

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 582 of 2012

1. Gopal Sharma son of Somaru Sharma
2. Awadhesh Sharma son of Somaru Sharma
3. Birbal Sharma son of Somaru Sharma
4. Nagendra Sharma son of Gopal Sharma
5. Mantu Sharma @ Mantu Vishwakarma son of Gopal Sharma
All residents of Village-Simar Sot, P.O. & P.S. -Haidarnagar,
District-Palamau Petitioners

-Versus-

The State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through Video Conferencing

07/06.09.2021 Heard Ms. Vani Kumari, the learned counsel
appearing on behalf of the petitioners.

2. Heard Mr. Shailesh Kumar Sinha, the learned A.P.P.
appearing on behalf of Opposite Party-State.

3. The present criminal revision application is directed
against the Judgment dated 28.04.2012 passed by the learned
Additional Sessions Judge-I, Palamau at Daltonganj in Criminal
Appeal No. 85/2006 whereby and whereunder the appellate
court confirmed the conviction of the petitioners under Sections
341, 323, 325, 504/34 of the Indian Penal Code, but modified
their sentences by awarding separate sentences under Sections
341, 323 and 504 of the Indian Penal Code and maintaining
their sentences for the offence under Section 325 of the Indian
Penal Code.

4. The learned trial court, vide Judgment of conviction and
the order of sentence dated 29.08.2006 passed by the learned
Judicial Magistrate, 1st Class, Palamau at Daltonganj in G.R. No.
1426 of 2001 / Tr. No. 902 of 2006 (arising out of Haidar Nagar
P.S. Case No. 24/2001 dated 09.11.2001), had convicted and
sentenced the petitioners as under:

Sr. No.	Name of the petitioners	Conviction by the trial court	Sentences awarded by the trial court	Comments
1.	Gopal Sharma	Under Sections 341, 323, 324, 325, 504/34 of Indian Penal Code	Only under Section 325 of IPC, Rigorous Imprisonment for 2 ½ years and fine of Rs. 500/- and in default of payment of fine, Simple Imprisonment for three months.	No separate sentence was awarded for offences under Sections 341, 323, 324, 504/34 of IPC by stating that the same facts constituted different offences.
2.	Awadhesh Sharma		Only under Section 325 of IPC, Rigorous Imprisonment for 1 year and fine of Rs. 500/- and in default of payment of fine, to undergo Simple Imprisonment of three months.	
3.	Birbal Sharma			
4.	Nagendra Sharma			
5.	Mantu Sharma @ Mantu Vishwakarma			

5. The learned appellate court acquitted all the petitioners from the charge under Section 324/34 of the Indian Penal Code on the ground that the charge was defective and confirmed the conviction of the petitioners under Sections 341, 323, 325, 504/34 of the Indian Penal Code and maintained their sentences for the offence under Section 325 of the Indian Penal Code.

6. The appellate court was of the view that the reason given by the learned trial court for not awarding separate sentence for the offences under Sections 341, 323, 324, 504/34 of IPC for which the petitioners were convicted is not sustainable and was of the view that the learned trial court ought to have awarded separate sentence for each offence, because these offences are different in nature and based on different facts and separate charges are needed to be framed. Accordingly, the learned appellate court rectified these defects by making necessary

amendment by way of addition in the order of sentence by invoking the provision under Section 386(e) of Cr.P.C. The appellate court had set aside the conviction of the petitioners under Section 324/34 of the Indian Penal Code, no sentence was awarded under Section 324 of the Indian Penal Code. Accordingly, the learned appellate court modified the sentences of the petitioners, in addition to the sentences for the offence under Section 325 of the Indian Penal Code, by awarding separate sentences for the offences under Sections 341, 323, 504/34 of IPC also which are as under:

Sr. No.	Name of petitioners	Sentences awarded by appellate court
1.	Gopal Sharma	-Rigorous Imprisonment for two months under Section 341/34 IPC,
2.	Awadhesh Sharma	-Rigorous Imprisonment for three months under Section 323/34 of IPC,
3.	Birbal Sharma	-Rigorous Imprisonment for one month under Section 504/34 of IPC
4.	Nagendra Sharma	and
5.	Mantu Sharma @ MantuVishwakarma	-Maintained the sentences under Section 325/34 IPC as awarded by the learned trial court and all the sentences were directed to concurrently.

