

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 488 of 2011

Jagannath Hazam Appellant
Versus

The State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Ashok Kr. Pandey, Advocate
 For the State : Mr. Gautam Rakesh, A.P.P.

ORAL ORDER IN COURT

08/16.02.2024 This Criminal Appeal has been filed on behalf of the appellant challenging the judgment of conviction and sentence dated 19th July, 2011, passed by Shri Uday Narayan Mishra, learned Addl. Judicial Commissioner-I, Khunti in S.T. No. 313/2000 arising out of G.R. Case No. 262 of 1999, by which the appellant has been convicted for the offence under Sections 324, 341 of the I.P.C. and sentenced to undergo S.I. for one year and to pay fine of Rs.1,000/- for the offence under Section 324 I.P.C. and appellant was further sentenced to undergo S.I. for one month for the offence under Section 341 I.P.C, however both the sentences have been directed to run concurrently.

2. The prosecution case, as per Fardbayan of Informant Haradhan Bagti, recorded on 03.04.1999, is that on 30.03.1999, the Informant was in the *Hatt*, where one Dashrath and the appellant Jagannath Hazam were abusing. The Informant forbade them to do so. Thereafter, in the night both Dashrath and Jagannath Hazam restrained the Informant near Kausal Basti and assaulted with sword and Bhujali

with intent to kill him. The Informant received injuries on head and other parts of the body and fell down. Thereafter, on alarm being raised both the accused persons fled away.

3. Heard Mr. Ashok Kumar Pandey, learned counsel for the appellant and Mr. Gautam Rakesh, learned A.P.P.

4. Learned counsel for the appellant has submitted that the impugned judgment of conviction and sentence passed by the learned Court below are illegal, arbitrary and not sustainable in the eye of law. It is submitted that there is material contradiction in the evidence of the informant and his wife and other prosecution witnesses.

However, learned counsel for the appellant has alternatively submitted that he is not arguing the case on merit on the point of conviction, however on the point of sentence it is submitted that the appellant was a young man at the time of offence and remained in custody for around two months and hence, he may be given the benefit of the Section 4 of the Probation of Offenders Act

5. Learned counsel for the State raised no objection and submitted that appropriate order may be passed.

6. It transpires that the F.I.R. was lodged against the appellant on 03.4.1999 under Section 324, 323, 307/34 I.P.C.

7. It transpires that the chargesheet was submitted against the appellant and one Dashrath Munda under Section 341/323/324/307/34 of the

I.P.C. on 12.7.1999 before the A.C.J.M., Khunti and learned A.C.J.M. took cognizance under Section 341/323/324/307/34 against the appellant and said Dashrath Munda.

8. After supplying police papers to the accused, the charges were framed against the appellant, namely Jagannath Hazam and Dashrath Munda under Sections 341/34, 307/34 of the I.P.C. and also under Section 324 of the I.P.C. by Shri D.D.Guru, the Addl. Judicial Commissioner-III, Khunti and to which the appellant pleaded not guilty and claimed to be tried.

9. It transpires that the prosecution has examined seven (07) witnesses in support of this case, who are as follows:-

- (i) P.W.-1 is Suresh Bagti,
- (ii) P.W.-2 is Sambat Bagti,
- (iii) P.W.3 is Ambika Aind,
- (iv) P.W.4 is Ghasi Ram Munda,
- (v) P.W. 5 is Keshri Devi,
- (vi) P.W. 6 is Haradhan Bagti, i.e. the Informant-injured
- (vii) P.W. 7 is Senior Registrar of T.M.H. Hospital, namely Dhiraj Kumar Bhatta Mishra

10. To prove its case the prosecution has got marked following documents as the exhibits, which are as follows:

- (i) Ext. 1 is the signature of the Informant on the Fardbayan,
- (ii) Ext. 2 is the Injury report (in torn condition) of Haradhan Bagti, i.e. the Informant-injured.

11. Thereafter, the appellant was examined under Section 313 Cr.P.C. and to which he denied the circumstances put forth before him.

12. Neither any defence witness has been examined nor any document has been marked as an Exhibit.

13. It also transpires that in the meantime, the trial of accused Dashrath Munda has been separated from the trial of the appellant.

