

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 1656 of 2006

*[against the judgment of conviction and order of sentence dated
20.11.2006 passed by learned Additional Sessions Judge, Fast Track
Court, Koderma in Sessions Trial No. 28 of 1999]*

Krishna Prasad, Son of Late Lekha Mistry, resident of Jhumari
Telaiya, Ward No.-06, P.S.- Telaiya, District- Koderma.

..... Appellant

Versus

The State of Jharkhand

..... Respondent

With

Cr. Appeal (S.J.) No. 1658 of 2006

Ram Chandra Rana, Son of Girdhari Rana, resident of Village-
Chandwara, P.S.- Chandwara, District- Koderma.

..... Appellants

Versus

The State of Jharkhand

..... Respondent

With

Cr. Appeal (S.J.) No. 1659 of 2006

Sheo Shankar Prasad, Son of Devchand Mistry, resident of Jhumari
Telaiya, Ward No.-06, P.S.-Telaiya, District- Koderma.

..... Appellant

Versus

The State of Jharkhand

..... Respondent

With

Cr. Appeal (S.J.) No. 1660 of 2006

Birendra Kumar Sharma, Son of Late Ishwari Prasad Sharma,
resident of Village- Mandraj viddha, P.S.- Delha, District- Gaya
(Bihar).

..... Appellant

Versus

The State of Jharkhand

..... Respondent

.....

For the Appellants : Mr. Sahil, Advocate.

[In all cases]

For the Respondent : Mr. Prabhu Dayal Agrawal, Spl.P.P.

[In Cr. Appeal (S.J.) No. 1656 of 2006]

: Mrs. Nehala Sharmin, Spl.P.P.

[In Cr. Appeal (S.J.) No. 1658 of 2006]
: Mrs. Vandana Bharti, A.P.P.
[In Cr. Appeal (S.J.) No. 1659 of 2006]

: Mr. Rajesh Kumar, A.P.P.
[In Cr. Appeal (S.J.) No. 1660 of 2006]

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P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

Dated: 13th December, 2024

1. Learned counsel appearing for the State has submitted that appellant no.1 Sheo Prasad and appellant no. 2 Raghunath Rana of Cr. Appeal (S.J.) No. 1658 of 2006 have died. She has brought on record the communication along with death certificate by way of counter affidavit. Hence, the appeal stand abated so far appellant no.1 Sheo Prasad and appellant no. 2 Raghunath Rana are concerned. In this Cr. Appeal (S.J.) No. 1658 of 2006, the sole surviving appellant no. 3, Ram Chandra Rana.
2. Since all the above appeals arises out of the same FIR and conviction by the common judgment except the appellant Birdenra Kumar Sharma, the appellant of Cr. Appeal No. 1660 of 2006 as during course of trial, he was declared absconder and after delivery of the judgment in Original Case of S.T. No. 28 of 1999, he has surrendered *suo moto* hence, splitting his trial and case was numbered as 28A/1999, convicted and sentenced by separate order.

3. Heard learned counsel for the parties.
4. Appellants have preferred this criminal appeal challenging their conviction and sentence dated 20.11.2006 and 07.12.2006 passed by learned Additional Sessions Judge, Fast Track Court, Koderma in Sessions Trial No. 28 of 1999 and 28A of 1999 arising out of Koderma (T) P.S. Case No. 124 of 1998 (G.R. No. 215 of 1998), whereby and whereunder, the appellants have been convicted for the offence under Sections 147 and 323 of the Indian Penal Code and sentenced to undergo R.I. for two years under Section 147 of the I.P.C. and R.I. for one year under Section 323 of the I.P.C. while the appellants, Sheo Shankar Prasad in Cr. Appeal (S.J.) No. 1659 of 2006 and Krishna Prasad in Cr. Appeal (S.J.) No. 1656 of 2006 have been convicted under Section 148 of the I.P.C. and sentenced for R.I. for three years. All the sentences were directed to be run concurrently.

