

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.457 of 2002

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Shiv Shankar Sah son of late Ram Charitra Sah, R/O village-Dighi Kala, P.S.
Hajipur Sadar, Distt-Vaishali.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anurag Saurav, Advocate
Mr. Dharmendra Kumar Paswan, Advocate

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 29-01-2015

Heard learned counsel for the appellant as well as

learned APP for the State.

2. Challenge in this appeal is judgment of conviction dated 25th of July 2002 and sentence dated 27th of July 2002 passed by Presiding Officer, Additional Court No.III, Fast Track, Vaishali at Hajipur in connection with Sessions Trial No. 199/1993/263/2002 holding the sole appellant, Shiv Shankar Sah guilty for an offence punishable under Sections 307, 324 and 337 IPC and directing to undergo RI for ten years as well as fined of Rs. 5,000/- in default thereof, to undergo RI for one year, RI for two years, RI for three months respectively with a further direction to run the sentences concurrently.

3. Shorn of unnecessary details, prosecution case as comes out on the basis of Fard-e-beyan of Nishi Devi (PW 3) recorded on 13.05.1992 at about 8:45 p.m. at Sadar Hospital, Hajipur alleging inter



alia that while they have gone to attend *Shradh* feast, On account of, death of mother of Shiv Shankar Sah and his brother Hare Ram Sah, both of them, that means to say, Shiv Shankar Sah and his brother Hare Ram Sah began to quarrel over mode of meeting of expance having incurred on *Shradh*. His brother, Sanjay Kumar Chaubey (PW 2) has intervened and on account thereof, Shiv Shankar Sah gave Bhala blow over his abdomen causing injury thereupon. It has also been alleged that Chunnu @ Anjani came in rescue who was also assaulted by Shiv Shankar Sah with a Phatta (sliver of bamboo) resulting injury over his person. Both were lifted to Sadar Hospital for treatment.

4. Then thereafter, having institution of Hajipur Sadar P.S. Case No. 134/1992, the police entered into investigation and submitted charge-sheet leading to trial after conclusion of the same, ultimately met by the judgment impugned, appellant has been found guilty and accordingly sentenced, the subject matter of instant appeal.

5. The defence case, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C. is that of complete denial of occurrence as well as of false implication.

6. In order to substantiate its case, the prosecution had examined altogether 6 PWs out of whom PW-1 is Mishri Pandit, PW-2 is Sanjay Chaubey, PW-3 is Nishi Devi, PW-4 is Chunnu Singh @ Anjani Kumar, PW-5 is Dr. Sunil Kumar and , PW-6 is Syed Kamrul

Haque, as well as had also exhibited Ext-1, signature of informant over Fard-e-beyan, Ext-2 series, Injury report, Ext-3, Fard-e-beyan. Defence had also examined two DWs out of whom DW 1 is Raghunath Thakur while DW-2 is Umesh Kumar.

7. While assailing the judgment of conviction and sentence, manifold arguments have been raised on behalf of appellant. The first and foremost happens to be that except PW 1, none is an independent witness. PW-1 had not supported the prosecution case. On account thereof, evidence of remaining PWs should not be accepted. In an alternative, it has been submitted that PW-3, the informant had twisted her version in order to suit with the medical evidence apart from the fact that she also, during course of her cross-examination, had doubted over herself to be an eyewitness of occurrence. On this very score, it has been submitted that from the Fard-e-beyan, it is apparent that the same was recorded at the hospital while from her deposition, it is apparent that she had disclosed to have given her Fard-e-beyan at her residence. That happens to be the reason behind, being not an eyewitness to occurrence, as being not present at the place of occurrence. From her evidence, it is further evident that police had come, lifted the injured to the hospital and at that very time, she was at her house raising hue and cry, which indicates her not to be an eyewitness to the occurrence. Hence, claim of informant that the whole occurrence had taken place in her presence is nothing but out and out a concocted story. Then, it has been submitted that further

infirmities are apparent from her evidence inconsonance with FIR wherein she had disclosed that assault over Chunnu @ Anjani was made by *Phatta* while during course of deposition, she had narrated that assault was made by the brickbat. That has purposely been introduced in the background of medical evidence. This inconsistency again goes to show that she is not an eyewitness to occurrence.