14. P.W.1 is Suresh Bagti, who has stated during evidence that he went outside hearing alarm and learnt from Haradhan Bagti, i.e. the Informant that he was assaulted by Jagannath Hazam and Dashrath Munda by sword.

However, during his cross-examination, he admitted that he learnt about the occurrence from the Informant Haradhan Bagti and he had seen the Informant resting in the house but had not seen any bandage on his wound. He also admitted that Haradhan Bagti had not been treated by any Doctor in his village and Haradhan Bagti is his *Mamera* Brother.

Thus, P.W. 1 is a hear-say witness, but he stated that he had not seen any bandage on the wound or on the body of Haradhan Bagti and he stated that Haradhan Bagti is his *Mamera* brother and hence, he is an interested witness and cannot be relied upon.

15. P.W. 2 is Sambat Bagti, who had seen the Informant in injured condition and he was informed by the Informant and his wife that the appellant and one Dashrath Munda had assaulted the Informant.

During cross-examination, he admitted that the Informant-Haradhan Bagti is his cousin

brother. He also admitted that accused persons had fled away before his arrival.

Thus, P.W. 2 is also a hear-say and interested witness.

16. P.W.3 is Ambika Aind, who is also a hear-say witness and has stated during his evidence that he learnt about the occurrence of assault from the wife of the Informant-Haradhan Bagti, who had stated the name of Dashrath and Jagannath (Torn page).

During cross-examination, he admitted that Haradhan is his Uncle. He was confronted on the point of improvement in his statement before the police to which he stated that he had disclosed the name of appellant Jagannath Hazam and Dashrath Munda as he learnt their names from the wife of Informant-Haradhan Bagti.

17. P.W.4 is Ghasi Ram Munda, who is a hear-say witness and has stated that he heard about the assault on Informant-Haradhan Bagti by Dashrath Munda and Jagannath Hazam, however, during cross examination, he admitted that he had not seen the occurrence and he did not know anything about this case and hence, his evidence is not relevant and reliable.

18. P.W.5 is Kishori Devi, who is the wife of Informant-Haradhan Bagti and she has stated that while her husband Haradhan Bagti was going to guard the field of one Bilaiti and she came out of the house with him to see him off and when she went inside the house, then she heard the alarm raised by her

husband and when she came out of the house with a lantern and she saw in the light of the lantern that appellant Jagannath Hazam and another accused Dashrath Munda had thrashed her husband on the ground and Dashrath was assaulting her husband with a Sword and Jagannath had a '*Bhujali*' in his hand. She further stated that when she raised alarm the accused persons fled away. She stated that her husband had received injury on his head, between the upper part of temple and face at both sides, sole of his feet and on his back. Thereafter, she took her husband to TATA Hospital for treatment, where her husband was treated for about two months.

During cross-examination she admitted that she was not aware of the distance of the Tomato Field her husband was going to guard. She stated that there is house of Basant, Lambodar and Kamdev near the place of occurrence, who had also arrived at the place of occurrence and some other persons, namely Radha Govind Singh and Ambika Bagti were also present. Haradhan Bagti was taken to the Hospital by 407 Vehicle, but she is not aware of the name of the owner of the vehicle. She had disclosed before the Police that Co-accused Dashrath had caused injury to Haradhan Bagti by sword, whereas appellant Jagannath was armed with *Bhujali*. She also admitted that she stated before the Police that before her arrival at the place of occurrence, both the accused persons fled away and she had seen her husband in an injured condition lying on the ground. She stated that she was not aware as to who had informed the Police and on which

day. She admitted that she had no quarrel with the accused persons. She has shown ignorance about the land dispute between the father of appellant Jagannath Hazam and one Ambika, who was not examined. She stated that her husband used to sell vegetables in the market, however, she denied the suggestion that her husband was a *Rangdar* and he used to extort money from the Traders of the market. She also denied the suggestion that her husband has been assaulted somewhere outside the village and for which the appellant has been implicated at the instance of one Ambika and Sambat and one Suresh as they had land dispute with the appellant.

Thus, from scrutinizing the evidence of P.W.5, it is evident that she is also a hear-say witness, however, she is the wife and she stated that her husband was not involved in any Rangdari, but her evidence also reveals that the Informant was having some dispute with some persons due to his activities and she is an interested witness and hence her evidence is not reliable.