7. From perusal of the records of this criminal revision, it appears that the appellate court judgment was passed on 28.04.2012 and the petitioners were directed to surrender within a period of fortnight from the date of receipt of the judgment by the learned trial court to serve the sentence. It appears from the Vakalatnama filed in the present case that the petitioners were in custody at the time of filing of the present criminal revision petition which was filed on 25.07.2012 and the petitioners were directed to be enlarged on bail vide order dated 02.08.2012 and

a few days must have been taken by the petitioners to furnish the bail bond before the learned court below.

Submission on behalf of the petitioners

8. The learned counsel for the petitioners while assailing the impugned judgments submitted that there was previous dispute between the parties and in support of the previous dispute, one judgment dated 09.05.2005 passed in G.R. No.28 of 2002 has also been exhibited before the learned court below as Exhibit-A and the Petitioner No.1 herein, Gopal Sharma, has been acquitted in the said case from the charges under Sections 380 and 457 of Indian Penal Code. However, during the course of argument while referring to the said judgment i.e. Exhibit-A, it transpired that the said case was instituted in the year 2002 and the present case was instituted in the year 2001.

9. The learned counsel for the petitioners further submitted that a *panchayati* was held to resolve the dispute between the parties, but the matter could not be settled and the present incident had taken place. She submitted that P.W.-2 has specifically stated that there was enmity between the parties and therefore, in view of previous enmity between the parties, false implication of the petitioners cannot be ruled out. She also submitted that all the prosecution witnesses are interested witnesses and considering these aspects of the case, the petitioners may be given benefit of doubt.

10. Learned counsel further submitted that without prejudice to the aforesaid submissions, the fact remains that the incident is of the year 2001 and more than 20 years have elapsed from the date of occurrence and the petitioners have also remained in custody for some period. She submitted that the sentences of the petitioners may be modified and reduced to some extent and some fine amount may be imposed upon them which may

be directed to be remitted to the victims of the case by way of victim compensation.

Submission on behalf of the Opposite Party-State

11. Learned counsel appearing on behalf of the Opposite Party-State opposed the prayer and submitted that two persons i.e. informant and his father are the victims of the case and they have suffered grievous injuries. He further submitted that both the victims have fully supported the prosecution case and considering the nature of injuries suffered by the victims and the evidences on record, the prosecution has been able to prove the case beyond all reasonable doubt. He submitted that merely because interested witnesses have been examined in the present case, the same by itself cannot be a reason to reject their evidence, particularly in view of the fact that they have been fully cross-examined from the side of the defence. He submitted that there are concurrent findings recorded by the learned courts below and accordingly, conviction of the petitioners may not be set aside in revisional jurisdiction. Learned counsel also submitted that the maximum substantive punishment which has been awarded to the petitioners in this case is in connection with the offence under Section 325/34 of Indian Penal Code and the Petitioner No.1 has been sentenced to undergo Rigorous Imprisonment for 2 ½ years and rest of the petitioners have been sentenced to undergo Rigorous Imprisonment for 01 year under the said section. He submitted that so far as the offence under Section 324/34 of Indian Penal Code is concerned, all the petitioners have been acquitted from the said charges by the learned appellate court. He also submitted that they have also been convicted under other sections of Indian Penal Code though lesser punishment has been given in those sections. He submitted that the maximum

sentence prescribed under Section 325 of the Indian Penal Code is 07 years and considering these aspects of the matter, the punishment imposed upon the petitioners is sufficient and justified. However, he did not dispute the fact that the incident is of the year 2001 and more than 20 years have elapsed and accordingly, he submitted that it is for this Court to consider the prayer for modification of sentences of the petitioners.

