

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (S.J.) No. 42 of 2020

(Against the judgment of conviction dated 25.11.2019 and order of sentence dated 28.11.2019 passed by the learned Addl. Sessions Judge-III, Bermo at Tenughat, in Sessions Trial No.-227 of 2013)

1. Khirodhar YadavAppellants
2. Dhaneshwar Yadav
Versus
The State of JharkhandRespondent

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellants : Mr. Vikas Kumar, Adv.
For the Resp.-State : Mrs. Nehala Sharmin, A.P.P.

11/Dated:-05.07.2024

Heard learned counsel for the parties.

2. This appeal is directed against the judgment of conviction dated 25.11.2019 and order of sentence dated 28.11.2019, passed by the learned Addl. Sessions Judge-III, Bermo at Tenughat, in Sessions Trial No.-227 of 2013 arising out Gomia P.S. Case No. 14 of 2013 corresponding to G.R. No.113/2013; whereby both the appellants were convicted for the offences punishable under Sections 379 and 326/34 of the Indian Penal Code. They have been sentenced to undergo R.I. for four (4) years for the offence committed under Section 326 of I.P.C. with a fine of Rs.5,000/-. In default of payment of such fine, they shall have to undergo further 6 months R.I. and both the appellants shall also undergo two (2) years R.I. for the offence committed under Section 379 of I.P.C.

3. The prosecution case in brief is that on 27.01.2013 at about 4:30 A.M., the informant along with Bharat Ravidas, Sanjay Ravidas were going on a bicycle to bring coal dust. On the way, they reached near Bokaro river bridge. He saw two persons, having uprooted iron-board plate stone inscribed thereupon Lalpania and Rahavan distance in kilometer, were going. The informant and his associate, having parked there cycle, told them

that they were taking board having stolen it. The police would have suspicion over them for committing theft, as their houses were near that board. Thereafter, they started intercepting them, one of them made knife blow over the back of the informant due to which he received injury. The informant's associate caught them and they raised alarm, then Chotan Ravidas, Dhaneshwar Ravidas and Manoj Ravidas reached there and all of them intercepted them. On inquiry they told their name Dhaneshwar Yadav and Khirodhar Yadav. The further averment is that the accused-Khirodhar Yadav made life threatening attempt over informant by dagger blow.

On the basis of the written report of the informant, Gomia P.S. Case No. 14/2013 dated 27.01.2013 under Sections 379/411/324/307/34 of I.P.C. was registered and police started investigation.

After completion of the investigation, police submitted charge-sheet under Section-379/411/324/307/34 of I.P.C. against the above named accused persons and on 23.03.2013 cognizance was taken accordingly and the case record was committed to the Court of Sessions on 20.06.2013. The appellants pleaded not guilty and sent up for trial.

4. Learned counsel for the appellants submits that the prosecution has failed to prove the charges leveled against the appellant and the learned trial court has failed to appreciate that informant and all the prosecution witnesses are very friendly to each other, so they are interested witnesses and not a single independent witness has come to support the prosecution case. The informant is also facing trial in a theft case. His credential is also tainted.

He further submits that from the F.I.R., it is clear that uprooting of milestone by the appellants is only a mere presumption of the informant and there is no antecedent of such cases on appellants. He contended that during course of cross-examination of P.W.-4 (Doctor), he did not mention that the injury

was a punctured wound. He also did not mention the date of discharge report, X-Ray report and U.S.G. report over the injury report and he could not say as to who prepared X-Ray & U.S.G. report.

Learned counsel submits that there was a huge contradiction between the statements of P.W.-7/P.W.-4 and P.W.-1 as regards to injury and wound. The P.W.-7 had said in his statement that A-2 caught him and A-1 assaulted him by dagger at back side of his chest. P.W.-4, who treated P.W.-7, found injury as incised lacerated over the lateral part of chest wall of size 1"x1/2", whereas P.W.-1 stated that he saw blood was oozing from the waist of P.W.-7.