8. Now coming to the evidence of other two injured, i.e. PW-2, Sanjay Kumar Choubey and PW-4, Chunnu @ Anjani, it has been submitted that they have not sustained injury in a manner and at the place as suggested by the prosecution. There happens to be consistent evidence of PWs-2 and 4 that they have sustained injury at the Darwaza of appellant as well as Hare Ram Sah. They have further spoken regarding profused bleeding from the injury having over person of PW 2 but, the reason best known to the prosecution, not a single drop of blood was found by the Investigating Officer, PW 6 during course of inspection of place of occurrence. Furthermore, neither trampling mark nor any sort of corroborative material has been found or seized from the place of occurrence. At the present moment, if the disclosure made by PW-3 is taken into consideration, it is apparent that police had come at the place of occurrence soon after the occurrence and there happens to be consistent version of the prosecution that appellant had escaped soon after the occurrence and as they have not disclosed that appellant either had taken away Bhala along with him or *Phatta*, whichever may be, certainly would have

been found and seized by the Investigating Officer during course of inspection of the place of occurrence. The aforesaid event suggests that place of occurrence is not the actual P.O.

9. Because of the fact that obligation lies upon the prosecution to support its case beyond all reasonable doubts, therefore, even taking into account the status of PW-2 as well as PW-4 being injured, infirmities persisting in their testimony do not support the case of the prosecution in a manner as advanced and on account thereof, the judgment of conviction and sentenced recorded by the learned trial court is fit to be set aside.

10. In an alternative, it has been pleaded that nature of allegation does not justify application of Section 307 of the IPC. To support such plea, it has been submitted that *Shradh* was going on and to attend the feast having been organized by both the brothers, Hare Ram Sah and Shiv Shankar Sah, people had arrived and during course thereof, both the brothers began to fight. Furthermore, it is apparent that both of them did not carry any sort of animosity. It was unfortunate that during course of intervention at the end of PW 2, the appellant became infuriated, as a result of which, the injury as alleged, was inflicted at the end of appellant. So, the action as alleged, had resulted in a spur of moment without any premeditation and thus, neither is found influenced by an intention or knowledge. Furthermore, the nature of injury, dimension of injury also speaks the action of the accused/appellant apart from the fact that no allegation



of repetition of blow has been alleged and on account thereof, his act fell under Section 324, 337 of the IPC and for that having the sword of sentence hanging over his head for the last twenty two years, forced the appellant to go under mental stress, duress as well as agony and in the aforesaid background as well as taking into account absence of criminal antecedent as well as having absence of being previous convict, he be released in accordance with Probation of Offenders Act.

11. Per contra, the learned APP submitted that the learned counsel for the appellant made hypothetical approach while placing materials available on record. It has further been submitted that nature of offence is to be gathered from the circumstance visualizing from the record itself having so produced during course of trial. It is apparent from the deposition of the witness that while brawl was going on amongst the full brothers, PW 2 innocently intervened and was rewarded by piercing injury by Bhala on his abdomen, a delicate part of the body, by the appellant. Bhala is a deadly weapon and its application, certainly on account of nature of weapon will be in same manner and being so, certainly, there would be application of Section 307 IPC.

12. Furthermore, it has been submitted that minor inconsistencies in the evidence of the witnesses who, in the present era are being examined years after the occurrence, is but natural. The evidence in its entirety has to be looked into and during course

thereof, the material aspect visualizing therefrom is to be perceived. Mere picking hither and thither portion of the evidence is not permissible in the eye of law. Consequent thereupon, the finding recorded by the learned trial court is just, legal and proper and is fit to be confirmed.

