IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 801 of 2005

Baij Nath Mirdha …… **Appellant**

Versus

The State of Jharkhand …… **Respondent**

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant :Mr. S.P. Roy, Advocate
For the State : Mrs. Vandana Bharti., A.P.P.

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ORAL JUDGMENT IN COURT

Order No. 08/ Dated: 11.12.2024

This Criminal Appeal has been filed on behalf of the appellant by challenging the judgment of conviction and sentence dated 23.06.2005 passed by Sri Lakshmikant Sharma, then 1st Additional District & Sessions Judge, Pakur in connection with Sessions Case No. 143 of 2002 arising out of Amrapara P.S. Case No. 34 of 2002 corresponding to G.R. Cases No. 380 of 2002 (T.R. Case No. 219 of 2002) by which the appellant and one Ram Prasad Mirdha (deceased) have been convicted for the offences under section 341, 324 of the I.P.C. and sentenced to undergo R.I. for the period of one (01) month each for the offence under section 341 of the I.P.C. and further sentenced to undergo R.I. for one (01) year each for the offence under section 324 of I.P.C. .

However the learned Lower Court below has directed that both the sentences shall run concurrently.

However, the learned Court below has acquitted the appellant and Ram Prasad Mirdha (deceased) for the offence under section 307 of the I.P.C.

2. The prosecution case, in brief, is that while the Informant was returning from village Balami to his unit and when he reached near a Tanki having one lakh gallon capacity

at dam road then both the accused persons asked him to stop his motor cycle. The informant stopped his motor cycle then the appellant No. 1 Ram Prasad Mirdha (deceased) ordered his son to kill the Informant and upon which Baijnath Mirdha (i.e. the appellant) inflicted him a sharp sword blow and the Informant tried to save himself then the sword hit him in between his left elbow and shoulder due to which the Informant sustained injury. He raised hulla and anyhow he saved himself and came to the Unit and he went to the Air Force Hospital for his treatment. After getting first aid, he went to Amrapara P.S. It is also alleged by the Informant that he had some hot talks with the accused persons and the accused persons had threatened him of dire consequences.

3. Heard learned counsel for the appellant and learned counsel for the State.

4. Learned counsel for the appellant submitted that impugned judgment of conviction and sentence passed by the learned Court below is illegal, arbitrary and not sustainable in the eye of law.

However, learned counsel for the appellants alternatively submitted that that the appellant has undergone long protracted trial for 22 years and original Appellant No. 1 Ram Prasad Mirdha has already died, hence lenient view has taken in favour of sole appellant .

5. On the other hand, the learned A.P.P. raised no objection.

6. Perused the Lower Court Record and considered the submission made by both the sides.

7. It appears that the Informant Kalyan Mandal had lodged the FIR against the appellant and one late Ram Prasad Mirdha (i.e the Original Appellant No. 1) on 28.07.2002 for the offences under section 341, 323,324 307 and 504 of the I.P.C. giving rise to Amrapara P.S. Case No. 34 of 2002 .

8. The Police, after conducting investigation, had submitted charge-sheet under sections 341, 323, 324 307 and 504 /34 of the I.P.C against the appellant and one Ram Prasad Mirdha on 04.09.2002 before then Additional Chief Judicial Magistrate, Pakur and then Additional Chief Judicial Magistrate had taken cognizance on 15.11.2002 under sections 341, 323,324 307 and 504 / 34 of the I.P.C against the appellant and Ram Prasad Mirdha.

9. After supplying the police papers, the case was committed to the Court of Sessions.

10. The Charges were framed on 17.06.2009 against the accused persons namely Ram Prasad Mirdha (deceased) and Baijnath Mirdha for the offence under sections 341, 324 307 and 504 /34 of the I.P.C and to which the appellant and Ram Prasad Mirdha (deceased) pleaded not guilty and claimed to be tried.

11. During trial the prosecution got examined seven (07) witnesses who are as follows:-

(i) P.W. 1 is Dr. Ashok Kumar Srivastava,

(ii) P.W. 2 is Kalyan Mandal i.e. the Informant,

(iii) P.W. 3 is Srikant Mandal,

(iv) P.W. 4 is Ved Prakash Mehta,

(v) P.W. 5 is Rabin Kujur is part I.O. of this case,

(vi) P.W. 6 is Rameshwar Pandit and

(vii) P.W. 7 is Parendra Kumar Bahal .