Findings of this Court

12. After hearing the learned counsel for the parties and considering the materials available on record, this Court finds that as per the prosecution case, on 01.10.2001 at about 12:00 hours in the day, the informant's father was returning home with the bundle of grass for his cattle from his field and when he reached near his house, the Petitioner No.1 Gopal Sharma abused him and also assaulted him with slaps and lathi and other accused persons i.e. the other petitioners also assaulted him as a result of which his father received bleeding injury on his head. While the informant was trying to save his father, he was also assaulted with lathi on his head. The petitioners namely, Nagendra Sharma and Mantu Sharma stated that they had taken old revenge and also threatened the victims with dire consequences, if any overt act is committed in future. On the basis of the written report, Haidar Nagar P.S. Case No. 24/2001 dated 09.11.2001 was registered under Sections 341, 323, 325, 504/34 of the Indian Penal Code. After completion of investigation, the investigating Officer (P.W.-10) submitted charge-sheet dated 10.12.2001 under Sections 341, 323, 324, 325, 504/34 of the Indian Penal Code against the petitioners and cognizance of the offence was taken on 20.02.2002 under the same Sections. On 20.06.2002, the charges were framed against the petitioners for offences under Section 341/34, 323/34, 324,

325 and 504 of the Indian Penal Code which were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

13. In course of trial, the prosecution examined altogether 10 witnesses. P.W.-1 is Muneshwar Rajwar who is the father of the Informant and an injured victim, P.W.-2 is Muneshwar Yadav, P.W.-3 is Asbarati Devi, P.W.-4 is Tetar Ram, P.W.-5 is Rampati Rajwar who is the Informant and the other injured victim of the case, P.W.-6 is Ramjeet Yadav, P.W.-7 is Radha Mohan Yadav, P.W.-8 is Kalash Rajwar, P.W.-9 is Dr. Anil Kumar who is the Doctor who had examined both the victims and P.W.-10 is Banarasi Prasad who is the Investigating Officer of the case. The prosecution also adduced documentary evidences in support of its case which have been marked without objection. Exhibit-1 is signature of informant on the written report, Exhibits-2 and 2/1 are injury reports of P.W.-5 (Informant) and P.W.-1 (father of informant) respectively, Exhibits-2/2 and 2/3 are the opinions of doctor regarding the injury reports, Exhibit-3 and 3/1 are the X-ray plates of P.W.-5 and P.W.-1 respectively, Exhibit-4 is the formal F.I.R. and Exhibit-5 is the charge-sheet.

14. On 11.07.2006, the petitioners were examined under Section 313 of Cr. P.C. wherein they denied the incriminating evidences put to them and claimed to be innocent. The petitioners did not examine any oral witness in their defence, but filed certified copy of the judgment passed in G.R. Case No. 28/2002 which was marked as Exhibit-A without objection.

15. Learned trial court considered the oral and documentary evidences available on record including the materials produced from the side of the defence and recorded its findings in Para-20 and 21 which read as under:

"20. Now I am considering the evidence on record.

From the evidence of P.W.-2, it appears that he is not an eye witness, but a hearsay evidence supported assault between Gopral Sharma and Muneshwar Rajwar. P.W.-2, she is also not an eye witness, but she reach at place of occurrence after the occurrence and saw accused persons with lathi and broken head of Muneshwar Rajwar and also injury of Rampati Rajwar. P.W.-4 he during cross-examination deposed that he reach at place of occurrence after ten to fifteen minutes from the sound of quarrel. Assault took place for a period of 10-15 minutes, but during chief, supported the prosecution case. P.W.-6 is also a hearsay witness, but supported that between Gopal Vishwakarma and Muneshwar quarrel took place. Further he was declared hostile and nothing has been extracted by prosecution during cross-examination except denial of suggestion. P.W.-7 he is also hearsay evidence, but supported that he heard about assault between Gopal Sharma and Muneshwar Rajwar. P.W.-8 he also a hearsay evidence, but supported that he heard about assault between Gopal Sharma and Muneshwar Rajwar.

