

Criminal Appeal (D.B.) No. 388 of 2013

[arising out of Judgment of Conviction dated 17th May, 2013 and Order of Sentence dated 18th May, 2013 passed by the 2nd Additional Sessions Judge, Seraikella-Kharsawan in Sessions Trial No.172 of 2011]

-
1. Chhotu Kalindi son of Rijhu Kalindi
 2. Musru Kalindi son of late Bunda Kalindi
 3. Babu Lall Kalindi son of Umesh Kalindi
 4. Bhalu Kalindi son of Late Manbodh Kalindi
- All are residents of Village Narendra Nagar Kandra Basti, PO PS Kandra, District Seraikella-Kharsawan.

... **Appellants**

-versus-

The State of Jharkhand

... **Respondent**

For the Appellants : Mr. Ram Chandra Prasad Sah, Advocate
For the Respondent : Mr. Vishwanath Roy, A.P.P.

PRESENT: SRI ANANDA SEN, J.
SRI SUBHASH CHAND, J.

J U D G M E N T

Reserved on 15.04.2024

Pronounced on 24.05.2024

Per Ananda Sen, J. The appellants have preferred this appeal against the Judgment of Conviction dated 17th May, 2013 and Order of Sentence dated 18th May, 2013 passed by the 2nd Additional Sessions Judge, Seraikella-Kharsawan in Sessions Trial No.172 of 2011, whereby the appellants have been held guilty and convicted for the offence punishable under Sections 307/34, 323/34, 324/34 and 341/34 of the Indian Penal Code and they have been sentenced to undergo rigorous imprisonment for 10 (ten) years each and fine of Rs.4,000/- each and in default of payment of fine to further undergo simple imprisonment for 6 (six) months for the offence under Section 307 of the Indian Penal Code; further sentenced to undergo rigorous imprisonment for one year each for offence under Section 323 of the Indian Penal Code; sentenced to undergo rigorous imprisonment for three years each for offence under Section 324 of the Indian Penal Code and sentenced to undergo simple imprisonment for 1 (one) month each for the offence punishable under Sections 341 of the Indian Penal Code and all the sentences were directed to run concurrently.

2. Learned counsel for the appellants submits that there are no materials to convict these appellants, thus, the learned Trial Court has erred in convicting and awarding sentence to the appellants. He submits that there was one shop nearby and no independent witness was examined, which establishes the allegation to be false. As per him it was dark at night as occurrence had taken place at 09.30 p.m., which creates doubt about identification of the appellants by the witnesses. Learned counsel for the appellant harps upon the statement made by the P.W.1 at paragraph 10, wherein he stated that the injury was caused because of an assault, but this witness did not take the name of the person who has assaulted him. He further submits that non-examination of Chandan Sardar, who resides next to the place of occurrence and that too of Tea Shop owner is fatal for the prosecution. He further submits that the informant, in his written report before the police, has not stated that his son along with Sanjay Das had reached the place of occurrence after receiving a phone call from his daughter-in-law whereas P.W.2 has stated in his deposition before the Trial Court that he along with Sanjay Das (P.W.3) had reached the place of occurrence from market upon receiving a phone call from his wife. He submits that this is a clear case where the appellants ought to have been acquitted by the Trial Court in absence of any concrete evidence to substantiate the charges against the appellants.

3. Learned A.P.P. for the State submits that there are sufficient and cogent evidence without there being any contradictions or ambiguity amongst the prosecution witnesses about the manner of assault and weapons used by the appellants, which is also corroborated by the medical evidence. He submits that the Trial Court has rightly convicted and sentenced the appellants after weighing the entire materials and evidence available on record and the same needs no interference by this Court.

4. We have heard the learned counsel for the appellants and the learned A.P.P. for the State and have also gone through the records and the entire evidence.

5. Prosecution case is based on the written report of the informant, Ramjee Prasad. He has alleged that on 13.07.2011 at about 09.30 at night when informant after closing his shop was returning home, near Railway Crossing, Chotu Kalindi, Bhalu Kalindi, Musru Kalindi and Babulal Kalindi intercepted him. They demanded money to consume liquor. On refusal, they

after abusing, started assaulting the informant. All were armed with weapons like sword, sticks etc. Bhalu Kalindi, who was armed with sword, assaulted the informant with a sword blow on his head as a result of which blood started oozing from his head. Thereafter all the others started assaulting the informant by sticks on the head and body. On raising alarm, informant's son came running and tried to save his father, upon which all the accused assaulted him also with their respective weapons on the head and body of the informant's son, as a result of which informant's son also got head injury. Soon people of the locality gathered there and saved them from the assailants.

