

Cr. Appeal (S.J.) No.1182 of 2006

[Against the Judgment of conviction and Order of sentence dated 27.07.2006 passed by learned Additional Sessions Judge, East Singhbhum at Ghatshila, in S.T. No.257 of 2004]

- 1. Manki Banra son of Opin Banra;
2. Minjari Banra wife of Opin Banra,
3. Opin Banra son of late Renso Banra;

All are the resident of village : Bensasole, Tola-Jiling Gora, Police Station: Mosabani, District: East Singhbhum, Jharkhand

.... Appellants

Versus

The State of Jharkhand Respondent

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGEMENT

For the Appellants : Mr. Soumitra Baroi, Advocate

For the State : Mrs. Priya Shrestha, S.P.P.

29/11/2024

By court:

1. The present appeal is directed against the Judgment of conviction and Order of sentence dated 27.07.2006 passed by learned Additional Sessions Judge, Civil Court, East Singhbhum, Ghatshila in S.T. No.257 of 2004, whereby and whereunder, the appellants have been held guilty and convicted for the offences under Sections 341, 323 and 324 of Indian Penal Code and sentenced to undergo R.I. of 1 years along with fine of Rs.1,000/- for the offence under section 323 of IPC and further sentenced to undergo R.I. of one month

along with fine of Rs.500/- for the offence under section 341 of IPC in default of payment of the fine, they have further been convicted to serve a further R.I. sentence for 10 days.

FACTUAL MATRIX

2. The prosecution story of this case is in nutshell that, On 09.02.2004 at about 3:30 AM, the informant went to nature's call in the field, then, the accused/appellants caught hold him and assaulted with tangi, lathi and fists as a result of which, he sustained injuries on different part of body. It is further alleged that the informant came to his house and narrated the said incident to his father, mother and other villagers, thereafter, he was medically treated by a local doctor. Accordingly, on 10.02.2004, a written information was given to Mushbani Police Station.
3. Upon above information, the FIR being Mushbani P.S. Case No.09 of 2004 was registered against all the appellants and after completion of investigation, charge-sheet was submitted against them for the offences under sections 341, 323, 324, 307/34 of Indian Penal Code. After taking cognizance, the case was committed to the court of Sessions and S.T. No. 257 of 2004 was registered.

4. Learned counsel for the appellants without touching the merits of the judgment has confined himself to the point of non-extending the benefit of section 3 of Probation of Offenders Act, 1958 to the appellants to which they deserve. It is further submitted that the doctor and Investigating Officer of this case have not been examined in this case by the prosecution, therefore, the injury report was not proved. Though, the appellants have been held guilty for the offences under sections 323, 324, 341 of IPC but after hearing on the point of sentence, sentence has been passed for the offences under sections 323 and 341 of IPC against the appellants. Learned trial court has absolutely ignored the arguments of learned counsel for the convicts at the time of hearing on the point of sentence as it was the first offence of the appellants and one of the appellants is an old lady of 60 years and also without recording any specific reasons, the learned trial court declined to extend the benefit of section 3 of Probation of Offenders Act, to which the appellants deserve. It is further submitted that more than two decades have been passed after passing the impugned judgment and the appellants have maintained peace and tranquility and never involved in other cases. Hence, the appellants deserve the benefit of section 3 of

Probation of Offenders Act, 1958 instead of awarding any sustentative sentence to the appellants.

5. Learned S.P.P. appearing for the State has defended the impugned judgment on merits but has raised no serious objection against the plea for extending the benefit of section 3 of Probation of Offenders Act, 1958 to the appellants.
6. Prosecution has examined altogether 6 witnesses in this case and several documentary evidences have also been adduced.
7. I have gone through the entire record of the case along with impugned judgment and order in the light of contentions raised on behalf of both sides, it appears that learned trial court has held the appellants guilty for the offences under sections 323, 324 and 341 of IPC inspite of the fact that the doctor, who conducted the medical examination of the injured person has not been examined and he passed the sentence only for the offence under sections 323 and 341 of IPC. It also appears that learned trial court has not extended the benefit of section 3 of Probation of Offenders Act, 1958 to which they deserve and for which no special reasons have been recorded rather he has acted upon the submission of learned A.P.P. for the State that the offence has been proved against the convicts,

hence, the convicts deserve substantive sentence, which cannot be entertained.

8. Considering the aforementioned circumstances, nature of offence committed by the appellants, their age, character and antecedents, I deem it fit and expedient in the ends of justice to extend the benefit of section 3 of Probation of Offenders Act, 1958 instead of undergoing the substantive sentence of imprisonment awarded by the learned trial court. Accordingly, the appellants are directed to appear before the concerned trial court within three months from the date of judgment and learned trial court shall release the appellants after due admonition as per section 3 of the Probation of Offenders Act, 1958. Accordingly, this appeal is dismissed on merits with modification in sentence as stated above.
9. Pending I.A(s), if any, is also disposed of accordingly.
10. Let the copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

29/11/2024

N.A.F.R./Pappu-