16. The learned trial court also considered all the points raised on behalf of the petitioners in their defence during the course of arguments and convicted the petitioners and sentenced them as mentioned above in detail.

17. The learned appellate court also considered the materials on record and recorded its finding at Paras-14 and 15 which read as under:

“14. There is specific, cogent and consistent evidence that the accused persons in furtherance of their common intention inflicted lathi blow on the hand of the informant and they also inflicted bleeding injury on the head of his father and they have caused such injuries by means of lathi, which is a hard and blunt substance. Further the learned lower court rightly found that no any material as regard previous enmity between the parties was brought on record. Hence, the defence of false implication is not sustainable. I do not find any illegality, impropriety and infirmities in the impugned judgment of conviction. The convicts have restrained the informant and his father and abused the informant’s father and assaulted them with lathi in furtherance of their common intention to commit the alleged offence. The learned lower court has rightly found

that the date and time of the occurrence and the place of occurrence have also been substantiated by the prosecution witnesses. Further, the evidence is very prominent and conspicuous that the informant Rampati Rajwar sustained injury on his left forearm and his father Muneshwar Rajwar sustained injury on his scalp left side, tip of right index finger, left thumb and dorsum of left middle finger and with the result of such injury the lower shaft of left ulna of the informant Rampati Rajwar had been fractured, which was grievous in nature and his father had also sustained grievous injury as his proximal phalanx of left thumb and base of, middle phalanx of his left middle finger had also fractured. On account of the grievous injury caused to these injured the offence under Section 325/34 of IPC has got substantiated considering the evidence in its entirety. Further, the ld. Lower court has rightly convicted the accused persons under Sections 341, 323, 325, 504/34 of I.P.C. But their conviction under Sections 324/34 of the I.P.C. is not sustainable in the eye of law. On proper appreciation of evidence on record including medical evidence and F.I.R., I find that there is nothing on record to consider that the alleged wounds were inflicted by any sharp cutting weapon. In absence of use of such weapon, I do not find it proper that the appellants ought to have also been convicted under Section 324/34 of IPC. Further, on perusal of the charge framed against the appellants, it appears that charge framed under Sections 324/34 I.P.C. against the accused persons shows that the accused persons voluntarily caused hurt to informant by means of lathi which is an instrument of stabbing. But this charge is defective on the very face of the FIR. Hence, there was no basis to convict the appellants under Section 324/34 of IPC. Hence the conviction of the appellants under Section 324/34 of IPC by the learned lower court is hereby set aside and all the accused persons stand acquitted under Section 324/34 of IPC.

15. On perusal of the entire evidence on record i.e. oral as well as documentary evidence and the evidence of the doctor and the I.O. including the injured persons, it appears that the learned lower court has meticulously examined the evidence on record and has rightly come to the finding that the appellants have committed the alleged occurrence and as such the learned lower court has rightly convicted the convict Gopal Sharma and adequately sentenced him to undergo 2 ½ years R.I. and also to pay a fine of Rs. 500/- and in cause of default of payment of fine, further to undergo 03 months S.I. under Section 325/34 IPC

and the rest convicts Birbal Sharma, Mantu Sharma, Awadhesh Sharma and Nagendra Sharma have also been rightly convicted and properly sentenced to undergo R.I. for one year and also to pay a fine of Rs. 500/- each and in default of payment of fine three months S.I. under Section 325/34 of IPC."

18. The learned appellate court recorded that the learned trial court had rightly convicted the petitioners under Sections 341, 323, 325, 504 and 34 of the Indian Penal Code, but the conviction under Section 324/34 of IPC was not sustainable in the eyes of law as the charge framed under Section 324/34 of the Indian Penal Code was defective and therefore, the learned appellate court set aside the conviction of the petitioners for offence under Section 324/34 of Indian Penal Code on this technical ground. So far as conviction of the petitioners under other Sections are concerned, the learned appellate court upheld the same. The learned appellate court also found illegality in sentencing the petitioners and modified the sentences as already mentioned above.