6. On the basis of the written report of the informant Kandra Police Station Case No.19 of 2011 was registered for offences under Sections 341, 323, 307, 325, 34 of the Indian Penal Code. Police took up investigation and on completion of the investigation, filed chargesheet No.25 of 2011 on 31.07.2011. Cognizance of the offence was taken and case was committed to the Court of Sessions. Charges against the appellants were framed on 04.01.2012. Appellants were charged for the offence under Sections 323/34, 341/34, 324/34, 307/34 of the Indian Penal Code. Charges, so framed, were read over and explained to the appellants, to which they pleaded not guilty and claimed to be tried.

7. To bring home the charges, the prosecution examined altogether 6 witnesses, namely, P.W.1 Ramjee Prasad (informant), P.W.2 Shailendra Kishore Prasad (informant's son), P.W.3 Sanjay Das, P.W.4 Dr. Deepak Kumar (medical Officer), P.W.5 Mangal Kalindi and P.W.67 Vishnu Dutt Pandey (investigating officer of this case).

The prosecution also produced the following documentary evidence, which were marked exhibits: -

Exhibit 1	Signature of the informant on the written report
Exhibit 2 & 2/1	Injury reports
Exhibit 3	Endorsement made on the written report
Exhibit 4	Formal F.I.R.

The defence did not examine any witness in support of their defence nor did they produced any documentary evidence.

8. P.W.1 Ramjee Prasad is the informant. He stated that on 13.07.2011 at about 09.30 p.m. at night when he was returning to his home after closing his shop, near the railway gate and overbridge, Bhalu Kalindi,

Babulal Kalindi, Chhotu Kalindi and Musru Kalindi intercepted and asked for money so that they can buy liquor. This witness opposed by saying that he does not have money. Bhalu Kalindi was armed with sword and rest were armed with lathi and danda. They started abusing him, then Bhalu Kalindi hit with the sword on the head of the informant. Blood started oozing out from his head. Rest of the accused also assaulted him. He further stated that his son, who had gone to the market and was also returning, on seeing the incident, tried to save him, upon which Bhalu Kalindi assaulted him also with sword. He stated that one Sanjay Das, who was accompanying son of this witness had also seen the occurrence. After this they went to the police station and gave a written report by narrating the entire incident. He was thereafter sent to Shanti Nursing Home, Kandra for treatment. This witness identified the accused, who were in Court.

In cross examination, he stated that he has a shop of cereals like rice and dal. He gave description of the boundary of the area. He stated that the place of occurrence is between his house and the road. He stated that he is not acquainted with the accused since long but he says that they are resident of Narendra Nagar, Near Kandra School, which is at 300 yards from the house of the informant. He further stated that there was no enmity with them. He stated that it was not dark and there was sufficient light for their identification. He reiterated that these accused immediately demanded money on seeing him for consuming liquor. He stated that the assault continued for 10 minutes. He stated that his son was conscious after the assault. His apparels were drenched with blood, but the police did not ask for the same. He denied that he sells liquor and he himself consumes the same.

P.W.2 Shailendra Prasad is the son of the informant. He stated that at 09.30 p.m. at night on 13.07.2011 his wife called him and informed that four persons are assaulting his father. On receiving the said information, he left from the market and came near the house and saw that four accused were assaulting his father, they were Bhalu Kalindi, Musru Kalindi, Chhotu Kalindi and Babulal Kalindi. Bhalu Kalindi was armed with sword and the rest were armed with lathi and danda. They assaulted on the head and on the other body parts. He stated that assaulted was made on the head with sword and on the left side of the head injury was caused. He stated that he also intervened to save his father, but they also assaulted him on his head and on the body. Bhalu Kalindi assaulted him by sword. Thereafter, they went to the police

station and they were sent to Shanti Nursing Home, where they were treated. He stated that accused were demanding money to consume liquor. He stated that place of occurrence is 10-12 feet from their house. He narrated the details of the persons, who reside near their house. He stated that he is a tempo driver and his tempo was parked in front of his house and he was in market to buy some articles. Sanjay Das was along with him and no one else was with him. He denied that the distance between the Railway Gate and the place of occurrence is about ½ k.m. He stated that at the time of occurrence, he, Sanjay Das and his wife were there and no one was there. His brother and sister-in-law are not aware of the fact. He denied about any earlier dispute between the accused and the informant or him. He stated that the assault was on the head of his father and on his head also, that too by sword. He stated that the wound was stitched.