13. PW-5 the Doctor while examining PW- 2 as well as PW-4 on 13.05.1992 at about 8:45 p.m. had found following injuries:-

(A) Sanjay Choubey

(1) Sharp penetrating wound on left side of the upper abdomen oblique direction size 4"x1/4"x3" deep directed downward and laterally cutting the muscles of anterior abdominal wall, peritoneum is intact, red in colour, bleeding from the wound.

(B) Chunnu Singh @ Anjani Kumar

(1) Lacerated wound 1'x1/8' fenia deep over posterior lateral aspect of left side of skull, red in colour, blood coming out.

14. So far presence of injury over the person of PW-4 is concerned, single lacerated wound having fenia deep caused by hard and blunt substance needs no further escalation.

15. With regard to injury sustained by PW-2, Sanjay Choubey, it is evident that the same has been found 4"x1/4"x3" deep wound over upper portion of abdomen which, the doctor had found simple, caused by sharp pointed weapon.

16. During cross-examination, although defence could not be able to demolish save and except taking advantage of the opinion



of the doctor to be caused within six hours, got from the mouth of Doctor that this injury might have been caused beyond three hours but within six hours which is not going to support the appellant in any way as there happens to be lapses on the part of defence in cross-examining the doctor, such as, relating to colour of injuries as well as whether blood found over injury was coagulated or not, time of coagulation as a supporting link. However, from the injury report, it is apparent that neither the injury was found dangerous to the life nor doctor had opined that in case of non availability of medical faculty at an earliest, there was every possibility that on account of aforesaid injury death might have caused. Therefore, the injury on its face does not satisfy the ingredients of Section 307 IPC regarding the eventuality of death.

17. So far evidence having been adduced on behalf of prosecution through PW 2 and PW 4 are concerned, it is apparent therefrom that no flaw has been perceived. Even during course of cross-examination, PW-2 at para-3, PW-4 at para-3 have stood the test showing the appellant to be sole assailant by means of Bhala over PW-2 as well as by brick over PW-4. Mere non presence of blood stains at the place of occurrence by PW-6, the Investigating Officer will not cause prejudice to the prosecution case in the background of the fact that no cross-examination has been made on behalf of appellant relating to place of occurrence.

18. Consequent thereupon, assault over person of PWs-2



and 4 by the appellant is found proved by the cogent, reliable and trustworthy evidence, more particularly that of injured PWs-2 and 4 whose status itself laid at primacy. However, as discussed above as well as taking into account the admitted fact that while both the full brothers were quarrelling, was intervened by PW-2 and on account thereof, having inflicted single Bhala blow as well as PW-4, during course thereof, was hurled with a brick particle did not justify the application of Section 307 IPC more particularly in the background of discussion made in foregoing paragraph over the nature of injury inconsonance with the opinion of the doctor as well as absence of nailing helm. Consequent thereupon, the conviction and sentence recorded by learned trial court relating to Section 307 IPC is struck down.

19. With regard to remaining finding, being appellant held guilty for an offence punishable under Sections 324, 337 IPC by the learned trial court is hereby confirmed.

20. Now coming to the quantum of sentence, it is apparent that dispute was over a trivial issue that too amongst full brothers wherein neither PW-2 nor PW-4 was dragged. Furthermore, action of appellant was in a spur of moment without any premeditation, as indicated above as well as being aged about thirty years at the time of occurrence (shown as 40 years during course of statement recorded on 20.05.2002) and further perceiving the demon sword since 1992 as well as ordeal of trial for such a long period, having absence any sort

of adverse inference, attract intervention at the score of sentence also.

As, it is apparent from the lower court record that he surrendered on 29.05.1992 and was released on 16.06.1992 while having been taken into custody on 25.07.2002 was released on 28.10.2002 justify imposition of sentence as already undergone and is ordered so under both heads, independently.

21. The appeal is partly allowed with the aforesaid modification. The appellant is on bail. He is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

Patna High Court
January 29th 2015
Perwez/AFR

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