

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 774 of 2012

1. Jamal Mian S/o Late Roshan
 2. Md. Shakil S/o Md. Jamal
 3. Md. Kajim S/o Late Roshan Mian
 4. Md. Kailu S/o Md. Kamruddin
 5. Charkhu @ Charku S/o Md. Islam
 6. Md. Mahafuz S/o Md. Jamal
 7. Md. Kallu S/o Md. Kamruddin
 8. Md. Bablu @ Bablu Mian S/o Md. Jamal
 9. Md. Kamruddin S/o Late Roshan Mian
 10. Md. Kaushar S/o Md. Mobarak
 11. Md. Guddu S/o Md. Islam
 12. Md. Afjal S/o Late Roshan
- All Resident of Village Kud, P.O. and P.S. Katkamsandi
District Hazaribagh Petitioners

-Versus-

State of Jharkhand Opp. Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

Through: Video Conferencing

8/06.09.2021

1. Heard Mr. P.P.N. Roy, the learned Senior counsel appearing on behalf of the petitioners alongwith Mr. Pandey Ashok Nath Roy, Advocate.
2. Heard Mr. Jitendra Pandey, the learned A.P.P. appearing on behalf of the Opposite Party-State.
3. This criminal revision has been filed against the judgment dated 13.06.2012 passed by the learned District and Additional Sessions Judge-cum-Special Judge (L.A), Hazaribag in Criminal Appeal No. 241/11 whereby and whereunder the learned appellate court has dismissed the criminal appeal filed by the petitioners and modified the judgment of conviction and the order of sentence dated 09.12.2011 passed by the learned Judicial Magistrate, 1st Class, Hazaribag in G.R. No. 2954/2001 corresponding to T.R. No. 1784/2011.

4. The conviction and sentence of the petitioners passed by the learned trial court as well as learned appellate are given in tabular form as under: -

Petitioner Numbers	Conviction by Trial Court	Conviction by Appellate Court	Sentence by Trial Court	Sentence by Appellate Court
1 to 4,6 to 11	u/s 147, 148, 341, 323 and 506/34 IPC	u/s 147, 341 and 323/34 IPC. Acquitted for offences u/s 148 and 506 IPC.	S.I. for 3 months u/s 147/34 IPC; S.I. for 4 months u/s 148/34 IPC; S.I. for 2 months u/S 341/34 IPC; S.I. for 3 months u/S 323/34 IPC; and S.I. for 6 months u/S 506/34 IPC	S.I. for 3 months u/s 147 IPC; S.I. for 15 days u/s 341 IPC; and S.I. for 3 months u/s 323 IPC.
5 and 12	u/s 147, 148, 341, 323, 326 and 506/34 IPC	u/s 147, 341 and 325 IPC. Acquitted for offences u/s 148, 326 and 506 IPC and convicted u/s 325 IPC.	S.I. for 3 months u/s 147/34 IPC; S.I. for 4 months u/S 148/34 IPC; S.I. for 3 months u/s 341/34 IPC; S.I. for 4 months u/s 323/34 IPC; S.I. for 6 months u/s 506/34 IPC; and R.I. for 1 year u/S 326/34 IPC	S.I. for one month u/s 147/341 IPC and R.I. for 1 year with fine of Rs. 500/- u/s 325 IPC.

5. The conviction and Sentence of Petitioner Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, and 11 passed by learned trial court as well as learned appellate court are same. Conviction and Sentence of Petitioner Nos. 5 and 12 passed by learned trial court as well as learned appellate court are same.

Submission on behalf of the petitioners

6. Learned Senior counsel appearing for the petitioners while advancing his arguments, at the outset, submitted that the date of occurrence in the instant case is of the year 2001 and there are 12 convicts and accordingly, there are 12 petitioners before this Court. Learned Senior counsel submitted that the Petitioner Nos. 1 to 4 and Petitioner Nos. 6 to 11 were

convicted for offence under Sections 147, 148, 341, 323, 506/34 of the Indian Penal Code by the learned trial court and the Petitioner Nos. 5 and 12 were convicted under Sections 147, 148, 341, 323, 326, 506/34 of the Indian Penal Code. However, the learned appellate court has set aside the conviction of the Petitioner Nos. 5 and 12 for offence under Section 326/34 of the Indian Penal Code and convicted them under section 325 of IPC. Learned Senior counsel also submitted that so far as offence under Section 148, 504/34 of the Indian Penal Code is concerned, the learned appellate court acquitted all the petitioners. Learned Senior counsel submitted that considering the fact that the occurrence is of the year 2001 and there was previous enmity between the parties, the sentences of the petitioners may be modified and confined to the period already undergone by them in custody. He submitted that during the pendency of the present revision application also, the petitioners have remained in custody for some time. The records of the case show that the petitioners had surrendered before the learned court below on 04.09.2012 and were directed to be released on bail vide order dated 19.09.2012. Learned Senior counsel submitted that after the order dated 19.09.2012, a few days must have been taken by the petitioners for furnishing the bail bonds.