12. The prosecution in support its case has got marked the following document as the Exhibits, which are as follows:-

(i) Exhibit-1 is injury report,

(ii) Exhibit -2 is fardbeyan and

(iii) Exhibit- 2/1 is endorsement on FIR (signature of the P.W. 4 on fardbeyan) .

13. Thereafter the appellant and Ram Prasad Mirdha (deceased) were examined under section 313 Cr.P.C. on 11.01.2005 by the learned Court below and to which they denied the circumstances put forth before them.

14. Thereafter the learned Court below has passed the impugned judgment of conviction and sentence against the appellant and Ram Prasad Mirdha (deceased).

15. It transpires that P.W. 1 is Dr. Ashok Kumar Srivastava who had examined the injured and find following injury on his person as follows:-

(i) Sharp cut wound 6 cm 1cm X 1cm deep on medial surface of left arm,

(ii) Abrasion - 1cm X ½ cm on left palm ,

(iii) Nature of injuries simple. Caused by sharp cutting weapon,

(iv) Age of injuries between 6 to 12 hours at the time of examination ,

(v) M/I of identified scar of cut wound right leg .

He proved the injury report marked as Exhibit-1.

16. From perusal of evidence of the Informant examined as P.W. 2, it would appear that the sole appellant Baij Nath Mirdha had assaulted him by sword below elbow for keeping relationship with one Devri Paharin daughter of Jabra Pahariya and also prohibiting him for selling the wine.

Though the Informant had claimed that the appellant had assaulted him by sword by causing injury in his left arm, however it also appears that there was some dispute between the parties as the appellant had objected the relationship of the Informant with one Devri Paharin.

17. P.W. 4 is Ved Prakash Mehta, he is the second Investigating Officer of this case and submitted charge-sheet against the appellants. However he admitted that neither recorded statement of any witnesses nor step the place of occurrence which marked as Exhibit -3.

18. P.W. 5 is Robin Kujur who is the part Investigating Officer who had recorded the statement of the witnesses.

During cross- examination, he admitted that he had not prepared the map and he also admitted that he had not seized any weapon from Singharsi Health Centre. Even he had not seen the blood stained cloth of the Informant.

19. P.W. 6 is Rameshwar Pandit and P.W. 7 is Parendra Kumar Bahal and they have been declared hostile by the prosecution.

20. P.W. 3 is Srikant Mandal, the father of the Informant and who is the hearsay witness. Even he admitted during his cross-examination that he is not aware of dispute with son of Ram Prasad Mirdha i.e. with the appellant. He also admitted that his son had gone to meet Jagru Pahariya on the date of occurrence. He also admitted that the police had not taken over the blood stained Gangi of the injured – Informant. Thus, P.W. 3 is an interested witness and hence he is not reliable .

21. Considering the evidence led on behalf of the prosecution, this Court finds that the conviction of the appellant under section 324 of the I.P. C. is not proper rather at best he can be convicted for the offence under section 323 of the I.P.C.

22. Under the circumstances, the conviction of the appellant Baij Nath Mirdha is altered from under section 324 I.P.C. to under section 323 of the I.P.C.

23. So far as sentence is concerned , it appears that the occurrence took place in the year 2002 on 18.07.2002 and more then 22 years have been passed and the appellant has faced the agony of long protracted trial , hence he can be given the benefit under section 4(1) of Probation Offenders Act which is as follows:-

> **"Section 4 :- Power of Court to release certain offenders on probation of good conduct:-**
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> (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 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 behavior.
>
> 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."

24. Considering the rigors of trial and also long protracted trial for more than 22 years and also considering the fact, the Appellant Baij Nath Mirdha is directed to be released on furnishing bond of Rs.5000 with one security for the period of one year under Section 4 of the Probation of Offender's Act.

However, the Appellant Baij Nath Mirdha is directed to appear and receive sentence when called upon during such period and in the meantime he must keep the peace and be of good behavior during the said period.

25 . Thus, the conviction of the appellant under Section 324I.P.C is altered to section 323 of I.P.C. and his sentences is modified as indicated above.

26. The appellant Baij Nath Mirdha is directed to execute the bond of Rs. 5,000/- within Twelve (12) weeks from today.

25. Thus, this Criminal Appeal No. 801 of 2005 is allowed in part to the extent as indicted above.

26. Let the Original Lower Court Records be sent to the learned Court below at once by the Office.

(Sanjay Prasad, J.)

Bibha/