IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (S.J.) No.794 of 2006

(Against the judgment of conviction and the order of sentence dated 23.05.2006 passed by Sri Satyendra Kr. Singh, 1st Addl. Sessions Judge, Deoghar, in Sessions Case No.271 of 2001)

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1. Vinod Yadav @ Vinod Kumar Yadav
2. Bharat Yadav @ Mahto
3. Amuly @ Amulya Yadav
4. Bhudeo Yadav @ Bhudeo Prasad Mahto
5. Sudarshan Yadav … … Appellants

Versus

The State of Jharkhand … … Respondent

For the Appellants: M. A.K. Choudhary, Advocate
For the Respondent: Mrs. Vandana Bharti, A.P.P.

PRESENT
HON'BLE MR. JUSTICE RAJESH KUMAR

By Court: Heard the parties.

2. This appeal is directed against the judgment of conviction and the order of sentence dated 23.05.2006 passed by Sri Satyendra Kr. Singh, 1st Addl. Sessions Judge, Deoghar, in Sessions Case No.271 of 2001 whereby the appellants have been convicted for the offence under Sections 147 & 307/149 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for six months with a fine of 500/- for the offence under Section 147 of the Indian Penal Code and in default thereof, further sentence of simple imprisonment for one month. They have been further sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.1000/- for the offence under Section 307/149 of the Indian Penal Code and in default thereof, further rigorous imprisonment for six months. Both the sentences were directed to run concurrently.

3. The criminal law has been put in motion by written report dated 20.07.2000 of P.W.2-Niranjan Yadav upon which, first information report has been registered as Sarath (Chitra) P.S. Case No.86 of 2000 (G.R. Case No. 321 of 2000) under Sections 147, 148,

149, 324, 323, 326, 307, 447, 504 and 341 of the Indian Penal Code. As per the allegation, on 20.07.2000 at about 5.00 a.m., the informant was ploughing Plot No.108 at his village Banjhiken. At about, 6.00 p.m. Vinod Yadav, Bhudeo Yadav and Amuly Yadav armed with Lathi, Sudarshan Yadav armed with Rod and Bharath Yadav armed with Tangi, came there and raised objection. On protest, the informant, his father namely Haradhan Yadav, his aunt namely Astma Devi and his uncle namely Ramdhan have been assaulted by these appellants. As per the allegation, Bharath Yadav assaulted with Tangi on the head of Ramdhan. Axe blow has been given to the informant, uncle and aunt. Thereafter, the informant and his family members had gone to their house and prepared written report and submitted it to the police station, which is the basis for registration of the present FIR.

4. On the basis of the FIR, investigation has been done and the appellants have been charge sheeted under Sections 147, 148, 149, 324, 323, 307, 447, 504 and 341 of the Indian Penal Code. Cognizance has been taken and the case was committed to the court of Sessions and charge has been framed under Sections 147 and 307/149 of the Indian Penal Code.

5. On conclusion of the trial, all the accused persons have been convicted and sentenced under the aforesaid Sections of the Indian Penal Code, against which, present appeal has been filed.

6. To substantiate the prosecution story, altogether 10 witnesses have been examined. P.W.1-Debal Mahto; P.W.2-Niranjan Yadav is the informant and injured witness; P.W.3-Manbharan Yadav; P.W.4-Narshingh Prasad Yadav; P.W.5 Angrej Mahto; P.W.6-Aklu Mahto; P.W.7-Ramdhan Mahto (injured witness); P.W.8-Astma Devi (injured witness); P.W.9-Dr. Lakshmi Narayan Dagral, who has examined the injured; P.W.10-Dilip Prasad Yadav is an Advocate Clerk and formal witness, who has proved fardbeyan, formal FIR and forwarding report. One charge sheet witness namely Haradhan could not be examined due to death.