7. Learned Senior counsel for the petitioners also submitted that a supplementary affidavit has been filed in the instant case bringing on record the judgment passed on 16th June 2015 by the learned District & Additional Sessions Judge-VII, Hazaribag in Cr. Appeal No.140 of 2008 whereby the Petitioner No.1 and petitioner No.8 have been acquitted in connection with Complaint case No.905 of 2001, corresponding to T.R. No.753 of 2008. He submitted that this judgment becomes relevant in view of the criminal antecedent

with regard to petitioner Nos.1 and 8 as mentioned in internal Page No.6 of learned trial court's judgment.

8. Learned Senior counsel also submitted that the age at the time of conviction of the Petitioner Nos. 1 to 12 was 75 years, 40 years, 55 years, 37 years, 37 years, 30 years, 45 years, 42 years, 65 years, 28 years, 27 years and 50 years respectively and from the records of the case, it appears that Petitioner Nos.1, 3, 9 and 12 had executed a bond under the provision of Probation of Offenders Act in relation with conviction under another case. He also submitted that it was only Petitioner No.5 and Petitioner No.12, who have been convicted for the offence under Section 325 of the Indian Penal Code and have been sentenced accordingly by the learned appellate court.
9. Learned Senior counsel for the petitioners also submitted that considering the facts and circumstances of the case and the lapse of time and the present age of the petitioners, some sympathetic view may be taken.

Submission on behalf of the State

10. Learned A.P.P. appearing on behalf of the opposite party-State, while opposing the prayer, submitted that it has been recorded by the learned trial court in the judgment itself that there was previous conviction of the Petitioner Nos. 1, 3, 9 and 12. He submitted that on account of the previous conviction of the aforesaid petitioners, no sympathetic view may be taken in connection with these petitioners. Learned A.P.P. also submitted that so far as Petitioner No. 5 and 12 are concerned, no sympathetic view may be taken in view of the fact that grievous injury was caused and they were convicted inter alia under Section 325 of the Indian Penal Code and the maximum punishment prescribed under Section 325 is 7 years, but the learned appellate court has sentenced them only for a period of one year with fine of Rs. 500/-. So far as the other petitioners are concerned, learned A.P.P. submitted that appropriate

order may be passed and it is for the court to consider the sentences even at the stage of revisional jurisdiction.

11. During the course of argument, it is not in dispute that the occurrence is of the year 2001 and about 20 years have elapsed from the date of the incident. Learned counsel submitted that so far as conviction of the petitioners are concerned, there are concurrent findings recorded by the learned courts below in connection with the conviction under Sections 147, 323, 341 of the Indian Penal Code for the petitioner Nos. 1 to 4 and 6 to 11 and for offence under Sections 147, 341 and 325 of the Indian Penal Code so far as the Petitioner Nos. 5 and 12 are concerned. It is also not in dispute that the learned trial court had convicted the petitioner Nos. 5 and 12 for the offence under Section 326/34 of the Indian Penal Code, but the appellate court has found them guilty for offence under Section 325 of the Indian Penal Code and not under Section 326/34 of the Indian Penal Code. Learned counsel for the state has submitted that no interference is called for in the conviction of the petitioners as there is no illegality or perversity in the impugned judgments.

Findings of this Court

12. As per the prosecution case, one Anil Kumar Singh narrated his fardbeyan before the ASI, S.D. Singh of Sadar P.S. on 13.12.2001 at 23:30 P.M. at Sadar Hospital itself alleging that on the same day, he was sitting in the shop of Iltaf Mian at around 9:00 P.M. and he heard some sound near the house of Iltaf Mian. At this, he and Iltaf went there and when they were going to the house of Sarju Ram at Chatra Road, they saw the accused persons/petitioners, altogether 12 in number, were carrying sticks, Bhujali in their hands. They stopped there out of fear and on seeing them, the accused persons rebuked them. The accused persons ran towards both of them and asked as to why he had given evidence in his case and on the objection,

Afjal Ansari uttered some hot words and instigated some other accused persons. Upon this, Charkhu hit him with Bhujali just over his ear, eye and head with bad intention and he fell down and rest of the accused persons had beaten him with sticks and as such, he got injured. He became unconscious due to merciless beating and one of the accused persons had snatched away Rs. 600/- from his pocket. Several persons of the village had seen the occurrence.

