

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 617 of 2011**

Rajesh Mohanty

..... Appellant

Versus

State of Jharkhand

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Nilesh Modi, Amicus Curiae
For the Respondent : Mr. Manoj Kr. Mishra, A.P.P.

ORAL JUDGMENT IN COURT

07/16.02.2024 This Criminal Appeal has been filed on behalf of the appellant challenging the judgment of conviction and sentence, dated 17.10.2011, passed by Indrason Yadav, Asstt. Sessions Judge-I, Seraikella-Kharwan, in Sessions Trial No. 12 of 2005, by which the appellant has been convicted for the offences under Sections 307 and 326 of the I.P.C. and sentenced to undergo R.I. for five years and to pay a fine of Rs.1,000/- for the offence under Section 307 of the I.P.C. and R.I. for four years and to pay a fine of Rs. 1,000/- for the offence under Section 326 of the I.P.C.

2. The informant has lodged the F.I.R. stating therein that on the alarm raised by his father he went near the place of occurrence and found that the appellant was assaulting his father and sister and the appellant with an intention to kill his father tried to hit his father by *Farsa* but when his father raised his hand to save himself, he sustained a cut injury on the

hand. It is stated that the motive of the offence is an old enmity between the parties.

3. Heard Mr. Nilesh Modi, learned Amicus Curiae for the appellant and Mr. Manoj Kumar Mishra, learned A.P.P. for the State.

4. Mr. Nilesh Modi, Learned Amicus Curiae has submitted that the impugned judgment of conviction and sentence dated 17.10.2011 is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the learned Court below has convicted the appellant on mere conjecture and surmises and it is submitted that no offence under Section 307 and 326 of the I.P.C. is made out. It is submitted that the prosecution witnesses examined were highly interested person. It is submitted that no independent witness had supported the offence. It is submitted that at the best this is a case of single blow and there is no repeated blow on the person of the informant by the appellant and as such no offence under Section 307 I.P.C. is made out. It is submitted that there is abrasion or cut injury on the hand and as such, offence under Section 307 I.P.C. is not made out.

It is alternatively submitted by the learned Amicus Curiae that the appellant had remained in custody for about six months and therefore, lenient view may be taken towards the appellant.

5. On the other hand, the learned A.P.P. has submitted that the impugned Judgment of conviction and sentence passed by the Court below is fit and proper and no interference of this Court is required. It is submitted that there are several eye witnesses of the

occurrence and the father and sister of the informant were the injured persons. It is submitted that the P.W. 5 is the informant and who has fully supported the prosecution case and has stood the test of cross-examination. It is submitted that the P.W.1, i.e. Jayanti Malakar and P.W. 4, namely, Tarapado Malakar had sustained injury and P.W.4, namely Tara Pado Malakar had sustained grievous injury on his left hand. It is submitted that P.W. 4 has saved his life when he was intended to be assaulted on his head/neck by the appellant by Farsa, by putting his hand in front of the weapon and hence, offence under Section 307 I.P.C. is also made out. It is submitted that P.W.1 is the sister, whereas P.W.4 is the father of the informant. It is submitted that appellant was annoyed at the informant and his family members as previously also the father of the informant had instituted a case against the appellant and one Pintu Mohanty as said Pintu Mohanty had solemnized marriage with the sister of the informant and the case was lost by the father of the informant against him as also against this appellant. It is submitted that P.W.2, P.W. 5, namely Sarla Devi, i.e. mother of the informant and Shiv Ranjan Malakar, i.e. the Informant himself, respectively and P.W. 3, Chittaranjan Malakar had also seen the occurrence and had seen the appellant causing injury to the father of the informant and his sister and hence, the prosecution has successfully proved his case. It is submitted that non-examination of the I.O. is not fatal to the case as there were several eye-witnesses. It is submitted that the P.W. 6 is the

Doctor of the case, who has proved the injury on the person of the P.W.1, namely Jayanti Malakar and P.W.4, namely Tarapado Malakar. Thus, the prosecution has successfully proved its case and hence, no interference is required from this Court and the Criminal Appeal may be dismissed.

