

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.629 of 2014

Arising Out of PS.Case No. -103 Year- 2011 Thana -KATEYA District- GOPALGANJ

Vijay Kumar Shukla son of Sri Salik Shukla, resident of village- Mishrauli, Chapawa, P.S.-Kateya, District- Gopalganj

.... Appellant/s

Versus

1. The State of Bihar
2. Satish Mishra son of Vyas Mishra
3. Salik Shukla son of late Suryaman Shukla

Both residents of village-Mishrauli, P.S.-Kateya, District- Gopalganj

.... Respondent/s

with

Criminal Appeal (SJ) No. 497 of 2014

Arising Out of PS.Case No. -103 Year- 2011 Thana -KATEYA District- GOPALGANJ

Manoj Shukla son of Salik Shukla, resident of village- Misrauli, P.S. Kateya, District- Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No. 629 of 2014)

For the Appellant/s : Mr. Nityanand Mishra, Advocate

For the State : Mr. S.N.Prasad, A.P.P.

(In CR. APP (SJ) No. 497 of 2014)

For the Appellant/s : Mr. Naresh Dixit, Advocate

: Mr. Brij Bihari Tiwary, Advocate

For the State : Mrs. Abha Singh, A.P.P.

For the informant : Mr. Nityanand Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-03-2015

At the outset, learned counsel for the appellant Vijai Kumar Shukla (Cr.Appeal (SJ) No. 629 of 2014) has submitted that inadvertently name of the father of respondent no.2 Satish Mishra has been typed in the memo of appeal as Shalik Shukla in place of Vyas Mishra. Let the same be correctly typed as Vyas Mishra in the

cause title.

2. These appeals arise out of a judgment and order dated 31.7.2014 passed by the learned Additional District and Sessions Judge-IV, Gopalganj in Sessions Trial No.17 of 2012/180 of 2014 whereby respondent nos. 2 and 3 of Cr.Appeal (SJ) No. 629 of 2014 namely, Satish Mishra and Salik Shukla have been acquitted of the charges framed against them under Sections 341, 324 and 307 read with 34 of the Indian Penal Code and the appellant Manoj Shukla of Cr. Appeal (SJ) No.497 of 2014 has though been acquitted of the charge under Section 307 read with 34 of the Indian Penal Code but has been convicted under Sections 324 and 341 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- and in default thereof to undergo simple imprisonment for six months under Section 324 of the Indian Penal Code and simple imprisonment for one month under Section 341 of the Indian Penal Code. However, both the sentences have been ordered to run concurrently.

3. The Cr.Appeal (SJ) No.629 of 2014 has been filed under the proviso to Section 372 of the Code of Criminal Procedure by the informant of the police case in question against the judgment of acquittal in respect of respondent nos.2 and 3 whereas the Cr. Appeal (SJ) No.497 of 2014 has been filed by the convict Manoj Shukla against the judgment of conviction passed against him by the trial

court.

4. The prosecution story according to the *fardbeyan* given by the Vijay Kumar Shukla (P.W.7) on 22.5.2011 at 7.30 a.m. before the Assistant Sub Inspector, Md. Ali Kausar (P.W.8) at Kateya Police Station in the Referral Hospital, Kateya is that on 22.5.2011 in the morning while he was at his house his brother Manoj Shukla demanded money from him which was spent in construction of the house. The informant told him to swear in the name of God in the “Shiv Mandir” in this regard but he refused to do so. Thereafter, accused Manoj Shukla told him to leave the house but the informant refused to oblige him and said that he had also spent huge amount over construction of the house. Being infuriated upon the reply given by the informant, the accused Manoj Shukla inflicted a *Chhura* blow on the right side of his abdomen. His father Salik Shukla ordered the other accused persons to kill him and his brother Sailesh Shukla was hurling *Lathi* so that no one could be able to intervene in the matter. The motive behind the occurrence is alleged to be illicit relationship of his brother with the wife of one Giridhari Shukla. Apart from that, it is alleged that as the informant was issueless his wife wanted him to marry some other girl to bring forth offspring, the other members of the family wanted to eliminate him in order to grab his property. After inflicting *Chhura* blow, it has been stated that the accused persons left the place on the motorcycle of one Satish Mishra.



5. On the basis of the aforesaid allegation, the police registered first information report and took up investigation of the case. On conclusion of investigation, charge-sheet was submitted under sections 341, 324 and 307 read with 34 of the Indian Penal Code against altogether four accused persons, namely, Manoj Shukla, Satish Mishra, Salik Shukla and Sailesh Shukla. The learned Magistrate before whom the charge-sheet was submitted took cognizance of the offence and after complying with the mandatory provisions prescribed under section 207 of the Code of Criminal Procedure the case was committed to the court of sessions for trial.

