

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.295 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District-
KHAGARIA

- =====
1. Subhash Paswan
 2. Ashok Paswan
 3. Surendra Paswan
 4. Hardeo Paswan

All residents of village- Bela Simari,P.S.and District- Khagaria

Accused persons/.... Appellant/s
Versus

State of Bihar

Prosecution.... Respondent/s

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Appearance :

For the Appellant/s : Mr. None

For the Respondent/s : Mr. Bipin Kumar A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 15-01-2015

In spite of repeated calls, none appears on behalf of the appellants and on account thereof, as held by the Hon'ble Apex Court in **K.S. Panduranga Vs. State of Karnataka and others**, reported in **2013 (2) P.L.J.R. page- 276 (SC)** records have been minutely gone through and the appeal is being disposed of accordingly.

Ram Pratap Paswan, P.W. 3 had filed written report on 3.8.1995 disclosing therein that on the same day at about 7 A.M. while he was coming to his house, from his dera, he found Ashok Paswan, Subhash Paswsan, Surendra Paswan, Hardeo Paswan



engaged in closing the public road for which, the informant made protest and on account thereof, the accused persons abused, caught hold of and threw him on the ground. Accused Hardeo paswan sat over his chest and tried to cut his neck by means of garasa, however, blow caused injury near his neck on account of which, blood oozed out. On hue and cry, his brother Kamleshwari paswan, son Sohan Paswan came, and they were also assaulted by the accused persons. Accused Hardeo Paswan snatched Rs. 500/- as well as wrist watch from his possession. Harilal Paswan, Hari Shankar Paswan, Ramuday Paswan have been named as a witness.

On the basis of the aforesaid written report, Khagaria P.S. Case No. 213/95 was registered, followed with investigation as well as submission of charge sheet leading to conduction of trial, meeting with ultimate result, subject matter of the instant appeal.

The defence case, as is evident from mode of cross examination as well as from the statement recorded under section 313 Cr. P. C. is that of complete denial of occurrence. It has also been pleaded that prosecution party illegally advanced their plea over the land of accused persons which they refuted and on account thereof, accused persons were severely assaulted resulting, institution of Khagaira P. S. Case No. 212/95 wherein, as is evident from the Exhibits, prosecution parties have been convicted. In support of their

plea, though none has been examined however, Exhibits have been brought up on record.

In order to substantiate its case, prosecution had examined altogether 7 P.Ws., out of whom, P.W. 1 is Ramudgar Paswan, P.W. 2 Kamleshwari Paswan, one of the injured. P.W. 3 Rampratap Paswsan (informant). P.W. 4 Hari Lal Paswan. P.W. 5 Dr. Nawal Kishore Singh, who had examined the injured. P.W. 6 Mahendra Prasad Singh, I.O. and P.W. 7, a formal witness as well as had also Exhibited, Exhibit of signature of P.W. 3 over written report, Exhibit -2 series-respective injury reports, Exhibit-3- signature of Officer Incharge over formal F.I.R. Though, not DW had been examined, however, Exhibit-A, Judgement of Khagaria P.S. No. 212/1995, Exhibit-B order passed by the Additional District Sessions Judge, Khagaria in a case under section 133 Cr. P.C. have been exhibited. At the very outset, it is evident that one of the injured Sohan Paswsan, son of P.W. 3 has not been examined nor any explanation has been offered at the end of prosecution on that very score.

Before coming to analyse the evidence of prosecution witnesses over manner of occurrence, it looks prudent to analyse the genesis of occurrence, which, as per initial version of P.W. 3, happens to be on account of closure of public road. P.W.-3 in Examination-in-Chief had stated that while he was coming to his house from dera, he



found Subhash Paswan and Surendra paswan engaged in closing public road, which was resisted by him. During cross-examination, at para-6 he had stated that accused persons were blockade the road by means of bricks. In para-8, he has stated that accused persons have got possession over the land for the last twenty years or more. Accused Surendra and Subash Paswan are the sons of Uchit Lal while accused Ashok Paswan is daughter's son of Uchit Lal. Accused Suredra Paswan and Subash Paswan have donated the land to Ashok over which, his house stood and the alleged road also passes through the same plot, which has been fenced by the accused persons.

In para-8 he had also stated that the aforesaid land was Gair Mazarua. His father facilitated Uchit Lal to possess the same and at that very time he was aged about 12. Subsequently thereof, Uchit Lal got the land settled in his favour and since thereafter, is coming in possession thereof, peacefully. However, he volunteered that road was existing since before.

P.W.2 is his brother as well as alleged injured. Though, in Examination-in-chief, he had not spoken on that very score. But in para-6 of his cross examination, he had stated that both parties indulge in fighting on account of road. Wall of Ashok Paswan is over the land which he had erected for the purpose of construction of his house. This land has been donated by Subhash and Surendra Paswan

through deed of gift. Subash Paswan and Surendra paswan were in possession since before the execution of gift deed and before that, there was road. In para-7, he had further elaborated that this road was from East to West, however, is not present today. They are not claiming the aforesaid land.

P.W. 1 has not disclosed anything relating to the road, however, during cross examination at para-4, he had deposed that both parties are at loggershead on account of road. Prosecution parties are claiming road which the accused had declined. He himself volunteered that house of Ashok Paswan lies over the land. He further volunteered that road was existing through the aforesaid road.

