

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No.1377 of 2006**

Guru Charan Karmakar, son of Ranjan Karmakar
Resident of Village- Bhagabandha, P.S. Mango (Mufassil)
District- East Singhbhum.

.... **Appellant**

Versus

The State of Jharkhand **Respondent**

For the Appellant(s) : Mr. D.K. Karmakar, Advocate
For the State : Mrs. Nehala Sharmin, A.P.P.

P R E S E N T

Coram: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

Dated- 04.12.2024

By Court:- Heard Mr. D.K. Karmakar, learned counsel appearing for the appellant as well as Mrs. Nehala Sharmin, learned A.P.P. appearing for the State.

2. This appeal is directed against the judgment of conviction dated 13.07.2006 and order of sentence dated 17.07.2006 passed by Learned Additional Sessions Judge, Fast Track Court No.II, Jamshedpur, Singhbhum East, in Sessions Trial No. 430 of 2004/585 of 2004, whereby and whereunder the appellant has been convicted for the offences under Section 307 of the Indian Penal Code and has been sentenced to undergo R.I. for 5 years.

Factual Matrix

3. The prosecution case is based upon the fardbeyan of the informant (Bablu Besara) stating inter alia that on 14.06.2003 at about 08:00 AM, the informant and his parents found that the

accused was transplanting paddy crops in the field of the informant which was objected by the informant and his parents. Upon which, accused persons assaulted his father Indro Besra and his mother Parvati Besra on their hand with an axe due to which they got injury on their head, back and hand. When the informant tried to rescue them, the accused assaulted him on his forehead and shoulder by the axe. The parents of the informant fell down in the pool of blood. Thereafter, the injured were taken to M.G.M. Hospital for treatment.

4. On the basis of aforesaid fardbeyan, Mango (M.G.M.) P.S. Case no. 174/2003 was registered under Section 324 and 307 of the I.P.C. was registered against three accused persons.

5. After completion of investigation, charge-sheet was submitted before the Court of C.J.M. Jamshedpur and the case was committed to the Court of Sessions for trial and disposal.

6. In order to substantiate the charges leveled against all accused persons, altogether nine witnesses were examined by the prosecution.

7. The case of defence is denial from the charge and further defence is that appellant is innocent who has not committed any offence and he has been falsely implicated in this case.

8. After conclusion of trial the learned trial court, after appraisal of the evidences adduced on behalf of the parties, held the appellants guilty for the offences under Sections 307 of the I.P.C. and sentenced as stated above.

9. Being aggrieved and dissatisfied with the impugned judgment of conviction dated 13.07.2006 and order of sentence dated 17.07.2006; this Criminal Appeal has been preferred by the appellant.

10. Learned counsel for the appellant submitted that the dispute arose between the parties regarding disputed landed property in a sudden manner. There was exchange of assault from both sides and counter case was also pending. The injury sustained by all three injured persons in this case, although has been opined to be caused by sharp cutting weapon as well as hard and blunt substance, but nature of injuries is opined to be simple. In respect of some injury, the opinion was reserved, but no supplementary report was brought on record. Therefore, the injuries are deemed to be simple in nature as such offence no offence under Section 307 of the I.P.C. constituted in the facts and circumstances of this case in as much as there was no intention/knowledge as required to constitute the said offence. The appellant has remained in custody for more than one year during the course of trial of the case. It was his first offence and due to land dispute, the occurrence took place in the year 2003 and more than two decades have been lapsed. Hence, conviction for the offence under Section 307 of the I.P.C. of the appellant is fit to be set aside rather he may be held guilty for the offences under Sections 323, 324 of the I.P.C. for which he has already been sufficiently punished during the course of trial. Therefore, appellant may be awarded the sentence of

imprisonment already undergone instead of awarding the sentence as granted by the concerned trial court.

11. On the other hand, learned A.P.P. appearing for the State has opposed, but on the matter of sentence no objection was raised and defended the judgment on merits.

12. I have given anxious consideration to the aforesaid contentions raised on behalf of both sides and also perused the impugned judgment and order along with materials available on record.

P.W.5 is the informant himself, who has stated that it was Saturday at about 09.30 AM. his paddy field was forcibly cultivated by the accused. He along with his parents went there and when he objected it, upon objection the accused Guru Charan assaulted his parents with axe on his head and his mother on her shoulder. He was also assaulted on his right shoulder.

P.W.9 the medical officer who has examined all the three injured persons and found the following injuries:-

Injuries sustained by Indro Besra

(i) Incised wound on left parietal region of skull 3" x 1/4" scalp deep caused by sharp cutting object.

Nature of injury- Opinion reserved till x-ray report.

Injuries sustained by Bablu Besra:

(i) Lacerated would on right side of parietal region of skull 2" x 1/4 scalp deep.

(ii) Incised wound as right shoulder 2" x 1/4 " muscles deep.

Injury no. 1 caused by hard and blunt substance which is simple in nature as injury no.2 is caused by sharp cutting object.

Injuries sustained by Parvati Besra:-

- (i) Incised wound on left side of forehead $1\frac{1}{2}'' \times \frac{1}{4}''$ x skin deep.
- (ii) Incised wound at the root of left thumb $3\frac{1}{4}'' \times \frac{3}{4}''$ bone deep.
- (iii) Incised wound on right scapular region $4'' \times 1''$ muscles deep with oozing of fresh blood from the wound.
- (iv) Lacerated wound on right wrist $1'' \times \frac{1}{4}''$ x skin deep.

Injury Nos. I, ii, iii are caused by sharp cutting object. Whereas, injury no. iv was caused by hard and blunt object.

P.W.2 and P.W.3 have turned hostile, have not stated anything.

13. From the materials available on record, it appears that the occurrence took place in a sudden manner without any premeditation and there was a counter case also. Therefore, the circumstances under which the occurrence took place and the manner of assault caused to the informant party does not attract the required intention and knowledge for constitution of offence under Section 307 of the I.P.C. rather the same is fall under Section 323 and 324 of the I.P.C. Therefore, the conviction of the appellant under Section 307 of the I.P.C. is hereby set aside and in the facts and circumstances of the case, the appellant is held guilty for the offences under Section 323, 324 of the I.P.C.

14. It appears that appellant has remained in custody for more than one year during the trial of the case. Therefore, instead of awarding any substantive sentence of imprisonment the appellant is sentenced for the period already undergone for the offences under Sections 323, 324 of the I.P.C. accordingly, this appeal is partly allowed with modification in sentence.

15. Pending I.A., if any stands disposed of.

16. Let a copy of this judgment along with trial court records be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court at Ranchi

Dated:-04.12.2024

Amar/-