6. Perused the Lower Court Record of this case and considered the submission of both sides.

7. It transpires that the informant had lodged the F.I.R. against the appellant for causing grievous injury to his father and injury to his sister on 18.10.2004 and the police has instituted Saraikela P.S. Case No. 88 of 2004 under Section 341/343/346/307 I.P.C. against the appellant on 18.10.2004.

8. It transpires that police, after investigation, had submitted chargesheet against the appellant for the offence under Section 341, 323, 326, 307 I.P.C. before the C.J.M., Saraikela on 15.12.2004.

9. Thereafter, the learned C.J.M. had taken cognizance against the appellant under Section 341, 323, 326, 307 of the I.P.C.

10. After supplying the police papers, charges were framed against the appellant under Sections 307 and 326 of the I.P.C. by Shri R.N. Rai, learned A.D.J., Fast Track Court, Seraikela on 26.4.2005 and to which the appellant pleaded not guilty and claimed to be tried.

11. During trial the prosecution has got examined six (06) witnesses, who are as follows:

(i) P.W. 1 is Jayanti Malakar, sister of the informant,

- (ii) P.W.2 is Sarla Devi, i.e. Mother of the informant,
- (iii) P.W.3 is Chitranjan Malakar, i.e. brother of informant,
- (iv) P.W.4 is Tara Pado Malakar, i.e. father of informant,
- (iv) P.W.5 is Sheo Ranjan Malakar, i.e. the informant and
- (v) P.W. 6 is Dr. Pranav Kumar.

12. The prosecution, in support of its case, has got marked following documents as exhibits:-

- (i) Ext. 1 is the signature of the informant on the Fardbayan,
- (ii) Ext. 2 and 2/1 are the injury reports of the injured.

13. Thereafter, the appellant was examined under Section 313 Cr.P.C. on 19th August, 2008 and he denied the circumstances put forth before him.

14. Neither any defence witness has been examined nor any document has been marked as exhibit on behalf of the defence.

15. Thereafter, the learned Court below has convicted the appellant and sentenced him under different counts as mentioned above, hence this appeal.

16. So far as prosecution evidence is concerned, P.W. 5, who is the informant of this case, has stated during his evidence that on the alarm raised by his father, he went to the road and saw the appellant armed with *Farsa* and that appellant was misbehaving and abusing his sister and in the meantime when he reached near his father, then the appellant tried to assault him by *Farsa* on his neck, but his father saved himself by his left hand due to which he sustained injury in his left hand. Further he stated that the appellant had assaulted the sister of the informant due to which she sustained cut injury in her finger.

Thereafter, he had taken his father to the Sub-Divisional hospital, Saraikela and submitted written report to the police station and proved his signature on the Fardbayan as Ext.1.

17. However, during cross examination, he admitted that there are also several persons nearby his house. He also admitted that he had not mentioned in the written application that the appellant was teasing or misbehaving with his sister. He also admitted that when his father fell down, neither he raised alarm nor he tried to catch hold of the appellant. He further admitted that the cousin brother of the appellant had performed love marriage with his sister against their wishes. He had denied suggestion that his father fell down after taking wine near the Kali temple due to which his hand was fractured and they instituted false case.

18. Thus, from the evidence of P.W. 5, i.e. the informant it is evident that he is not the eye witness of the occurrence and he went to the place of occurrence on alarm being raised by his father. It is also admitted that the cousin brother of the appellant has solemnized marriage with his sister and there was dispute between both the sides.

19. P.W. 1 is Jayanti Malakar, who is the injured sister of the informant and has stated during her evidence that appellant was abusing her and tried to catch hold of her hand and made cut injury by his *Farsa* in her finger. Thereafter, the appellant tried to assault her father by *Farsa*, but he saved himself by raising his hand to the weapon and sustained fracture

in his hand. Thereafter, she was taken to the hospital and her father was taken to hospital and later on they were sent to M.G.M. Hospital.