P.W. 4 neither deposed on that very score nor was cross examined by the defendant.

P.W. 6 is the I.O. It is apparent from his evidence, more particularly para-1 wherein he had given topography of the P.O. failed to disclose the presence of house of Ashok Paswan as well as presence of the road and further having been blocked.

In para-5 of his cross examination, he had admitted that though there was disclosure, even that, he had not investigated over the land with regard to ownership, whether road was subsisting at an earlier occasion, whether road has been blocked, its Khesra No, Khata No. etc. He had further stated that prosecution parties have not

advanced their claim over the land rather they claimed only road.

In the aforesaid background, it is apparent that prosecution could not be able to substantiate its plea more particularly, obstruction being put up by accused persons on the alleged date and time of occurrence nor the road which, as per prosecution, was subsisting since before. More, particularly, objective finding of the I.O. nullified to the claim of the prosecution that occurrence took place as they protested over blockade of road at the end of the accused by erecting wall.

In the aforesaid background, the evidences of the material witnesses, relating to main offence of assault and as well as snatching of wrist watch, cash is to be seen and for that, minute observation has to be made over admission of the prosecution witnesses. Coupled with Exhibit-A, the judgment passed by the learned lower Court relating to Khagaria P.S. Case No. 212/95, ended in having the conviction of the prosecution parties. In order to trace out, the suggestion led on behalf of the appellant to the respective witnesses have also to be considered wherein the witnesses were suggested that they forcibly tried to make trespass over the land of the appellant/accused, on account thereon, a volatile situation prevailed wherein not only accused were assaulted at their hand, probability of sustaining the injury at their own hand, could not be ruled out. The evidence of PW 1 at para-11 had admitted



that he had stated before the police that he had rescued Hardeo Paswsan. Hardeo Paswan was assaulted over his head and hands. He did not fall out of assault. That means to say Hardeo Paswan, an accused/conviction/ one of the appellant sustained injuries during course of the occurrence which, the prosecution witness had already admitted during cross examination. At the present juncture, it would not be wise to ignore the evidence of PW -2, one of the injured, who in para-6 of the cross examination had admitted that both parties indulged in Mar-pit on account of road. That means to say, the narration as flashed by the informant regarding the genesis as well as manner of occurrence is found properly diluted during course of trial at their end.

P.W. 3, the informant in para-9 had stated that no sooner than he forbidden the accused from erecting a wall, they began to assault. In para-13 he had further admitted that accused Surendra Paswan had instituted a case against him for the same occurrence wherein, he alongwith his son and brother are an accused, which is pending for trial before the Court.

Now coming to the place of occurrence, it is apparent from the written report that no exact location has been pointed out by the informant, however, P.W. 1 in his Examination- in- chief had stated that when he came near Sarkari Dalan, he saw the occurrence,



though, he had not pin pointed the place. However, under para-13 , he shown the boundary of place of occurrence, North Barren land belonging to Ram ji Paswan, South- Kharanja road and then Ram Swaroop Paswan, East-Sarkari Dalan, West- Kharanja and then house of Subash and Surendra Paswan.

P.W. 2 had stated that when he reached near Samudaik Bhawan, he saw the informant being manhandled at the end of accused persons and during course thereof, he along with the son of the informant Sohan, sustained injury. During cross-examination, it is apparent that no cross- examination was made specifically on that very score.

P.W. 3, during examination –in-Chief, had not specified the same. However, during cross-examination in para- 6, he had stated that occurrence did not take place at the road rather it had taken place in his field and had identified the same with boundry. North field of Ram Ji Paswan and then his house, South-road, East- Samudaik Bhawan, West- his field.

P.W. 4 in para- 6 had stated the boundary of the place of occurrence, North - house of the Ramji Paswan South- road, - East Sarkari Bangla, West- Ram Pratap. I.O. had identified the place of occurrence North- barren land of Ramji Paswan, South-village road, East Samudaik Bhawan, West - land having small coconut tree and on

account thereof, there happens to be inconsistency amongst the witnesses coupled with the objective finding of the I.O. regarding place of occurrence.

Now coming over authenticity of the evidence of P.Ws. it is apparent that there happens to be material development during course thereof, regarding which their attention were drawn .P.W.-1 (Para-10), P.W.-2 (Para-6, wrongly mentioned as para-5) P.W.3 (para-8 and 11), P.W. 4 (para-7), which is found corroborated with the evidence of P.W. 6, I.O. para-6, 7, 8 and 9.

In the aforesaid background, as well as in the back ground of the fact that there happens to be admission on the part of some of the witnesses regarding presence of injuries over the person of accused in the same sequence for which admittedly they were prosecuted and further from Exhibit-A, the judgment of the counter case divulging conviction of the prosecution parties, speaks a lot, putting question mark over manner as well as genesis of occurrence and that being so, the evidence of P.W. 5 Doctor Nawal Kishore Singh, who had examined P.W. 2, P.W. 3 as well as Sohan is not going to bulbale the prosecution case, as the prosecution, after proper scrutiny of evidence as well as appreciating their conduct, is found to have suppress the genesis as well as manner of occurrence, and further, is found has not come up with clean hand.

Consequent there upon, the Judgment of the conviction and sentence recorded by the learned Trial Court is set aside.

The appeal is allowed.

Appellants are on bail. Hence, they are discharged from its liability.

(Aditya Kumar Trivedi, J)

Sudha/-

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