

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.58 of 2014

Arising Out of PS.Case No. -187 Year- 2004 Thana -AHIAPUR District- MUZAFFARPUR

1. Sushila Devi Wife Of Shankar Choudhary @ Shankar Choudhary Resident Of Village - Jhapha Dih, P.S.- Ahiyarpur, District – Muzaffapur Appellant

Versus

1. The State Of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 151 of 2014

Arising Out of PS.Case No. -187 Year- 2004 Thana -AHIAPUR District- MUZAFFARPUR

1. Kishori Devi W/O Prahlad Choudhary

2. Rekha Devi W/O Birendra Choudhary Both Resident Of Village- Jhapahan, P.S.- Ahiyarpur, District- Muzaffarpur Appellants

Versus

1. The State Of Bihar

.... Respondent

With

Criminal Appeal (SJ) No. 301 of 2014

Arising Out of PS.Case No. -187 Year- 2004 Thana -AHIAPUR District- MUZAFFARPUR

1. Ambika Ram @ Niki Ram Son of Late Ram Sewak Ram Resident of Village - Jhapahan Dih, P.S.- Ahiyarpur, District - Muzaffarpur

2. Basudeo Paswan Son of Chalitar Paswan

3. Raj Kumari Devi Wife of Chalitra Paswan Resident of Village - Udan Jhapahan, P.S.- Ahiyarpur, District – Muzaffarpur Appellants

Versus

1. The State of Bihar

.... Respondent

Appearance :

(In CR. APP (SJ) No. 58 of 2014)

For the Appellant : Mr. Syed Firoz Raza, Adv.

For the Respondent : Mrs. Abha Singh, APP

(In CR. APP (SJ) No. 151 of 2014)

For the Appellants : M/S Diwakar Prasad Karn & Chandra Shekhar Anand, Advs.

For the Respondent : Mr. Abhay Kumar, APP

(In CR. APP (SJ) No. 301 of 2014)

For the Appellants : Mr. Satya Varta Verma, Adv.

For the Respondent : Mr. S.N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 09-01-2015

Gopal Prasad, J.

Heard the learned counsel for the appellants and the State.
2. These three appeals arise out of same judgment and

order of conviction and sentence, recorded by the Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 782 of 2005, disposed off by order, dated 16.12.2013.

3. The appellants have been convicted under Sections 147 and 326 of the Penal Code and sentenced to undergo simple imprisonment for two years for offence under Section 147 of the Penal Code and seven years rigorous imprisonment for offence under Section 326 of the Penal Code with a fine of rupees one thousand each and in default of payment of fine further to undergo rigorous imprisonment for six months. However, it has been ordered that all the sentences shall run concurrently. The appellants have further been convicted for offence under Section 341 of the Penal Code, however, no separate sentence for offence has been awarded.

4. The prosecution case, as alleged in the first information report by the informant, Sumitra Devi, P.W. 4, that on 26.07.2004 at about 04.00 p.m. while she was returning to her home at Jhapha Chowk, Bajrangbali Asthan and reached at the house of Basudeo Paswan, near Panker tree, wives of Mahesh Paswan, Shankar Choudhary and Prahlad Choudhary and about 50-60 ladies of Kamakhya Sangh and local Mukhiya surrounded her, dragged her from tempo and threw her on the ground and abused and assaulted by slaps and fists and in the meantime, Niki Ram, Mukhiya, commanded and abated to throw acid on her face. On his command, Raj Kumari Devi armed with a bottle of acid in her hand and wife of Basudeo, Mahesh and Shanker threw the victim on ground poured acid on her chest and private part by which she got injury. The, further, case is that Raj Kumari Devi demanded a scissor and cut her hair and snatched rupees one thousand from her anchal. The, further, case is that her son Bimal Choudhary and daughter-in-law, Sumitra Devi,

daughter Nanhi Kumari and younger son, Garib Nath came for rescue. They were also assaulted by slaps and fists.

5. On information, the police came and took her for treatment. The occurrence took place on 26.07.2004, but, the fardbeyan was recorded on 28.07.2004 in the Sri Krishna Medical College and Hospital, Muzaffarpur. After lodging the first information report the investigation proceeded, the charge sheet submitted, case committed to the Court of session's and charge framed for offence under Sections 307, 354, 379 and 341 of the Penal Code as well as under Sections 147, 324 and 326 of the Penal Code.

6. During the trial, six witnesses were examined, who are P.W. 1, Sumitra Devi, the daughter-in-law of the informant, P.W. 2, Garib Nath Choudhary, the son of the informant, P.W. 3, Binda Kumari, the daughter of the informant, P.W. 4, Sumitra Devi, the informant, P.W. 5, Bimal Choudhary, the son of the informant, and P.W. 6, the doctor, who has formally proved the discharge certificate of the victim from the Sri Krishna Medical College and Hospital, Muzaffarpur.

7. The trial Court, taking into consideration the evidence of witnesses, acquitted the appellants of charge under Section 307 of the Penal Code, but, the convicted the appellants for charge under Section 326 of the Penal Code and, further, convicted under Sections 147, 341 and 326 of the Penal Code holding that there was enmity with the informant and Ambika Ram @ Niki Ram, Mukhiya, who abated and, further, Sumitra Devi has filed a rape case against Ambika Ram @ Niki Ram and Basudeo and the informant has filed a case against Ambika Ram @ Niki Ram in connection with a house under Indira Awas Yojna and so there is enmity and Raj Kumari Devi has alleged illicit relation of her husband against the informant and so has

motivated the ladies of Kamakhya Sangh to take action against the informant and this led to the occurrence and taking into consideration the evidence convicted the appellants, as mentioned above.