20. During cross-examination she also admitted that there were several persons near her house and all the people were watching the occurrence, but none tried to save them. She also admitted that her brother Shiv Ranjan Malakar, i.e. P.W. 5, was driving the vehicle of D.D.C., Saraikela, but she is not aware about his relationship with the driver of the police station, namely Prahlad Mohanty. She further admitted in the Para 6 of her cross examination that the cousin brother of the appellant Rajesh had enticed away her minor sister and her father had named appellant Rajesh in the F.I.R. of the said case for his involvement in the said matter and she is not aware as to whether her sister had given statement in favour of appellant Rajesh.

21. Thus, from scrutinizing the evidence of P.W.1, it is evident that she is the sister of the informant and she is an interested witness and she has admitted dispute between the parties that the cousin brother of the appellant had performed Love Marriage with the sister of the informant. Although she is an injured witness & has allegedly sustained injuries, but her evidence will be seen later on also.

22. P.W. 2 is Sarla Devi, who has stated that she also arrived at the place of occurrence on hearing the alarm and her husband has sustained injury due to the assault made by the appellant by *Farsa* which

caused injury on his left hand. She also stated about the previous dispute between the parties.

During cross examination, she admitted that several persons were assembled where the occurrence had taken place. She also admitted that the police had not recorded her statement. She also stated that Pinku Mohanty, who is the cousin brother of the appellant, had enticed away her daughter and her husband had instituted case against the said Pinku Mohanty and the appellant Rajesh Mohanty in which both Pinku and Rajesh were sent to jail. She also stated that her daughter had given statement in favour of the accused persons. She also admitted that her husband is a worshiper of Goddess Kali and wine is offered there but he did not take it. She denied the suggestion that her husband fell down on the stone of the river after taking wine and due to which he sustained injury.

23. Thus, from scrutinizing the evidence of P.W.2, it is evident that she is the mother of the informant and had supported the prosecution case and she is an interested witness. Although, She has claimed that she had seen the appellant assaulting her husband on the neck by Farsa, but that is also not possible as she had arrived at the place of occurrence after hearing the alarm raised by her husband. Thus, she is at best a hear-say witness and her evidence cannot be relied upon.

24. P.W. 3 is Chitta Ranjan Malakar, who is the elder brother of the informant and arrived at the place of occurrence on hearing the alarm raised by his

father and had seen that the hand of his father was fractured and blood was oozing out and the appellant was standing there with Farsa and there is a old dispute with the appellant.

25. During cross-examination, he himself had admitted that the occurrence had already taken place when he arrived there and he had not seen the appellant assaulting his father. He also admitted that his father had instituted a case against the appellant and his cousin brother as the said cousin brother of the appellant had enticed away his sister and solemnized Court marriage. He also admitted that his father is a worshiper of Goddess Kali but not aware that wine is offered there. He also denied the suggestion that his father fell down after taking wine on the stone of the river causing injury in his hand.

26. Thus, it is evident that the P.W. 3 is a hear-say witness and he had not seen the appellant assaulting his father and that there is a previous dispute between both the sides as the cousin brother of the appellant had enticed away his sister and performed Court marriage. Thus, evidence of P.W. 3 is also not relevant.

27. P.W. 4 is Tarapado Malakar, who is the father of the informant and the injured and he stated during his evidence that the appellant had tried to abuse his daughter Jayanti Malakar and he tried to save her and forbade the appellant from abusing his daughter. The appellant then tried to assault on his head by Farsa and he saved himself by left hand, due to which his left hand was fractured and blood had

started oozing out. Thereafter, he was taken to Sadar Hospital, Seraikela.