7. Counsel for the appellants has assailed the judgment of conviction, taking plea that in the present case both the parties are

Gotia. Both has been given allotted share in Plot No.108, which is cause for the dispute. Quarrel has been taken place between the parties and both sides have sustained injury. The injuries sustained by Sudarshan Yadav (Appellant no.5) has been testified by P.W.-9. Further, all the injuries sustained by the informant side is simple in nature, which has been testified by the Doctor i.e. P.W.-9. The court below has not recorded the finding that who is the aggressor. Even FIR has not been proved. It has been admitted by the informant (P.W.-2) in his cross-examination that written complaint has been prepared by Sudarshan Yadav, Chaukidar of the village but the said Chaukidar has not been examined.

Alternatively, argument has been advanced that even prosecution case has been taken to be true at best case under Section 323 of the Indian Penal Code is made out and not under Section 307 of the Indian Penal Code. Considering the period of litigation and the relationship of the parties, sentence may be reduced to the period already undergone as the appellants have remained in custody for one month and two days. Further, argument has been advanced that the investigating officer has not been examined, which has caused serious prejudice to the case of the appellants as the place of occurrence could not be proved.

8. Learned APP has supported the judgment of conviction as well as sentence. It has been argued that the injured witnesses have testified the assault which gets corroborated by the medical evidence. Non-examination of the I.O. will not make any difference as sufficient evidence has come in the testimonies of the injured witnesses and the fact that one of the appellants has sustained injury in the scuffle.

9. From perusal of the record, it appears that the appellants and the victims are Gotia. There is dispute with regard to Plot No.108 and due to this dispute, scuffle has been taken place between the parties. There is exaggeration of the incident by the informant regarding use of weapon. From the testimony of the Doctor (P.W.-9), it appears that the injuries sustained by P.Ws.2, 7 and 8 are simple in nature caused by hard and blunt substance. One of the appellants has also sustained injury.

10. It is trite that Section 307 of the Indian Penal Code is nothing but failed murder. Every injury or every assault is not an attempt to murder. To constitute ingredients of Section 307 of the Indian Penal Code, it must be proved that assailants have been taken all steps for killing but have failed due to circumstances beyond his control. In the present case, only scuffle has been taken place between the parties. There was no intervention of any third party. After simple injury, the appellants have left the place of occurrence. The injuries proved are simple in nature, which is punishable under Section 323 of the Indian Penal code.

11. Considering the entire material available on record and the discussion made hereinabove, this Court finds that the conviction of the appellants under Section 307 read with Section 149 of the Indian Penal Code is not sustainable and accordingly, it is converted into Section 323 read with Section 149 of the Indian Penal Code. Conviction under Section 147 of the Indian Penal Code is sustained.

12. The incident is of the year 2000. The trial has concluded in the year 2006 and the appeal is being heard in the year 2020. Considering the period of litigation and the relationship between the parties and further the nature of dispute and also considering the fact that who is the aggressor has not been proved by the prosecution, this Court feels that end of the justice will be satisfied, if the sentence is reduced to the period already undergone i.e. one month and two days. So far fine imposed upon the appellants is concerned, that is maintained.

13. Consequently, the judgment of conviction and the order of sentence dated 23.05.2006 passed by Sri Satyendra Kr. Singh, 1st Addl. Sessions Judge, Deoghar, in Sessions Case No.271 of 2001 is modified to the extent that the conviction of the appellants under Section 147 of the Indian Penal Code is sustained but conviction under Section 307 read with Section 149 of the Indian Penal Code is converted into Section 323 read with Section 149 of the Indian Penal Code. The sentence is modified to the period already undergone i.e. one month and two days. The fine as imposed by

the trial court is sustained. The fine should be deposited within two months from today.

14. With the above modification, this appeal stands disposed of.

15. Since the appellants are already on bail, they are discharged from liability of their bail bonds.

(Rajesh Kumar, J)

Jharkhand High Court at Ranchi
The 9th January, 2020
Ravi/NAFR/