19. This Court finds that P.W- 5, the Informant of the case has fully supported the prosecution case. He has stated that the occurrence is dated 01.10.2001 at about 12:00 hours in the day time and on that day, he came out from the house and saw the petitioners beating his father. Awadhesh Sharma was armed with *garasha* and rest of them were armed with lathi. He has stated that Birbal Sharma, Mantu Sharma and Nagendra Sharma also assaulted him with lathi while he was trying to save his father and all of them abused him. He also stated that his left hand had broken and his right-hand finger had cut.

20. This further finds that P.W.-1 is the other victim of the case who is the father of the informant and he has also fully supported the prosecution case. He has stated that while he was returning home from his field with a bundle of grass for his cattle, Petitioner No. 1 namely, Gopal Sharma pulled down

the bundle of the grass and abused him and assaulted him with lathi on his head, left hand and finger. Thereafter, Awadhesh Sharma also assaulted on his right hand as a result, his finger had a cut and on hearing alarm, the informant appeared there and then accused-petitioners Birbal Sharma, Nagendra Sharma and Mantu Sharma assaulted the informant and as a result, his left hand had broken. He has stated that he was brought to the police station and from there, he was sent to hospital and his son lodged the F.I.R. He claimed to identify the accused persons.

21. This Court also finds that P.Ws.-2, 3, 4 and 7 are not the eye witness to the occurrence, but they are either hearsay witnesses or they had arrived at the place of occurrence immediately after the incident and they have supported the prosecution case to that extent. P.W.-6 has been declared hostile by the prosecution. P.W.-8 has stated he did not know anything about the occurrence. P.W. 10 is the Investigating Officer of the case who has proved the formal F.I.R. as exhibit-4. He proved the place of occurrence and has stated that he had recorded the statements of witnesses and has submitted the charge sheet.

22. So far as P.W.-9 is concerned, he is the doctor who had examined the injured witnesses and had found the following injuries as recorded in the impugned judgment itself passed by the learned appellate court:

“P.W.-9 Dr. Anil Kumar examined the injured Rampati Rajwar and found following injuries on his person. (i) one contusion on lower 1/4th of left forearm of the size of 2”x 1/2” oval in shape with bony irregularity and tenderness positive. Age of injury-within 24 hours, and cause of injury-hard and blunt substance and nature of injury reserved to be given after production of X-ray plates. He proved this injury report dated 12.10.01, which is marked as Ext. 2. He further stated that he has also examined Muneshwar Rajwar and found the following injuries on his person (i) lacerated wound over scalp

on left side 3x1/2"x1/2" (ii) lacerated wound on tip of right index finger size 1"x1/2"x1/4" bony tenderness present. (iii) one lacerated wound at the root of left thumb size 1/2"x1/4"x1/4" bony tenderness positive (iv) contusion over dorsum of left middle finger. Cause of injury-caused by hard and blunt substance. Age of injury-6 hrs. Nature of injury-injury no. (i)-simple in nature and opinion about injury no. (ii) (iii) and (iv) is reserved to be given after production of X-ray plates. Thereafter, he stated that on examining the X-ray plates of the injured Muneshwar Rajwar, injury no. (ii) was found simple in nature and injury no. (iii) and (iv) were found grievous in nature as there was fracture of proximal phalanx of left thumb and base of middle phalanx of left middle finger and the X-ray plate of Muneshwar Rajwar is marked as Ext. 3/1. On examining the X-ray plate, of Rampati Rajwar, the doctor opined that the X-rays shows fracture of lower shaft of left ulna and this injury was found grievous in nature. The said doctor has proved the X-ray report as Ext.-3 injury report of Rampati Rajwar dated 12.10.01 and injury report of Muneshwar Rajwar dated 12.10.01 as Ext. 2 and 2/1 respectively and he has also proved the X-ray report dated 21.11.01 of Rampati Rajwar and X-ray report of Muneshwar Rajwar dated 21.11.01 as Ext. 2/2 and 2/3 respectively." (Emphasis supplied)

