

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 776 of 2013

Against the judgment of conviction dated 25.11.2013 and order of sentence dated 30.11.2013 passed by Sri Mahendra Prasad, learned Ad hoc Additional Sessions Judge, 2nd, Bhojpur, Ara in Sessions Trial No. 442 of 1993 arising out of Udawantnagar P.S. Case No. 35 of 1993 corresponding to G.R. No. 389/93.

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1. Kameshwar Prasad Sinha
 2. Dinesh Prasad Sinha, Both S/O Late Manbhal Lal
 3. Madan Prasad Sinha, S/O Late Dharmdeo Prasad Sinha

All resident of village - Terojpur, P.S. - Udwant
Nagar, District - Bhojpur, Ara

.... Appellants

Versus

1. The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Sri Ramakant Sharma, Senior Advocate
Mr. Shivendra Prasad, Advocate

For the Respondent : Mr. S. A. Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

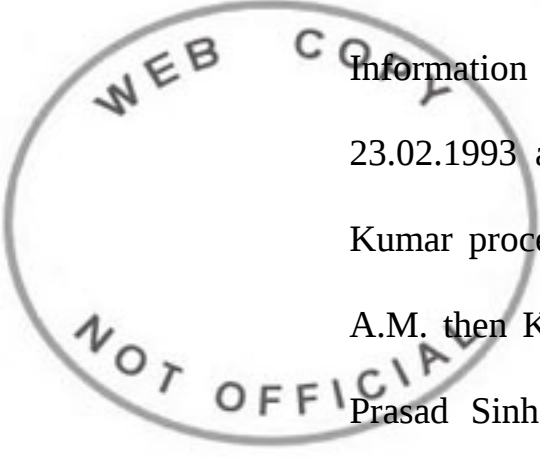
ORAL JUDGMENT

Date: 08-01-2015

Gopal Prasad, J.

Heard learned counsel for the appellants and learned
counsel for the State.

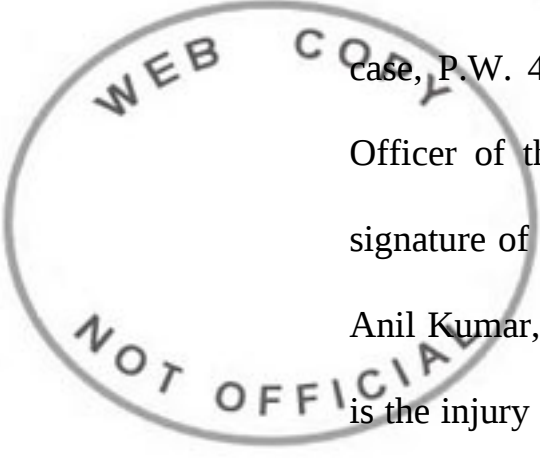
2. The appellants have been convicted under Sections 307, 323 and 341 read with Section 34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for ten years and also fine of Rs.5,000/- and in default of payment of fine to undergo simple imprisonment for six months. There is no separate sentence for other offences.



3. The prosecution case as alleged in the First Information Report by the informant Krishna Prasad Sinha is that on 23.02.1993 at about 9:00 A.M. he along with his son, namely, Anil Kumar proceeded and reached near Mahmampur village at about 9:15 A.M. then Kameshwar Prasad Sinha having Lathi in his hand, Madan Prasad Sinha having rod in his hand came there, caught him and assaulted by means of lathi and rod. In the meantime, accused Dinesh Prasad Sinha having lathi in his hand came there and assaulted him by means of lathi from back side. The son of the informant raised alarm for rescue thereafter villagers came then the accused persons fled away. Informant received injury upon his head, legs, back portion and hand. Villagers and his son brought the informant at Sadar Hospital, Ara for treatment. The said fardbeyan was recorded by the Jamadar of Gajrajganj O.P.

4. On the fardbeyan of the informant, First Information Report was lodged and investigation proceeded. After investigation charge-sheet submitted under Sections 341, 323, 325, 338 and 307/34 of the Indian Penal Code on which cognizance taken, case committed to the Court of Sessions and after commitment charges were framed under Sections 307/34, 323, 325, 341 of the Indian Penal Code.

