, 1st Class, Dhanbad in G.R. No. 2872/1985 corresponding to T.R. No. 700/1996 on 28.11.1996 and the sentence awarded to the petitioner under Sections 323 and 325, IPC of one year rigorous imprisonment with fine of Rs. 1,000/- and simple imprisonment for three months respectively with stipulation on default was confirmed.

2. Briefly stated, the prosecution story which stands narrated in the statement of the informant Bimla Devi before Chirkunda police recorded on 9.10.1985 was that the petitioner Chandreshwar Nonia @ Chandeshwar Nonia had put a wrist watch in the possession of the husband of the informant some two months ago of the alleged date of occurrence. On the date of occurrence he came to the house of the informant in absence of her husband and demanded the wrist watch to which she explained that her husband had been to the market to bring grocery. Upon such explanation the petitioner became furious and he started abusing, to which she opposed and it is alleged that the petitioner pinned her down by holding her hair and assaulted with brick on her nose as a result of which she sustained injuries in her nose and there started bleeding. On alarm her mother-in-law came and rescued her from being more assaulted. When her husband arrived at the scene from the market she narrated the occurrence to her husband. Before such narration of the occurrence to him, while her husband was returning with the grocery the/petitioner Chandreshwar Nonia @ Chandeshwar Nonia along with his brother Bishnu Nonia pulled her husband down on the earth and assaulted him with fists. The occurrence was intervened and pacified by the witnesses. The informant was taken to the police station on Riksha where she delivered her statement by narrating the occurrence. Upon such statement Chirkunda P.S. Case No. 184/85 was instituted against the petitioner Chandreshwar Nonia @ Chandeshwar Nonia and another Bishnu Nonia. Tfee police after investigation submitted chargesheet against both the accused including the petitioner herein for the offence under Sections 341, 325 and 323, IPC. In course of trial since the co-accused Bishnu Nonia did not appear and it was reported that he was dead, a report was called for from the Officer-in-Charge of the police station concerned. The report could not be placed for long and hence the trial of Bishnu Nonia was split up by the order dated 16.5.1996. After full trial the petitioner Chandreshwar Nonia @ Chandeshwar Nonia was convicted for the charge under Sections 325 and 323, IPC with substantial sentencee and fine as referred to above.

3. Learned Counsel on behalf of the petitioner submitted that in course of trial only four witnesses could be produced and examined on behalf of the prosecution viz.:

PW 1 Prasidh Singh PW 2 Bimla Devi (Informant) PW 3 Ganga Paswan (Informant's husband) PW 4 Dr. Vijay Kumar Sinha

4. He further submitted that PW 1 Prasidh Singh was the formal witness who proved the signature of the Officer-in-Charge, Chirkunda Police Station on formal FIR. PW 4 Dr. Vijay Kumar Sinha proved the injury report of the informant Bimla Devi, Ext. 2. In the instant case the material witnesses are only the informant and her husband and no other independent witness was produced on behalf of the prosecution. The mother-in-law of the informant though an important witness of the alleged occurrence has not been produced in the witness box for the reasons best known to the prosecution. Similarly it was alleged that PW 3 Ganga Paswan i.e. the husband of the informant was also rescued by several persons of the locality but none of such persons was examined on behalf of the prosecution.

5. Advancing his argument the learned Counsel submitted that in view of the materials on the record, neither brick, alleged to be used in the offence was produced nor the place of occurrence could be established and the learned Courts below committed grave error of law by passing the order of conviction even without appreciating that the Investigating Officer was not examined and that the First Information Report was not proved. Similarly police failed to collect blood stained earth from the alleged place of occurrence on the back drop of specific allegation of the informant that there started bleeding from her nose after sustaining injuries at the hands of the petitioner. The informant in her deposition has clearly stated that her husband came after about an hour of the occurrence and therefore, her husband could not be an eye-witness and in this manner for the reasons stated above, the trial Court as well as the first appellate Court committed grave error by not appreciating the fact that prosecution case could not be proved as against the petitioner beyond the shadow of all reasonable doubts. The conviction and sentence passed against the petitioner Chandreshwar Nonia @ Chandeshwar Nonia is therefore not sustainable which calls for indulgence of this Court by setting aside the conviction order of the petitioner and the sentence awarded against him.

6. Having regard to the facts and circumstances of the case, it is evident that the doctor PW 4 supported that he had examined Bimla Devi (informant) on 9.10.1985 at about 9.30 p.m. and found lacerated wound 1" x 1/2" x 1/2" on nose with fracture of nasal bone. In his opinion the injury was grievous in nature, caused by hard and blunt substance, may be by brick. He proved the injury report, exhibit (2).

7. The golden rule for weighing the evidence adduced on behalf of the party is the quality of the evidence of the witness and not the quantity. Admittedly in the present case the Investigating Officer has not been examined but his signature has been proved on the First Information Report by PW 1, PW 2 Bimla Devi has consistently narrated the occurrence leading to the complicity of the petitioner for the alleged charge under Section 325, IPC. Similarly the husband of the informant PW 3 is also consistent in his evidence adduced before the trial Court about the assault made by the petitioner and his brother Bishnu Nonia for the alleged charge under Section 323, IPC.

8. As regards place of occurrence PW 3 Ganga Paswan deposed that it was the railway cabin where the petitioner came and after certain altercation pulled her down on the earth and assaulted Bimla Devi with the brick on her nose as a result of which she sustained bleeding injuries from her nose and this fact has been supported by the medical evidence exhibit (2). She stood to the test of cross-examination and the defence failed to collect any material from her statement contrary to the prosecution case. Similarly PW 3 has given a consistent account of the occurrence and the involvement of the petitioner as well as his brother Bishnu Nonia therein. PW 3 Ganga Paswan Le. the husband of the informant is specific that while he was returning at the material time of occurrence he found the petitioner Chandreshwar Nonia @ Chandeshwar Nonia coming out, from his house with Bishnu Nonia where upon he asked as to why they had entered into his house. Such question ignited them and he was pushed by both the culprits as a result of which he fell down. When he entered into his house, he found his wife unconscious with blood smear and on demand she narrated the occurrence. In the cross-examination he admitted that he was working in KMCL, Kumardubl. He admitted that at that time he was living in the railway cabin, though, neither he nor his wife was an employee of the railway. It is important to note that neither the informant PW 2 Bimla Devi nor her husband PW 3 Ganga Paswan in their statements before the Court tried to raise the issue of demand of watch by the petitioner as alleged in the statement of the informant before the police and the defence did not take chance to put any question in this regard to the said witnesses on the issue of genesis of the alleged occurrence, but for such reason, the entire prosecution story cannot be disbelieved on the face of the consistent evidence of the victim as well as her husband. Learned Counsel for the petitioner failed to point out any ground that non-examination of the Investigating Officer has in any manner caused prejudiced to the petitioner. Dr. PW 4 found corresponding injury on the person of the victim PW 2 Bimla Devi as he found fracture of her nasal bone, so as to attract an offence punishable under Section 325, IPC. Similarly PW 3 is consistent that the petitioner with his brother dashed him on the question there being put to them as to why they had entered into his house and as a result of which he fell down. The petitioner and his brother voluntarily caused hurt to Ganga Paswan (PW 3). From the careful scrutiny, I, therefore, find that the judgment passed by the trial Court as well as the first appellate Court are well discussed and no ground is made out so as to call for interference therein.

9. In the result this criminal revision is dismissed. The judgment as well as the order of conviction passed against the petitioner Chandreshwar Nonia @ Chandeshwar Nonia is upheld. However, the trial Court is directed to dispose of the split up record of another accused Bishnu Nonia in accordance with law.