13. On the basis of the written report of informant-Anil Kumar Singh, the case was instituted under Sections 147, 148, 341, 323, 307, 379, 506/34 of the Indian Penal Code, which was registered as Katkamsandi P.S. Case No. 197/01. Upon investigation, charge-sheet was submitted under Sections 147/ 148/ 341/ 323/ 326/ 307/ 506/34 of IPC against all 12 named accused persons/petitioners vide charge-sheet No. 28/02 dated 28.02.02 and cognizance was taken for offence under Sections 147/ 148/ 341/ 323/ 326/ 506/34 of IPC vide order dated 06.03.2002. Cognizance was not taken under Section 307 of the Indian Penal Code as the learned C.J.M. did not find any prima-facie case under the said section. The petitioners were ultimately charged for offence under Sections 147/148/341/323/326/506/34 of IPC.
14. At the stage of trial, altogether six witnesses were examined including the victims- Iltaf Mian and Anil Kumar Singh, who were examined as P.Ws.-5 and 6 respectively. P.W.-1 is a cycle mechanic who claimed to be an eye-witness of the occurrence. He has fully supported the prosecution case by stating that when he heard the sound of shouting, he reached near the house of Sarju Ram and found that Anil Kumar Singh and Iltaf had got injuries, blood was pouring out from their injuries and he brought the injured on a bus coming from Chatra to Sadar Hospital, Hazaribagh and police had taken his statement regarding the occurrence. In his cross-examination, he stated

that when he reached near the place of occurrence, then he had seen that Afjal, Jamal Ansari, Kamruddin Mian, Bablu Mian, Mahbub Mian, Shakil Mian, Kallu, Kaishar Mian and others have beaten with stick and Bhujali.

15. P.W.-2 Mantosh Paswan has also fully supported the prosecution case. He has stated that on the date and time of occurrence, he was at his house and on shouting, he came out and reached near the house of Sarju Ram, where there was heavy rush and discussion was going on between the informant and Afjal. After some time, Charkhu had attacked twice with Bhujali over the informant firstly and hit his right eye and over his head, upon which, the informant fell down on the ground and then Kallu, Kaila, Charkhu, Guddu, Kamruddin, Kajim, Afjal, Jamal, Bablu, Shakil, Mahfuz, Kaishar had beaten with stick and rod. He also stated that when Iltaf got to rescue him, Afsal had hit him with rod over his right leg. After the incident, the accused persons fled away from the spot. P.W.-2 is also an eye-witness to the occurrence. He has proved the date, time and manner of occurrence.
16. P.W.-3 is the Doctor who had medically examined the victims Anil Kumar Singh and Iltaf Mian and exhibited the injury reports, which were already exhibited earlier as Exhibits-1, 1/1, 1/2 and 1/3 respectively. This witness has stated that the injured victim P.W.-6 (the informant) was examined by him on 13.12.2001 at about 9:55 p.m. and he found the following injuries on his body: -
 - (i) Lacerated wound 1' x 1/4" x muscle deep with fresh blood clot and dry blood smear over face. Wound place lateral to right eye.
 - (ii) Abrasion 1/2" x 1/2" over scalp.
 - (iii) Bruise 3" x 2" right shoulder.
 - (iv) Swelling 2" x 2" with two abrasions 1/4" diameter over left elbow.

- (v) Parallel bruise 4" x 1" fine in number back.
- (vi) Swelling with ecchymosis right upper and lower eye lids.
Age of injury-within four hours. Mole of identification-
Old scar right leg. All the injuries have been caused by
hard and blunt substance. Injury No. (ii) to (vi) are simple
in nature. Injury No. (i) is reserved till X-ray and report of
radiologist. As per report of radiologist Dr. M. Aind X-ray
plate no. PC-215 dated 14/12/01 of X-ray scuff A/P
lateral view. Crack of skull bone lateral to eye socket.
Hence injury no. (i) is grievous in nature.

P.W. 3 - the Doctor also examined other victim i.e. P.W.-5 Md. Iltaf and found the following injuries on his body: -

- (i) Swelling with tenderness 2" x 1/2" right ankle joint on lateral aspect. As per X-ray report as noted B.H.T. by Surgeon Dr. Suresh Kumar X-ray plat no. PC-216 dated 15/12/01 shows fracture of lower and the fibula right leg. Hence the injury is grievous in nature.