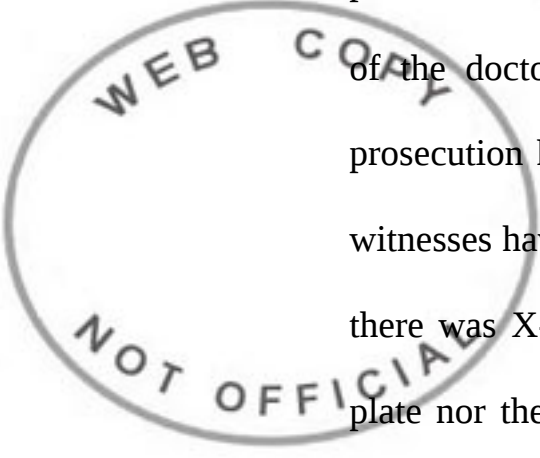
5. During trial, six witnesses were examined by the prosecution who are P.W. 1 Parasnath Singh, P.W. 2 Anil Kumar is the



son of informant, P.W. 3 Krishna Prasad Sinha is the informant of this case, P.W. 4 Mirtunjay Singh, P.W. 5 Basant Sah is the Investigating Officer of this case and P.W. 6 is Tej Narayan Singh. Ext. 1 is the signature of the informant on the fardbeyan, Ext. 1/1 is the signature of Anil Kumar, Ext. ½ is the signature of Basant Sao on fardbeyan, Ext. 2 is the injury letter written by A.S.I., Ext. 3 is the injury report and Ext. 4 is the formal First Information Report.

6. P.W. 1 is the eye-witness to the occurrence, P.W. 2 is the son of the informant who has supported the prosecution case, P.W. 3 is the informant who has also supported the prosecution case whereas the other witnesses P. Ws. 4 and 6 have declared hostile and P.W. 5 is the Investigating Officer. Taking into consideration the evidence of the witnesses as well as considering the submission the trial court convicted the appellants and sentenced them as mentioned above.

7. Learned counsel for the appellants, however, contended that the allegation made in the First Information Report is quite general and omnibus and there is no specific mention that who assaulted whom on which part of the body. It has been contended that P.W. 1 is not the eye-witness as he has not seen the assault and has only seen the accused persons fleeing away from the place of occurrence. P.Ws. 4 and 6 have turned hostile and none of the independent witnesses have come to support the prosecution case although the occurrence took



place in the broad day light. It is further contended that non-examination of the doctor to prove the injury is fatal to the prosecution as the prosecution has not proved the corroboration of the injury. Though the witnesses have stated that informant remained in hospital for a week and there was X-ray of his injury as he had fracture but neither the X-ray plate nor the doctor has been examined nor the injury report has been proved which caused serious prejudice to the defence. It has further been contended that P.Ws. 2 and 3 are the most interested witnesses and hence, the judgment of conviction and order of sentence is not sustainable.

8. Learned counsel for the State, however, supported the judgment of conviction and order of sentence as the witnesses have supported the prosecution case.

9. P.W. 1 has stated in his evidence that on Hulla he rushed to the place of occurrence and saw blood oozing from the head of the informant. He also saw that Madan, Kameshwar, Dinesh were fleeing from there. Further he has seen Madan armed with iron rod and rest persons armed with lathi. Hence, from the evidence of P.W. 1, it is apparent that he is not the eye-witness to the occurrence.

10. P.W. 2 has stated in his evidence that Madan Prasad Sinha assaulted his father by iron rod as a result of which he sustained

injury on the head but there is no specific allegation of assault by any accused person.

11. P.W. 3 Krishna Prasad Sinha in his evidence has also stated about the assault but has not specifically stated that who assaulted on which part of the body except about Madan Prasad Sinha. He further stated that he remained in hospital for a week and supported the prosecution case. However, the assertion of the witnesses i.e. P. Ws. 2 and 3 are only specific against Madan Prasad Sinha but there is no specific assertion of assault against the other accused persons. He also stated that both the accused persons were apprehended and the assault was made on the person of the informant.

12. However, there is allegation of assault and the witnesses stated that the informant was admitted in the district hospital but neither any document with regard to his treatment in the hospital nor the injury report nor the X-ray report have been produced to show the nature of injury. However, in the First Information Report the informant has made general and speaking statement of assault by all the three persons but developed the story of specific assault by Madan Prasad Sinha in his evidence in court except the allegation of assault by rod on the person of the informant and other witnesses have not specifically stated that who assaulted whom and on which part of the body and what was the injury on the body.

13. Having regard to the fact that the allegations are general and omnibus and is not corroborated by the medical evidence as the medical evidence has not been established, the appellants are entitled for the benefit of doubt as the prosecution has not been able to prove the charges beyond all reasonable doubts. Hence, the judgment of conviction dated 25.11.2013 and order of sentence dated 30.11.2013 passed by Sri Mahendra Prasad, learned Ad hoc Additional Sessions Judge, 2nd, Bhojpur, Ara in Sessions Trial No. 442 of 1993 arising out of Udawantnagar P.S. Case No. 35 of 1993 corresponding to G.R. No. 389/93 is set aside and appeal is allowed. The appellants are on bail, are discharged from the liabilities of their respective bail bonds.

(Gopal Prasad, J)

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