19. P.W. 6 is Haradhan Bagti, who is the informant of this case and stated that the occurrence took place on 30.03.1999 at around 9 P.M. He stated that in that year he had taken contract of Ubaya Bazar/Market. On the date of occurrence, in day time, Dashrath Munda and appellant Jagannath Hazam were using abusive language against the people of the Bazara and for which the Informant forbade them. Thereafter, after taking meal, while he was going to guard his field of Tomato, then he was assaulted by

Dashrath Munda by Sword due to which he sustained cut injury in head and also assaulted by Bhujali on his head by appellant Jagannath Hazam. He sustained cut injury in his left hand due to sword assault by Dashrath Munda and that he was yet to recover from the wound and had shown the injured finger before the Court. He further stated that he stayed in T.M.H. for around one and half month.

During cross-examination he had stated that he had no previous enmity with both the accused including the appellant. The Health Centre is around at a distance of 2 k.m. from his house, but the distance to Jamshedpur from his house is 55-60 k.m. He further stated that they had not informed about the occurrence to Tamar Police Station on the date of occurrence, but the police had recorded his statement on 03.04.1999 at Jamshedpu and prior to this they had not informed the police and his village is in the middle part of Jamshedpur and falls in Chandil P.S. He stated that he was admitted to the TATA Hospital on the 30.03.1999. He stated that the house of Kamdev, Radhamohan, Basant are located near the Place of Occurrence. He admitted that Ambika Aind is his nephew in relation. He had shown ignorance about the land dispute between the family of appellant-Jagannath Hazam and Ambika Aind. He admitted that he was not aware as to why he was abused by the appellant and Co-accused Dashrath Munda, but he admitted that he was making collection from the market as he has taken contract of the market from the Government. He also admitted that the appellant

had not gone to the market for selling anything. He denied the suggestion that he is a Rangdar and was collecting amount during *Rangdari* and for which he was assaulted by some other persons.

Thus, from scrutinizing the evidence of P.W.6, i.e. the Informant, it would appear that he was an Extortionist and he also failed to show any Government Order for collecting levy from the Market during the entire evidence.

20. P.W. 7 is the Senior Registrar, TATA Main Hospital, who stated that on 31.03.1999, he was posted at Main Hospital, Tata as Senior Medical Officer and on that day he found following injuries on the person of the injured Informant, which are as follows:-

- (i) Lacerated wound left Palm 5cm X 2 cm,
- (ii) Cut wound left side of forehead 5 cm X 3 cm,
- (iii) Cut wound behind the left ear 3cm X 1 cm,
- (iv) Contusion abrasion, lateral side of right arm,
- (v) Cut wound on left elbow 2 cm X 1 cm

He proved his signature on the injury report as Ext. 2.

During cross-examination he admitted of not mentioning the depth of injury in his injury report. He could not say as to whether the injuries were caused by sword, knife or Bhujali, but, he could only say that they were caused by sharp cutting weapon. Thus, the injury report reveals that the injury sustained by the Informant were simple in nature.

21. From perusal of the injury report marked as Exhibit 2, it would appear that the injuries on the person of Informant-Haradhan Bagti are simple and hence, the appellant can be given the benefit of Section 4 of the Probation of Offenders Act.

22. For the sake of convenience, Section 4 of the Probation of Offenders Act is quoted below:-

"Section 4:- Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond. (2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. (3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender. (4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or

without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender. (5) The Court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

23. Under the circumstances, conviction of the appellant, namely Jagannath Hazam under Sections 324, 341 I.P.C. is upheld

However, considering the fact that the F.I.R. was lodged in the year 1999, i.e. 24 years have passed and the appellant has faced long protracted trial, the appellant, namely Jagannath Hazam is directed to be released on bond of Rs. 2,000/- for a period of one year under Section 4 of the Probation of Offender's Act.

24. Thus, this Criminal Appeal is dismissed with the modification in sentence as aforesaid.

25. However, the appellant is directed to execute the bond and in the meantime he must keep the peace and be of good behavior for the said period.

26. Let a copy of this order be sent to the learned Court below at once.

27. Let the entire Original Lower Court Records be sent to the learned Court below at once.

(Sanjay Prasad, J.)