17. The learned trial court recorded that P.W.-4 Deepak Paswan was an eye-witness to the occurrence, who narrated the story in the same manner as by the informant and the victim. He has brought the victims to the Sadar Hospital, Hazaribag by a bus coming from Chatra. The learned trial court also recorded that although almost all steps were taken, but none other prosecution witnesses had turned up for evidence.
18. The accused were examined under Section 313 of Cr.P.C., in which, they denied the prosecution case and claimed to be innocent. The defence produced certain exhibits in relation to G.R. Case No. 2953/01 as Ext.-A and the certified copy of the charges of the said case as Ext. A/1 and A/2 respectively, in which, the victims of the present case as well as eight others were charged and also a copy of the judgment passed in G.R. Case No. 2146/01, in which, the victims of the present case and

others were convicted for offence under Sections 147/337/427/504 of IPC.

19. It further appears that the prosecution also exhibited Ext.-3 which is the certified copy of the judgment passed in Complaint Case No. 905/2001 dated 14/08/2008 by the learned Judicial Magistrate, in which, Petitioner Nos.1, 8 and another person namely, Shamsul Nissa were convicted under Section 379 of IPC and in another case Petitioner Nos.1, 3, 9 and 12 were convicted and they had submitted their respective probation bonds, which was exhibited as Exhibit-3/1, 3/2, 3/3 and 3/4. The Petitioners have brought on record a judgment passed in Cr. Appeal No. 140/2008 dated 16.06.2015 by the learned District & Additional Sessions Judge-VII, Hazaribag whereby the aforesaid judgment passed in Complaint Case No. 905/2001 dated 14.08.2008 was set-aside and all the three accused, including present petitioner no. 1 and 8 were acquitted.
20. The informant / victim of the case, P.W.-6 Anil Kumar Singh he has fully supported the prosecution case. P.w-5, the other victim of the case has also fully supported the prosecution case.
21. The learned trial court considered evidences on record and gave its finding as under: -

"In the facts and circumstances of this case as well as material as apparent on the record it transpires that although several case and counter case has undergone between the parties. In his instance case accused counsel had narrated that firstly there is delay in lodging the FIR and 2ndly I.O. had not been examined. These two major contradictions creates doubt. But in my opinion and observation, I find that since in this case victim Anil Singh, Iltaf Ansari victim PW-6 and PW-5 respectively have deposed their evidence in proving detailed. There does not exist any contradiction on the issue of point of time, period of time, date of occurrence, P.O, other then these two victims their injuries had been corroborated by the evidence as done

by Dr. Chandra Prakash Choudhary vide his exhibits 1, 1/1 and that of 1/2 and 1/3 of victims namely Anil Singh and Iltaf Ansari respectively. The prosecution evidence is also supported by the deposition of PW-1 Md. Taslim Cycle Mechanic, PW-2 Mantosh Paswan and PW-4 Deepak Paswan. Accused have failed to state about any sort of enmity of these witnesses with accused persons. All these were eye witness even they have brought these injured persons through Bhuneshwar Bus coming from Chatra at around 9:00 P.M to Sadar Hospital, Hazaribag. This has also been uttered by almost all witnesses that all the accused persons who were carrying Bhujali, Lathi in their hand created on unlawful assembly. They have attacked over informant and Iltaf Ansari as such causing grievous injury to them. Charkhu had hit with Bhujali to Anil Singh. Afjal Ansari had hit with Iron-Pipe over right leg. Rest Accused persons have beaten with stick. In the aforementioned circumstances all the accused persons are held guilty u/s 147/148/341/323/506/34 of the IPC. Accused namely Charkhu who had hit with Bhujali several times just beside the eye and head of Anil Singh is also held guilty u/ss 147/148/341/323/326/506/34 of the IPC and Afjal Mian who had hit with Iron Pipe over the leg of Iltaf is also held guilty u/ss 147/18/341/323/326/506/34 of the IPC. Their bail bond is cancelled and they are taken into judicial custody."

- 22.** The learned appellate court also considered the materials on record and recorded its findings in Para-7 that all the prosecution witnesses have stated that the occurrence took place in front of the house of Sarju Ram and on this point, no question was asked from any witness during their cross-examination and the Informant has stated the boundary of the place of occurrence. In such circumstances, non-examination of the investigating officer of the case was not fatal to the prosecution case. However, the learned appellate court acquitted all the petitioners from the charges under Sections 148 and 504/34 of the Indian Penal Code and also did not find any prima facie case under Sections 148, 326 and 506 of the Indian Penal Code against the petitioners. The appellate court

convicted the petitioner no. 5 and 12 under section 325 IPC instead of their conviction under section 326/34 IPC.