FACTUAL MATRIX

5. Factual matrix giving rise to this appeal in a narrow compass is that on 14.04.1998, Informant was in shop. After hearing the Hullah, he came out from his shop and saw that his uncle was being assaulted by accused persons by means of Revolver and iron rod and the reason behind that his uncle had given money to Shiv Prasad Sao six years ago and on asking for return, he was being assaulted.

6. On the basis of above information, FIR was registered as Koderma (T) P.S. Case No. 124 of 1998 against the above named accused persons for the offences under Sections 147, 148, 323, 307 and 427 of the I.P.C and under Section 27 of the Arms Act.
7. After completion of investigation, the Investigating Officer of the case has submitted charge sheet against accused persons and After taking cognizance of offence, the case was committed for the trial thereafter, the charges were framed for the offences under Sections 147, 148, 323, 307 and 427 of the I.P.C., which they denied and claimed to be tried.
8. In order to substantiate the charges levelled against them, altogether nine witnesses were examined by the prosecution.

P.W.-1 : Kishun Prasad Singh.

P.W.-2 : Anish Kumar Srivastava.

P.W.-3 : Surendra Yadav.

P.W.-4 : Dhaneshwar Sao.

P.W.-5 : Kailash Sao.

P.W.-6 : Baijnath Sao.

P.W.-7 : Dr. Rajendra Kumar Jamuar.

P.W.-8 : Bishwanath Sao.

P.W.-9 : Rambabu Mandal (I.O.)

9. The case of defence is denial from occurrence and false implication. However, no documentary evidence has been adduced by the defence.
10. The learned counsel for the appellants has submitted that So far as merits of the judgment is concerned, there is no dispute that there was exchange of assault from both side and some injuries have also been sustained by the appellants. Therefore, he confined his argument towards the extension of benefit of Section 4 of the Probation of Offenders Act, 1958. It is further submitted that there was some dispute between the parties relating to the money transaction. There was exchange of assault and the appellant has been held guilty for the offence under Section 323 along with Section 147 and 149 of the I.P.C. and maximum sentence is awarded three years. It is further submitted that at the time of hearing on point of sentence, there was specific plea of the appellants that they have no criminal antecedents and never convicted for any offence and deserve the benefit of Section 360 of the Cr.P.C., but without recording any special reasons as required under law, the learned trial court has failed to extend the benefit of provisions of Section 4 of the Probation of Offenders Act, 1958 or Section 360 of the Cr.P.C. to which appellants deserve. Hence, the judgment of the Trial Court is fit to be modified by extending the benefit of provisions of Probation of Offenders Act, 1958 to the appellants.

- 11.** Per contra, learned A.P.P. appearing for the State has opposed the aforesaid contentions and defended the judgment on merits. But, so far grant of benefit of Section 4 of the Probation of Offenders Act, 1958 no objection has been raised.
- 12.** I have gone through the record of the case along with the impugned judgment of conviction and order of sentence passed by the trial court.
- 13.** Considering the facts and circumstances of the case, nature of offence committed by appellants, their age, character and antecedent, it appears expedient in the ends of justice to extend the benefit of Section 4 of the Probation of Offenders Act to the appellants instead of awarding substantive sentence of imprisonment.
- 14.** In view of aforesaid discussions and reasons, appellants are directed to appear before the concerned trial court within three months from the date of the judgments and the learned trial court is directed to release them upon furnishing bond of Rs.5,000/- with one surety of the like amount each with condition to maintain peace and be of good behavior for a period of one year.
- 15.** The learned trial court may also call for report from the District Probation Officer in this regard if so required. In case of violation of terms and conditions of bond, the appellants

shall be called upon to receive the sentence of imprisonment awarded against them.

- 16.** This appeal is dismissed on merits with modification in sentence as stated above.
- 17.** Let a 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, Ranchi.

Dated: 13.12.2024.

Simran/-**NAFR**