6. The accused persons were charged for the offences punishable under sections 341, 324 and 307 read with 34 of the Indian Penal Code. In course of trial, one of the accused, namely, Shailesh Shukla died and, accordingly, his case abated.

7. In order to prove the charges framed against the accused, twelve witnesses were examined during trial. Out of them, P.W.1 Nagendra Mishra, P.W.2 Devendra Shukla, P.W.3 Chuman Mishra, P.W.4 Bachchi Devi, P.W.10 Dinesh Mishra and P.W.11 Arbind Mishra did not support the prosecution case and they were declared hostile by the prosecution. The prosecution cross-examined them but nothing relevant could come out in their cross-examination.

8. While deposing in court, the informant Vijay Kumar Shukla (P.W.7) has stated that on 22.05.2011 at 6.30 a.m his wife told



him that accused Satish Shukla, Manoj Shukla and Shailesh Shukla are calling him and are waiting at the door of the house. When he came out, he saw accused Manoj Shukla, who demanded money from him which he had spent in construction of the house. When he told that he had also spent huge amount in construction of the house then Manoj Shukla told him to swear in the name of God in the “Shiv Mandir” in this regard. Thereafter, he went to the “Shiv Mandir” along with five co-villagers, namely, Mahendra Shukla, Jagdamba Mishra, Arbind Mishra, Dinesh Mishra and Gobind Yadav. As soon as he reached near the temple, the accused Manoj Shukla inflicted a dagger blow on right side of his abdomen and at that time, the accused Shailesh Shukla was hurling *Lathi* so that no one could dare to come to intervene in the matter. He has proved the *farbdeyan* and signature of the witness to the FIR, namely, Abrind Mishra which have been marked as Exts. 1 and 1/1 respectively. In cross-examination, he has stated that the accused Manoj Shukla inflicted two *Chhura* blows on his person. When he sustained the first chhura blow, he tried to run away but after sustaining the second chhura blow, he fell down. He has also stated that at the time of occurrence he was wearing Ganjee, Kurta and Pyjama and blood had fallen on the clothes worn by him but the same were not given to the police officer. He has admitted that no x-ray of injuries sustained by him was ever conducted.



9. P.W.5 Bedanti Devi, wife of the informant, is a hearsay witness to the latter part of the occurrence. She has stated that at the time of occurrence the accused persons came at her door at about 5.30 a.m. They took her husband to the “Shiv Mandir” in the name of taking oath before the deity where the accused Manoj Shukla struck twice with *Chhura* on her husband and the accused Shailesh Shukla was hurling *Lathi* so that none else could intervene. She has stated that her husband was taken to the hospital by Dinesh Mishra, Arbind Mishra, Gobind Yadav, Mahendra @ Chhotu and Jadgamba Mishra. In cross-examination, she has admitted that she had not gone to the “Shiv Mandir” and had not witnessed the occurrence of assault.

10. P.W.6 Govind Yadav is an independent witness to the occurrence. He has stated that on the order of accused Salik Shukla his son Manoj Shukla assaulted with dagger on the abdomen of the informant. Thereafter, he took the victim to the hospital along with others. In cross-examination, he has admitted that he had contested election of union against the accused Salik Shukla in which he was declared winner. He has also admitted that the accused Salik Shukla had lodged a case against him which is pending in the court. In further cross-examination, he has admitted that the alleged occurrence took place near the “Shiv Mandir” which is situated at a distance of one kilometer from the village.

11. P.W.9 Sanjay Kumar has stated that on 22.5.2011 he



was posted as a compounder in Kateya Referral Hospital. On that day, Dr. Sanjay Kumar was posted as a medical officer in Keteya Referral Hospital. According to him, Dr. Sanjay Kumar has already died. He has proved the signature of Dr. Sanjay Kumar on the original injury report of the informant which has been marked as Ext.3. He has also proved photo copy of the injury report of the informant which has been marked as Ext.3/1. He has stated that in the injury report inadvertently left side abdomen was written but in the photo copy it has been corrected as right side abdomen. In reply to the court question, he has admitted that the doctor had not put his initial or signature in the register at the place of correction made in respect of injury sustained by the informant.

12. P.W.8 Md. Ali Kausar is the police officer, who had recorded the *fardbeyan* of the informant. He has proved the formal FIR as well as his own writing and signature over the *fardbeyan* which have been marked as Exts. 2 and 1/2 respectively. In cross-examination, he has admitted that at the place of occurrence he did not find any blood mark or any other relevant thing during the inspection made by him. He has further stated that the informant did not hand over any blood stained garment to him.

13. On the basis of the aforesaid evidence, the court below acquitted the accused Satish Mishra and Salik Shukla of all the charges but accused Manoj Shukla was convicted under section 324

and 341 of the Indian Penal Code and sentenced in the manner described hereinabove.