23. After hearing the learned counsel for the parties and going through the records of the case, this Court finds that P.W.-6 Anil Kumar Singh is the informant of the case and he is also an injured eye witness to the occurrence. He has fully supported his version as stated in his fardbeyan. P.W.-5 Iltaf Mian is the other injured eye witness of the case and he has also fully supported the prosecution case and thereby, he has corroborated the evidence of the informant. This Court further finds that P.W.-1, P.W.-2 and P.W.-4 have also supported the prosecution case and P.W.-3, the doctor has corroborated the injuries caused to both the main victims of the case i.e P.W-5 and 6.
24. This Court finds that all the prosecution witnesses are consistent regarding assault particularly upon P.W-5 and 6 . There are concurrent findings recorded by the learned courts below regarding conviction of the Petitioner Nos. 1 to 4 and 6 to 11 under Sections 147, 323, 341 of the Indian Penal Code. So far the Petitioner Nos. 5 and 12 are concerned, there is specific evidence that the Petitioner No.5 had hit Anil Kumar Singh by means of bhujali and the Petitioner No.12 had hit the other victim namely, Iltaf by means of iron rod causing grievous injuries to both of them. This Court finds no illegality or perversity in the conviction of the petitioners passed by the learned appellate court. Accordingly, the conviction of the petitioners passed by the learned appellate court is upheld.
25. So far the sentences of the petitioners are concerned, considering the fact that the Petitioner Nos. 3 and 9 have criminal antecedent, this Court is not inclined to interfere with the sentences awarded to the Petitioner Nos. 3 and 9 by the learned appellate court.

26. Considering the nature and gravity of the offence committed by the Petitioner No.5 and Petitioner No.12 and also the fact that Petitioner No.12 has criminal antecedent, this Court is also not inclined to interfere with the sentences awarded by the learned appellate court to the Petitioner No.5 and 12.
27. **Accordingly, the conviction and the sentences of the Petitioner Nos. 3, 5, 9 and 12 passed by the learned appellate court is upheld.**
- The bail bonds furnished by the Petitioner Nos. 3, 5, 9 and 12 are cancelled.**
28. However, considering the fact that the occurrence is of the year 2001 and more than 20 years have already elapsed and the Petitioner Nos. 2, 4, 6, 7, 8, 10 and 11 have no criminal antecedent and they have already remained in judicial custody for some period, ends of justice would be served, if their sentences are modified to some extent by imposing fine. So far as petitioner No.1 is concerned, he is aged about 85 years at present and although he has one criminal antecedent, this Court is of the view that no useful purpose will be served by sending him to jail at this stage of his life and ends of justice would be served, if his sentence is also modified to some extent by imposing fine.
29. Accordingly, the sentences of the Petitioner Nos. 1, 2, 4, 6, 7, 8, 10 and 11 are modified and reduced to the period undergone by them in judicial custody with fine of Rs. 10,000/- each [*Rs. 1000/- each for offence under section 323 IPC; and Rs. 9,000/-each for offence under section 147 IPC*] to be deposited by them before the learned court below within a period of three months from the date of communication of a copy of this Judgment to the learned court below.
30. The 50% of the fine amounts, so deposited by Petitioner Nos. 1, 2, 4, 6, 7, 8, 10 and 11, shall be remitted to the two victims of

the case namely, Anil Kumar Singh and Iltaf Mian in equal proportion after due identification. If the aforesaid fine amount is deposited within stipulated time frame, the bailors of the respective petitioners will be discharged from their liabilities under the bail bond. In case, the fine amounts are not deposited within the stipulated time frame, the bail bonds furnished by them will be immediately cancelled by the learned court below and they would serve the sentences as imposed by the learned appellate court.

31. Accordingly, with the aforesaid findings, and modification of sentence of Petitioner Nos. 1, 2, 4, 6, 7, 8, 10 and 11 with the aforesaid condition, this criminal revision application is hereby disposed of.
32. The sentences of the Petitioner Nos. 3, 5, 9 and 12 passed by the learned appellate court do not call for any interference.
33. Let the lower court records be sent back immediately to the court concerned.
34. Let a copy of this order be communicated to the learned court below through 'e-mail/FAX'.

(Anubha Rawat Choudhary, J.)