23. It has been submitted by learned counsel for the petitioner by referring to Exhibit-A that there was previous enmity between the parties and therefore, the petitioners have been falsely implicated in the present case. As already mentioned above, during the course of arguments of the learned counsel for the petitioners while referring to the aforesaid judgment i.e. Exhibit A, it transpired that the said case was instituted in the year 2002 and the present case was instituted in the year 2001. Otherwise also, this Court is of the considered view that merely because there is enmity between the parties, that by itself is not sufficient to disbelieve the prosecution evidence which is based on the evidence of the two victims and supported by the evidences of the other witnesses including the investigating officer of the case as well as the

doctor who had examined the victims after the incident. There is no material contradiction in their evidences.

24. This Court is of the considered view that there are concurrent finding of facts recorded by the learned courts below. On the basis of facts proved by the prosecution, the petitioners were convicted for offence under Sections 341, 323, 325, 504 read with Section 34 of the Indian Penal Code and the learned appellate court acquitted the petitioners for offence under Section 324 of the Indian Penal Code on technical grounds and convicted under section 325 IPC as the ingredients of section 325 IPC was satisfied. The learned appellate court did not interfere with the conviction of the petitioners so far as other sections are concerned. Considering the totality of the facts and circumstances of this case, this Court does not find any illegality or perversity or irregularity in the impugned judgment of conviction of the petitioners under Sections 341, 323, 325, 504 read with Section 34 of the Indian Penal Code calling for any interference in revisional jurisdiction.

25. So far as the sentences of the petitioners are concerned, this Court finds that the petitioners have remained in judicial custody for some period during pendency of this criminal revision and that on the date of conviction on 29.08.2006, Petitioner Nos. 1, 2, 3, 4 and 5 were aged about 45 years, 37 years, 36 years, 32 years and 22 years respectively. Accordingly, the present age of the Petitioner Nos. 1, 2, 3, 4 and 5 are about 60 years, 52 years, 51 years, 47 years and 37 years respectively and the petitioners have faced the rigors of the criminal case for more than 20 years. Considering the entire facts and circumstances, this Court is of the view that ends of justice would be served, if the sentences of the petitioners are modified to some extent and some fine is imposed upon them.

26. Accordingly, the sentence of the Petitioner No.1 namely, Gopal Sharma for the offence under Section 325 of the Indian Penal Code is modified and reduced to Rigorous Imprisonment for six months with fine of Rs.15,000/- and the sentences of the rest of the petitioners namely, Awadhesh Sharma, Birbal Sharma, Nagendra Sharma and Mantu Sharma alias Mantu Vishwakarma for the offence under Section 325 of the Indian Penal Code are modified and reduced to Rigorous Imprisonment for three months with fine of Rs.10,000/- each. The sentences of the petitioners for the offences under Sections 341, 323, 504/34 of the Indian Penal Code passed by the learned appellate court do not call for any interference. All the sentences are directed to run concurrently.

27. The aforesaid total fine amount shall be deposited by each of the petitioners before the learned trial court within a period of three months from the date of communication of a copy of this Judgment to the learned trial court. It is further directed that 50% of the fine amount, so deposited, shall be remitted to the two victims of the case namely, Muneshwar Rajwar (P.W.-1) and Rampati Rajwar (P.W.-5) in equal proportion after due identification. In case, the fine amount is not deposited within the stipulated time frame the petitioners would serve the sentences as imposed by the learned appellate court.

28. Bail bond furnished by the petitioners are hereby cancelled.

29. Accordingly, with the aforesaid findings and modification in sentences of the petitioners, the present criminal revision petition is hereby **disposed of**.

30. Pending interlocutory application, if any, is dismissed as not pressed.

31. Let the lower court records be sent back immediately to the court concerned.
32. Let a copy of this Judgment be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)

Binit/