14. I have heard Mr. Naresh Dixit learned counsel for the appellant Manoj Shukla in Cr. Appeal (SJ) No.497 of 2014, Mr. Nityanand Mishra learned counsel for the appellant in Cr. Appeal (SJ) No.629 of 2014, Mr. Satya Narayan Prasad learned Additional Public Prosecutor for the State in Cr.Appeal (SJ) No. 629 of 2014 and Mrs.Abha Singh learned Additional Public Prosecutor for the State in Cr.Appeal (SJ) No. 497 of 2014.

15. Mr. Dixit has submitted that the learned trial court has not appreciated the evidence in correct perspective. According to him, the witnesses have not stood to the test of cross-examination. The informant of the case has materially changed his statement in course of trial. The other witnesses examined on behalf of the prosecution have also contradicted each other. The medical report does not corroborate the initial version of the informant and the prosecution failed to produce any material exhibit before the court in course of trial.

16. Per contra, learned counsel Mr. Nityanand Mishra appearing on behalf of the appellant Vijay Kumar Shukla has submitted that the prosecution has led reliable evidence in support of its case. The informant has corroborated his version in course of trial and the allegations made by the informant has duly been corroborated

by eye witness to the occurrence, namely, Govind Yadav. The wife of the informant has also corroborated the prosecution case so far as the first part of allegation of calling the victim from his house by the accused persons are concerned and she is an important hearsay witness in respect of assault made upon the informant by the accused.

17. Mr. Nityanand Mishra has further submitted that the medical report fully corroborates the prosecution case and, hence, the court below has erred in acquitting respondent nos.2 and 3 of Cr. Appeal (SJ) No.629 of 2014, namely, Satish Mishra and Salik Shukla.

18. Learned Additional Public Prosecutor Mr. Satya Narayan Prasad and Mrs. Abha Singh have supported the judgment of the trial court. According to them, the judgment passed by the trial court does not warrant any interference by this Court as the trial court has appreciated the evidence in correct perspective and the judgment of the trial court can neither be held to be unreasonable or perverse.

19. Having heard the parties and perused the records, I find that in the FIR the informant has stated that the alleged assault took place near his door but while deposing in court he has stated that the assault took place near the “Shiv Mandir” at Pakha village which is one kilometer away from his house. Further, in the FIR he has stated that no other person was present there at the place of occurrence when the alleged incident took place but in his deposition he has developed the story and introduced five eye witnesses. I



further find that in the FIR he alleges that the accused Manoj Shukla inflicted only one dagger blow which hit him on the right side of his abdomen but in the court he has stated that Manoj Shukla struck twice with dagger on his abdomen. I also find that the original injury report marked as Ext.3 would show injury on the left side of abdomen of the informant whereas right from beginning the allegation is that the informant sustained injury on the right side of his abdomen.

20. I have perused the injury report as contained in Ext.3 and the photo copy of the injury report as contained in Ext.3/1. Apparently, there is no correction in the original injury report but the photo copy of the injury report reflects correction. The doctor, who has prepared the injury report, has not been examined. It has been stated by the compounder, who has been examined as P.W.9, that the doctor, who prepared the injury report, has died but his death has not been proved in accordance with law. If there is no correction in the original injury report, it does not stand to reason, as to how the photo copy of the original reflects correction. Apparently, it appears that some interpolations have been made in the photo copy of the injury report first and, thereafter, the photo copy of the interpolated injury report has been brought on record and marked as Ext.3/1.

21. I further find that the investigating officer did not find any positive evidence during inspection of the place of occurrence. The material exhibits such as dagger, *Ganjee*, *Kurta* and *Pyjama* were

neither seized by the police nor produced in the court. The so called independent witness Govind Yadav (P.W.6) was admittedly on inimical terms with the accused Salik Shukla and the wife of the informant (P.W.5) is a hearsay witness as far as allegation of assault upon the victim is concerned.

22. Regard being had to the quality of evidence led in the court, I am of the considered opinion that the court below has erred in convicting the appellant Manoj Shukla of the charges under sections 324 and 341 of the Indian Penal Code, as the prosecution has miserably failed to prove its case beyond all reasonable doubts.

23. Accordingly, Cr. Appeal (SJ) No.497 of 2014 is allowed. The impugned judgment of conviction and order of sentence dated 31st July, 2014 passed by the learned Additional District and Sessions Judge-IV, Gopalganj is set aside. The appellant Manoj Shukla, who is on bail, is discharged from the liability of bail bond.

24. For the reasons assigned, hereinabove, I find no merit in the appeal filed by the informant under the proviso to section 372 of the Code of Criminal Procedure against the judgment of acquittal of the accused Satish Mishra and Salik Shukla. Accordingly, Cr. Appeal (SJ) No.629 of 2014, being devoid of any merit, is dismissed.

Md.S./-

(Ashwani Kumar Singh, J)

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