Learned counsel contended that there are further remarkable inconsistencies between the statements of P.W.-1, P.W.-3 and P.W.-5. P.W.-1 had stated in his statement that he took, P.W.-7 to the private hospital from place of occurrence, whereas P.W.-3 stated that police sent P.W.-7 to the hospital from place of occurrence and lastly P.W.-5 stated in his statement that he took P.W.-7 over his shoulder to his house from place of occurrence. He further submits that the statement of the informant (P.W.-7) and P.W.-6 is contradictory, as P.W.-7 had mentioned that he along with P.W.-6 & P.W.-2 parked their cycle and started inquiring from the accused, whereas it appears from the statement of P.W.-6, that he was a little behind to P.W.-7 on the way and reached at place of occurrence upon hearing the alarm raised by the informant upon the dagger blow. He further submits that the statement of P.W.-6 and P.W.-2 is also contradictory, as P.W.-6 mentioned that Lalpania 13 KM and Rahawan 48 KM was written over the iron board whereas P.W.-2 mentioned that only Lalpania 13 KM was written over the iron board and nothing else was written over it.

5. Learned counsel for the appellants, after the aforesaid argument, made an alternative prayer on the question of sentence and submits that the incident is of the year 2013

and the appellants have suffered the mental agony due to ongoing litigation and looking to the overall facts and circumstances of the case, this Court may kindly, at least, modify the sentence for the period already undergone as appellants are middle-aged persons and both the appellants Khirodhar Yadav and Dhaneshwar Yadav, have remained in custody for about 557 days and never misused the privilege of bail and further the appellants are having no criminal antecedent, so some leniency may be granted by this court.

6. Learned A.P.P. opposed the prayer for acquittal and submits that the learned trial court has not committed any error in convicting the appellant. However, he fairly submits that as per record, there is no any criminal antecedent of the appellant; as such, if the sentence is modified, then the same should be modified in lieu of fine.

7. Having heard learned counsel for the parties and after going through the impugned judgment and the documents available on LCR, and looking to the comprehensive facts and circumstances of the case and the deposition of the prosecution witnesses who have considerably proved the case of the prosecution and the findings of the learned trial court; this Court is not inclined to interfere with the Judgment of conviction and thus the same is sustained.

8. Now, coming to the alternative argument of learned counsel for the appellant with regard to sentence awarded to him; this Court is of the view that at this stage remitting the appellants to the rigors of imprisonment at this juncture of his life would not serve the ends of justice and admittedly, both the appellants- Khirodhar Yadav and Dhaneshwar Yadav, have remained in custody for about 557 days.

9. Thus, on the point of sentence, looking to the entire facts and circumstances of the case and also he is not involved in any other criminal activities, as informed by learned A.P.P.; thus,

he has a chance to reform.

10. Taking into consideration of mitigating circumstances, I am of considered view that without interfering with the judgment of conviction, the sentence ought to be modified to the extent that both the appellants shall be released for the period already undergone but subject to payment of fine of Rs.20,000/- each before the D.L.S.A. Bokaro.

11. As a result, the sentence as ordered by the learned trial court is hereby modified to the extent that both the appellants are sentenced for the period already undergone subject to payment of fine of Rupee Twenty Thousand (Rs.20,000/-) each before the D.L.S.A. Bokaro.

12. It is made clear that the appellants shall pay the aforesaid fine of Rs.20,000/- each, before the D.L.S.A. Bokaro within a period of 12 weeks from the date of receipt of copy of this order, failing which the appellants shall serve rest of the sentence as ordered by the learned trial court.

13. With the aforesaid observations, directions and modification in sentence only, the instant criminal appeal stands disposed of.

14. The appellants shall be discharged from the liability of their bail bonds, subject to fulfillment of aforesaid condition.

15. Let a copy of this order be communicated to the trial court and also to the appellant through the officer-in-charge of concerned police station.

16. Let the lower court record be sent to the court concerned forthwith.

(Deepak Roshan, J.)

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