28. During cross-examination he stated that several persons including ladies had assembled there and he had become unconscious and not aware as to who had taken him to hospital. He further stated that he was taken to hospital in an unconscious condition and were wearing Dhoti and Gamcha and regained consciousness in the Seraikela hospital and his Dhoti and *Gamcha* were full of blood, but he had not handed over the same Dhoti and Gamcha, however, the police had recorded his statement. He had also admitted that prior to this occurrence also, he had instituted a case against the appellant Rajesh as appellant Rajesh and his cousin brother had enticed his daughter Muna @ Menti and his daughter had given statement in favour of appellant Rajesh and his cousin brother.

He further admitted that there is a house of one Bhikhari Mohanty in front of his house and he also instituted case against said Bhikhari Mohanty and his mother. He further admitted that he has also instituted a case against one Banwari Barik and Tarak Patnaik who are living in Hansa Uri, which is situated near the place where he is living.

He also admitted that he is a worshiper of Goddess Kali and wine is offered at the time of Puja in Kali Mandir. He also admitted that Kali Mandir is situated near river side and there are several stones. He denied the suggestion of fracture of his hand as he had fell down on the stone.

29. Thus, from the evidence of P.W.4, it would appear that he was assaulted by the appellant Rajesh Mohanty by Farsa, but he himself instituted a case against him for enticing his daughter, who had performed Court marriage with the cousin brother of the appellant. He also admitted that wine is offered in the mandir of Kali and he is also a worshiper of Goddess Kali.

30. P.W.5 is Shiv Ranjan Malakar, who had lodged the F.I.R. and has supported the prosecution case by stating that he had seen appellant Rajesh Mohanty assaulting his father by Farsa on his neck and when his father tried save him his left hand got fractured and the appellant had assaulted his sister, who sustained cut injury in her finger. Thus, P.W. 5 has supported the prosecution case.

31. P.W. 6, i.e. Dr. Naveen Kumar has examined the injured Tara Pado Malakar and Jayanti Malakar.

The Injury Report w.r.t. Tara Pado Malakar is Ext. 2 and the injuries found on the person of Tara Pado Malakar are as follows:-

Sharp cut injury over left hand. Size 4" X 3"X ½" caused by sharp cutting weapon. Grievous in nature. Age of injury is within two hours but it is not mentioned in the injury report and

The Injury Report w.r.t. Jayanti Malakar is Ext. 2/1 and the injuries found on the person of injured Jayanti Malakar are as follows:-

Abrasions on left little finger, that is simple in nature, caused by hard & blunt

object. Age of injury is within two hours but it is not mentioned in the injury report.

32. During cross examination, he admitted that he has not mentioned the time when he had examined the injured and he had not mentioned the age of injury because there was no column for mentioning the age of the injury. He further admitted in Paragraph 5 of his cross-examination that the injured Tarapado Malakar was unconscious at the time of examination, but he has not mentioned this fact as there was no such column.

33. Thus, P.W. 6 has proved the injuries on the person of Tara Pado Malakar, i.e. P.W.4 and Jayanti Malakar, i.e. P.W.1 and had not mentioned about the fracture of the hand of P.W.4, namely Tara Pado Malakar and he merely stated that the injury is grievous but without giving any specific finding.

34. From the evidence of P.W.1, i.e. Jayanti Malakar-the injured, it would appear that her brother Shiv Ranjan Malakar is the driver of D.D.C., Seraikela and had some connection with the driver of the police station. P.W. 1 has stated that her father Tarapado Malakar had been taken to the M.G.M. Hospital.

35. P.W. 2-Sarla Devi, i.e. the mother of the informant, P.W. 3, namely Chittaranjan Malakar, brother of the informant and P.W. 4, i.e. father of the informant had not stated that P.W. 4 had been taken to M.G.M. Hospital for treatment, thus the allegation of P.W.1 appears to be an exaggerated one.

P.W.5, Shiv Ranjan Malakar-the informant, but he has also not stated that he had taken his father to M.G.M. Hospital for better treatment.

