IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal No. 802 of 2006

Keshu Mahto @ Keshu Mahto, son of Sanichar Mahto, resident of Village- Koriabera, P.S. Nawadih, District- Bokaro.

..... Appellant

Versus

The State of Jharkhand ..... Respondent

.....

For the Appellant : Mr. Pankaj Verma, Advocate.
For the Respondent : Mr. Santosh Kumar Shukla, A.P.P.

.....

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

Dated: 14th November, 2024

By Court: - Heard learned counsel for the parties.

2. The present appeal is directed against the judgment of conviction and order of sentence dated 09.05.2006 passed by learned Additional Sessions Judge, F.T.C.-II Bermo at Tenughat in Sessions Trial No. 168 of 1995 and 31 of 2002, whereby and where under, the appellant has been held guilty for the offence punishable under Sections 307 and 326 of the I.P.C. and sentence to undergo R.I. imprisonment of seven years along with fine of Rs.500/- for each offences with default stipulation.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal in a narrow compass is that on 07.06.1995 at 08:00 PM, the informant was present in the courtyard of his house along with his

father and elder brother (Keshu Mahto @ Keshu Mahto/appellant). Meanwhile, the elder brother of the informant started saying the he will construct wall just adjacent to the wall of the informant which he has purchased. Hence, altercation took place between the informant and his brother. It is further alleged that the elder brother of the informant Keshu Mahto @ Keshu Mahto went inside the house and came back with a sharp farsa and gave a blow to the informant with intention to kill him. The informant has sustained two farsa blow, one on his right cheek and another is on his left hand joint. The father of the informant along with others carried the informant on a cot to the D.V.C. Hospital for medical treatment, wherein his fardbayan was recovered by the police.

4. On the basis of fardbeyan of the informant, Nawadih P.S. Case No. 43 of 1995, G.R. No. 417 of 1995 was registered for the offences under Sections 326 and 307 of the I.P.C.

5. After completion of investigation, the Investigating Officer has submitted the charge sheet against the sole appellant for the aforesaid offences and after taking cognizance of offences, the case was committed to the Court of Sessions and in due course, after registration of Sessions Trial Case, the file was transferred to the Additional Sessions Judge

F.T.C.-II who proceeded for trial of the case and after conclusion of trail, has passed the impugned judgment and order.

6. The learned counsel for the appellant has submitted that it was a sudden dispute between two brothers in respect of raising wall and there was no intention or knowledge as require a commission of offence under Section 307 of the I.P.C. Admittedly, the informant was given two Tangi blow which have caused injury on the non-vital part of the body. Although, injuries found to be grievous in nature, but the injures has described by the doctor in the injury report reveals, laceration of muscles and it was not bone injury which is caused by farsa a common instrument of agriculture. Therefore, the conviction of the appellant for the offence under Section 307 of the I.P.C. is not sustainable under law and there is no definite opinion about the nature of injury to be grievous rather it appears to be simple in nature as per injury report which attracts the commission of offence under Section 324 of the I.P.C. The appellant has remained in custody during trial for more than three years, i.e., three years, four months and 11 days and has sufficiently being punished for the offence committed by him. Therefore, taking lenient view in the matter, the appellant may be sentenced for the imprisonment already

undergone instead of awarding of maximum sentence which is imposed by the learned trial court.

7. On the other hand, learned A.P.P. has opposed the aforesaid contentions raised on behalf of the appellant and submitted that the learned trial court has properly initiated the evidence available on record and arrived at the right conclusion. There is no reason for any interference in the impugned judgment of the trial court. This appeal is devoid of merits and is fit to be dismissed.

8. It appears that in the course of trial Seven witnesses were examined by the prosecution:-

P.W.-1 : Sanichar Mahto (Father of the informant).

P.W.-2 : Damodar Mistry (local villager).

P.W.-3 : Dwarika Mahto (brother of the appellant).

P.W.-4 : Hulas Mahto (Informant).

P.W.-5 : Lichiya Devi (Wife of the informant).

P.W.-6 : Dr. Ranjana Sinha (Medical Officer who has examined the injured).

P.W.-7 : S.N. Ram (Investigating Officer).

9. I have gone through the impugned judgment and order along with material available on record. For better appreciation of the contentions raised on behalf of the parities, it is an appropriate to deal with the testimony of

the witnesses examined in this case. P.W-4, Hulas Mahto, informant-cum-injured of this case, who has clearly deposed in his evidence that on the date of the occurrence and his brother Keshu Mahto @ Keshu Mahto gave him twice blow by farsa due to dispute of raising wall and he has sustained cut injury on his hand and both cheeks. He caught the farsa and the accused escaped. He was brought on hospital by his father Sanichar Mahto (P.W.-1) who has also present at the time of occurrence and younger brother (Dwarika Mahto (P.W.-3).

It appears that **P.W.1, Sanichar Mahto** and **P.W.-2 Damodar Mistry** local villager, **P.W.-4 Hulas Mahto**, **P.W.-5 Lichiya Devi** wife of informant have also supported the prosecution story. **P.W.-6 Dr. Ranjana Sinha**, Medical Officer of B.B.C. has examined the injured and the found the following injuries:-

(i) Right Mandibular region plus maxillary region, on the right cheek side, 2 ½" x 2" wound active bleeding present, muscles exposed.

(ii) Deep lacerated wound over the front of the left elbow size about 3"x2 ½" joint space exposed muscles tender with active bleeding.

Above injuries are opined to be sharp cut weapon like farsa, duration of injuries 6 to 8 hours and opined to be grievous in nature.

P.W.-7 S.I. Shambhu Nath Ram, is the I.O. of this case, who after completion of investigation submitted the charge sheet against the accused finding sufficient evidence for the punishable offence Section 326 and 307 of the I.P.C.

10. From perusal of impugned judgment, I find that there is no discussion as to how offence under Section 307 of the I.P.C. is proved in this case. At this juncture, provision of offence under Section 307 of the I.P.C is extracted as under:

> *Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.*

11. In the instant case, the dispute has grown in a sudden manner and the circumstances under which, the injuries are caused and the nature of injury sustained by injured person do not furnish required intention or knowledge for constituting the offence under Section 307 of the I.P.C.

Therefore, conviction and sentence of the appellant for the offence under Section 307 of the I.P.C. is not warranted under law and is fit to be set aside.

12. So far, conviction for offence under Section 326 of the I.P.C. is concerned, the injury report (Ex.2) of the injured itself proves that the injuries are found to be grievous in nature caused by sharp cut weapon and there is clear cut evidence of injured witness that he was assaulted twice by farsa (spade) causing injury on the mouth area. Therefore, there is no doubt that the appellant has voluntarily caused grievous injury by sharp cut weapon to his own brother on a trivial matter. Hence, his conviction for offence under Section 326 of the I.P.C. is upheld and confirmed.

13. So far as alternative plea about quantum of sentence is concerned, admittedly, the appellant has undergone more than three years imprisonment during course of trial of the case and post-conviction. In the facts and circumstances of this case and nature of injuries sustained by the informant, the imprisonment already undergone by the appellant appears to be sufficient punishment in the instant case.

14. In view of the aforesaid discussions and reasons, this appeal is partly allowed. Conviction and sentence of appellant for the offence under Section 307 of the I.P.C is set aside and

conviction for the offence under Section 326 of the I.P.C. is maintained with modification in sentence as stated above.

15. 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.)

Simran/-