P.W.3 is Sanjay Das. He stated that he and Shailendra Prasad were returning from market, when they received information that the informant is being assaulted. When they reached the place of occurrence, they saw father of P.W.2 was being assaulted. He named the persons who were assaulted. Bhalu Kalindi was armed with a sword and other accused were armed with lathi. Everyone was assaulting the informant. P.W.2 went to save him, but he was also assaulted. Shailendra and his father sustained head injury and blood was oozing out. Accused tried to kill the father of P.W.2. He stated that he had narrated all this to the police and he identified the accused in Court. In cross examination, he stated that his house is near Railway Station. He is a vendor and Shailendra is a tempo driver. He stated that they met in market when Shailendra received information over phone that his father is being assaulted. He stated that when the phone call was received, both were together. He stated that distance between the place of occurrence and house of Shailendra is 20-25 feet. He stated that it took 2-4 minutes to reach the place of occurrence. He stated that the vehicle was also parked near the house of Shailendra, and there is house of Chandan and Girija Singh and there was one Bablu Hotel nearby. Those persons were not present. He narrated that there was sufficient light at night. No one came from the hotel. He also tried to intervene in the fight and he was also assaulted, but he did not get himself treated. The assault continued for 10-12 minutes.

P.W.4 is Dr. Deepak Kumar. He had examined the P.W.2 Shailendra Kishore Prasad and had found the following injuries: -

- (a) Lacerated wound over the parietal part, seven stitch, sharp weapon as a cut, size 3 inch x deep two suta.
- (b) Right and left hand complaining pain and swelling
- (c) Nature of Injuries : All are simple.
- (d) Suggestion : Injury No.1 may be caused by sword and Injury No.2 may be caused by lathi, danda.

He had also examined Ramjee Prasad on the same day and had found the following injuries: -

- (a) Lacerated wound over the frontal region and stitch 8, sharp weapon cut, length : 3 inch and deep two suta
- (b) Pain all over the body
- (c) Nature of Injuries : All are simple
- (d) Suggestion : Injury No.1 may be caused by sword and Injury No.2 may be caused by lathi danda.

The injury reports were marked as Exhibits 2 and 2/1 respectively.

P.W.5 is Mangal Kalindi. He stated that he does not know anything about the occurrence. He was declared hostile.

P.W.6 is Vishnu Dutt Pandey, who was the Investigating Officer. He is Assistant Sub Inspector, who was posted at Kandra Police Station. He stated that Ramjee Prasad informed about the incident and Ajay Prasad has registered the First Information Report and signed it. He proved the written report, which was marked as Exhibit 3. Formal FIR was written by him, which was marked as Exhibit 4/1. He took charge of the investigation and went to the Nursing Home and there took restatement of Ramjee Prasad, who supported the prosecution case. Then he arrested the accused persons and recorded their statements. He also went to the place of occurrence and he describes the boundary of the place of occurrence. He stated that witnesses supported the fact that assault had taken place. He also obtained the injury report of both the informant and his son. He also filed chargesheet No.25 of 2011 under Sections 341, 323, 307, 325.

9. After closure of the evidence, appellants were examined under Section 313 of the Code of Criminal Procedure, wherein they denied their involvement.

10. The Trial Court, after hearing the arguments of the parties and after going through the evidence, by Judgment of Conviction dated 17th May, 2013 and Order of Sentence dated 18th May, 2013 passed in Sessions Trial

No.172 of 2011, has held the appellants guilty, convicted them and sentenced them for the offences as detailed in paragraph 1 hereinbefore.

11. Challenging the aforesaid conviction and sentence, the appellants has preferred this appeal.

12. We have gone through the evidence and the entire records.

13. From the records, we find that P.W.1, P.W.2 and P.W.3 have supported the prosecution case. There is no contradiction in their statement, rather the facts mentioned in the statement of each of these witnesses matches with each other. P.W.1 has stated that when he was returning after closing the shop, these four appellants confronted him. The appellant Bhalu Kalini was armed with sword. The fact that Bhalu Kalindi was armed with sword was asserted by P.W.2 and P.W.3 also. Similarly, the other appellants were armed with lathi and danda. P.W.2 and P.W.3. have also narrated the same fact that they were armed with lathi and danda. Thus, weapon, each of them were holding, i.e., Bhalu Kalindi a sword and others lathi and danda has been proved and substantiated by the prosecution.