36. It transpires that the Doctor further admitted of not mentioning in the injury report that the injured were sent to M.G.M. Hospital for treatment.

37. It further transpires that there is no injury report of the M.G.M. Hospital and no doctor of M.G.M. Hospital has been examined.

38. Thus, assertion of informant-P.W.1 that her father was taken to the M.G.M. Hospital is not proved. Even P.W. 2, P.W.3 and P.W. 4 had not supported the assertion that the injured was taken to M.G.M. Hospital.

39. From perusal of the Lower Court record, it would appear that the injury report of the appellant Rajesh Mohanty shows three injuries, i.e. at his left shoulder, right knee and left chest on 18.10.2004 at the time of remand.

40. The I.O. of the case had not been examined by the prosecution, as such there is no discussion regarding the distance of the place of occurrence and the place from which P.W. 5, P.W.2 and P.W. 3 had arrived at the place of occurrence.

41. The blood stained clothes of P.W.4-Tarapado Malakar had also not been handed over to the police officer and it was also not sent to F.S.L. and not produced during trial.

42. Even the doctor, while examining the injured P.W.4, had not stated that his hand was fractured and even an X-Ray was also not done.

43. Therefore, in view of the discussion made above, conviction of the appellant for the offence under Section 307 I.P.C. is not sustainable and thus, the conviction for the offence under Section 307 I.P.C. against the appellant is set aside.

44. So far as the conviction under Section 326 I.P.C. is concerned, it appears that F.I.R. was lodged on 18.10.2004 at 9.15 P.M whereas the occurrence had allegedly taken place on 18.10.2004 at around 9 A.M. in the morning.

From the evidence of P.W. 6, i.e. Dr. Pranab Kumar, it would appear that he had not mentioned even the time for examining the injured in his injury report and during the evidence. The injury report marked as Ext. 2 and marked as Ext. 2/1 respectively appeared to be manufactured one as the Doctor had not mentioned even the time of examining the injured, i.e. P.W. 1 and P.W. 4, namely Jayanti Malakar and Tarapado Malakar in the injury report. Even during his evidence, the Doctor has not stated about the time he had examined the injured. Thus, at best this can be a case of altercation between the sides.

45. It reveals from the record of this case that the appellant was remanded in this case on 19.10.2004, however, he was released on provisional bail for a period from 06.11.2004 to 22.11.2004 on the ground of death of his mother Indu Devi and thereafter, he surrendered again on 22.11.2004.

46. It also transpires that the learned C.J.M., Seraikela, had failed to notice that the appellant had sustained several injuries on his person, but at the time of remanding the appellant it was mentioned that he had not made any complaint of any ill treatment at the hands of the escort party.

47. It transpires that the P.W. 5, namely Sheo Ranjan Malakar is the Driver of D.D.C. and there is also previous enmity between the sides. Injury Report, i.e. Ext. 2 and Ext. 2/1 are manufactured documents and thus, it transpires that the charge against the appellant under Section 326 of the I.P.C. is also not sustainable in the eye of law.

48. Thus, on the facts and in the circumstances, of the case and in view of the discussions made, above, judgment of conviction and sentence, dated 17.10.2011, passed by Indrason Yadav, Asstt. Sessions Judge-I, Seraikella-Kharswan, in Sessions Trial No. 12 of 2005 is set aside and the appellant is acquitted from the charges under Section 307 and 326 I.P.C. and the appellant is discharged from the liability of his bail bonds.

49. Thus, this Cr. Appeal (S.J.) No.617 of 2011 is allowed.

50. Learned Member Secretary, JHALSA is directed to pay Rs. 5,000/- to Mr. Nilesh Modi, learned Amicus Curiae for assisting this Court.

51. Let the copy of this judgment and the entire Original Lower Court Record be sent to the learned Court below at once.

(Sanjay Prasad, J.)