8. The learned counsel for the appellants, however, contend that the informant herself has not supported the prosecution case and has been declared hostile by the prosecution and in her deposition in the cross examination she has stated that the fardbeyan was not read over to her and only thumb impression was taken and she did not see, who assaulted her nor she saw who poured acid. It has, further, been contended that neither the Doctor nor the investigating officer has been examined in the case nor the injury report has been proved in accordance with law and, further, the evidence of the witnesses, who come to support the prosecution case, are also at variance with regard to place of occurrence and manner of occurrence, hence, contend that the order of conviction and sentence, recorded by the trial Court, is not sustainable.

9. The learned counsel for the State, however, vehemently supported the order of conviction and sentence. It has been vehemently argued that the even if the doctor and the investigating officer has not been examined to support the prosecution case, the other witnesses have supported the prosecution case and they have at least supported the prosecution case about the assault and abuses, hence, conviction may be registered under Sections 323 and 324 of the Penal Code if not under Section 307 of the Penal Code.

10. Taking into consideration the submission, the prosecution case as alleged in the first information report that the accused persons surrounded the victim and at the instigation of Ambika Ram @ Niki Ram all the accused persons assaulted the informant and other family members and there is specific allegation

that Raj Kumari Devi poured acid on the person of the informant. However, in the evidence only three witnesses have come to support the prosecution case who are P.Ws. 1, 2 and 3, the daughter-in-law, the son and daughter of the victim. However, out of three witnesses P.W. 2 only stated about the abatement by Ambika Ram @ Niki Ram and, thereafter, it is alleged that Raj Kumari Devi poured acid. P.W. 4, the informant has not supported the prosecution case and P.W. 5, the son of the informant, has also not supported the prosecution case and they have been declared hostile by the prosecution itself. However, the doctor and the investigating officer have not been examined in the case though with regard to the place of occurrence there is variation in the evidences of P.Ws. 1, 2 and 3. P.W. 2 has stated that at the time of occurrence 2-5 persons stated that his mother is being assaulted, then, he rushed to his house. He has, further, stated in his cross examination that at the time of occurrence he was tapping toddy on tree and the place where his mother was being assaulted is in about 2-3 Kms away from place he was tapping toddy. He has, further, stated that he has gone to tap toddy. P.W. 3 has stated that the occurrence took place near the house of Rakha Devi, near Mandir, hence, there is variance regarding place of occurrence as the house of informant or house of Rekha. However, though it is alleged that the victim was assaulted, abused and was taken to hospital where she was treated. However, neither the medical officer, who examined the victim nor the injury report, has been proved nor the doctor and the investigation have been examined to prove the injury of place of occurrence. However, Exhibit 1, discharge certificate, has formally been proved by P.W. 6, the Advocate Clerk. The certificate has been issued by a doctor, who has not examined the victim and it is only mentioned that the victim remained in hospital for about 83 days, but,

neither the injury report has been proved by the doctor nor the doctor has been examined, hence, the appellants have been debarred the right of cross examining the witnesses on the point of injury though Exhibit 1 has been proved which shows a certificate by a doctor that the victim remained in hospital for about 83 days.

11. However, having regard to the fact that the injury has not been proved and the doctor, who gave the injury report, has also not come to depose and formally proved the discharge certificate issued by a doctor, who has not examined the victim, may not lead to evidence regarding the injury and when the injury has not been proved, the conviction either under Section 307 of the Penal Code or under Section 326 of the Penal Code is not maintainable. More over, P.W. 3 has stated that she also got injured, but, her injury report has not been proved has deposed and her statement was not recorded by the police, hence, having regard to the facts and circumstances of the case since the injury report having not been proved, the informant, who is an injured, also has not supported the prosecution case and the injury report has also not been established. The prosecution failed to prove the offence under Section 326 of the Penal Code. However, the investigating officer has also not been examined in the case, there is variance of the witnesses about the place of occurrence as well as the manner of occurrence and the injury report having not been established when there is specific case that victim, having been assaulted, was examined by the doctor in hospital and injury report has not been proved, hence, the appellants are entitled the benefit of doubt.

12. The trial Court misdirected in convicting the appellants or the principle that opinion of the doctor and investigating officer is immaterial if the witnesses are trustworthy. However,

having regard to fact that victim was assaulted and examined by doctor and the victim herself not supported the prosecution case and doctor and investigating officer has not been examined to prove injury and place of occurrence and the evidence of other witnesses are at variance, then, the order of conviction and sentence is not maintainable.

13. Here in this specific case where the informant, after assault, admitted to hospital and examined by the doctor, but, the doctor having not been examined and the injury report has not been proved, the conviction under Section 326 of the Penal Code can not be maintained and, further, conviction when the evidence of the witnesses are fluctuating, the order of conviction and sentence, recorded by the trial Court can not be sustainable and is hereby **set aside**.

14. Hence, these appeals are allowed and the appellants are acquitted of the charge.

15. Since, the appellants are on bail, they are discharged from the liability of the bail bonds.

(Gopal Prasad, J)

The Patna High Court
The 9th day of January, 2015,
N.A.F.R.,
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