On the point of assault also, I find no discrepancy. This is the consistent version of the witnesses that Bhalu Kalindi assaulted P.W.1 with a sword on his head. P.W.2 also stated that his father was assaulted on his head with a sword. P.W.3 also stated that accused Bhalu Kalindi was holding a sword. Injury report of P.W.1 (informant) is Exhibit 2/1. From the said injury report, I find that the doctor found lacerated wound on the frontal region and the same has been caused by sharp weapon. This injury report mentions that 8 stitches were applied to the informant. Thus, the injury on the head of P.W.1 has been proved. So far as P.W.2 is concerned, from his injury report (Exhibit 2), it is clear that a lacerated wound was found on the parietal part, which was caused by sharp weapon. The injury report further mentions that 7 stitches were applied. This also suggests that assault was by sword on the head of this witness also. The fact that Bhalu Kalindi assaulted with sword has been established and proved. All the witnesses have stated that Bhalu Kalindi has assaulted on the head with sword. Thus, medical evidence and ocular evidence matched with each other. There is nothing in the cross examination or examination-in-chief to disbelieve this witness nor there is any material to suggest that the appellants were falsely implicated.

Further there is consistent evidence that other appellants have assaulted with lathi and danda.

14. However, one fact is admitted that injury on the injured including the head injury, which was caused by the sword is simple, as per the opinion of the doctor.

15. Argument of learned counsel for the appellants that there was one shop nearby and no independent witness was examined, which establishes the case to be false cannot be accepted. The witnesses clearly stated that there was no other person present at the place of occurrence. Further, the quantity of the witnesses is not important, what is important is quality of evidence. In this case we find that there is quality evidence to substantiate the assault on the informant and his son.

16. So far as the question raised by the appellant that it was dark at night as occurrence had taken place at 09.30 p.m., which creates doubt about identification of the appellants is also not accepted as there was sufficient light on the road so as to identify the appellants.

17. The appellant cannot take the benefit of the statement made by the P.W.1 at paragraph 10, wherein he stated that the injury was caused because of an assault, but this witness did not take the name of the person who has assaulted him. Not taking the name of the appellant before the doctor is of no relevance when he has narrated before the doctor as to how incident had taken place, i.e., how the informant was assaulted. Non-examination of Chandan Sardar, who resides next to the place of occurrence and the Tea Shop owner is also of no relevance as P.W.3 has stated that those persons were not there.

18. The ground taken by the appellant that in the First Information Report it was not mentioned that P.W.2 and P.W.3 reached the place of occurrence after receiving the telephonic call is also of no relevance because P.W.1 has narrated the manner of occurrence and P.W.2 and 3 were returning from market and saw this witness being assaulted. P.W.2 received information from his wife that his father was being assaulted, then they immediately returned. Thus, non-mentioning about the telephonic call is absolutely not fatal for the prosecution.

19. From the impugned judgment, we find that all these four appellants have been convicted for offence punishable under Section 307 of the Indian Penal Code and they have been sentenced with rigorous imprisonment for 10 years each with a fine of Rs.4000/- each. They have also been sentenced to 1 year each for offence under Section 323 of the Indian

Penal Code and 3 year each for the offence under Section 324 of the Indian Penal Code and 1 year each for the offence under Section 341 of the Indian Penal Code.

20. Admittedly in this case hurt was caused to the informant and his son. Bhalu Kalindi has caused the hurt with a sword, that has been established by the prosecution both by oral and documentary evidence as it has been established that the appellant Bhalu Kalindi was holding a sword. In this aspect, when First Information Report is perused along with the report of the doctor, we find that injury is simple and assault is also of one blow. Further, there is nothing in evidence to suggest that there was intention to commit murder of the informant or his son. They were trying to extort money from them and on refusal the assault had taken place.

21. Section 324 of the Indian Penal Code provides for punishment for voluntarily causing hurt by dangerous weapons or means. Section 324 of the Indian Penal Code reads as under: -

“324. Voluntarily causing hurt by dangerous weapons or means.- Whoever, except in the case provided for by Section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

To attract Section 324 of the Indian Penal Code, a voluntary hurt should be caused by an instrument of shooting and stabbing or cutting. Definitely use of the said instrument can cause death. Admittedly, in this case sword was used by Bhalu Kalindi. Further, we find that this case does not fall within the exception, i.e., Section 334 of the Indian Penal Code as there was no grave and sudden provocation from the side of the informant. If the accused tries to extort money from any person and he refused to part away with the same, then if the accused assaults the person from whom, they were trying to extort, it cannot be said that assault was out of grave and sudden provocation. Thus, we find that Bhalu Kalindi cannot be held guilty under Section 307 of the Indian Penal Code, rather he can be held guilty of offence under Section 324 of the Indian Penal Code.

22. So far as other three appellants, i.e., Chhotu Kalindi, Musru Kalindi and Babu Lall Kalindi, are concerned, we find that there is nothing on

record that there was any common intention of all the persons. Admittedly, the other appellants were armed with lathi and it is not their case that they had assaulted on head rather on other part of the body on P.W.1 and P.W.2. The doctor also found only one wound, i.e., of sharp cut on head and there was no mark of injury on the body. The witness P.W.1 and P.W.2 also complained of some body-ache. P.W.3 also stated that he also was assaulted, but, assault was not of such magnitude that even consultation of doctor was necessary, but the fact that they had assaulted P.W.1 and P.W.2 is proved. Thus, these appellants, i.e., Chhotu Kalindi, Musru Kalindi and Babu Lall Kalindi, according to us, have committed offence under Section 323 of the Indian Penal Code.

23. So far as offence under Section 341 of the Indian Penal Code is concerned, prosecution has been able to prove the same as there is wrongful restrain by the appellants, which is corroborated by the evidence of P.W.1, P.W.2 and P.W.3.

24. Thus, we hold that the prosecution has proved charge against the appellant Bhalu Kalindi for offence under Section 324 and 341 of the Indian Penal Code and appellants, namely, Chhotu Kalindi, Musru Kalindi and Babu Lall Kalindi under Sections 323 and 341 of the Indian Penal Code.

25. So far as sentence against the appellants is concerned, as per law, the punishment under Section 323 of the Indian Penal Code is for a maximum period of 1 (one) year; punishment under Section 324 of the Indian Penal Code is 3 (three) years and the punishment for Section 341 of the Indian Penal Code is only for one month.

26. As per the report submitted by the prosecution, we find that appellant Chhotu Kalindi has remained in prison for 5 months 12 days, appellant Babu Lall Kalindi has remained in prison for 5 months 9 days, and appellant Musu Kalindi has remained in prison for 7 months 21 days. As these appellants have been convicted under Section 323 and 341 of the Indian Penal Code, we sentence them to undergo imprisonment to the extent of the period they have already undergone in prison by them, with a fine of Rs.4,000/- each for the offence under Section 323 of the Indian Penal Code. Further, since maximum punishment for offence under Section 341 of the Indian Penal Code is imprisonment for 1 (one) month only, no order need to be passed with respect to the sentence for offence under Section 341 of the Indian Penal Code. Thus, these three appellants since have already served their sentence, they need not be taken into custody. However, in case they do

not pay the fine, they are sentenced to undergo further simple imprisonment for one month each.

So far as Bhalu Kalindi is concerned, we find that he has already been released after serving 10 (ten) years in imprisonment and has also deposited the fine amount. Thus, since the maximum sentence for the offence punishable under Section 324 of the Indian Penal Code is 3 (three) years and that of offence under Section 341 of the Indian Penal Code is 1 (one) month only, no order needs to be passed with respect to the sentence for offences under Section 324 and 341 of the Indian Penal Code so far this appellant is concerned.

27. This appeal is partly allowed with the modification in the judgment of conviction and order of sentence to the extent as indicated above.

28. Trial Court is directed to take appropriate steps for realizing the amount of fine from appellants, namely, Chhotu Kalindi, Musru Kalindi and Babu Lal Kalindi.

29. Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Ananda Sen, J.)

Per Subhash Chand, J. I agree.

(Subhash Chand, J.)

High Court of Jharkhand, Ranchi
Dated, the 24th May, 2024

Kumar/Cp-03