

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.279 of 2000

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1 Md. Munna @ Mustafa, son of Md. Wakil, resident of Village-Bastawara, P.S. Simri, District-Darbhangha.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vishwanath Prasad Sinha- Sr. Advocate

Mr. Durgesh Kumar Singh--Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 20-08-2015

Sole appellant Md. Munna @ Mustafa, who has been found guilty for an offence punishable under Section 307/34 and 341 of the I.P.C. vide judgment of conviction dated 12.07.2000 and has been directed to undergo rigorous imprisonment for four years under Section 307/34 of the I.P.C.. However, no separate sentence has been passed in relation to Section 341 of the I.P.C. vide order of sentence dated 14.07.2000 by the 2nd Additional Sessions Judge, Darbhanga in Sessions Trial No.269 of 1998 has challenged the same under present appeal.

2. Prosecution case, in brief, as is evident from written report submitted by Sanjeev Kumar Jha (PW-7) on 23.11.1997, putting an allegation that on the same day at about 5.00 a.m., while he was at his Darwaza, Md. Munna @ Mustafa, son of Md. Wakil resident of village-Bastawara and Ali Ahmad Naddaf of village Sobhan came near him and Md. Munna @ Mustafa began to abuse as well as also threatened of dire consequences as he had deposed against him relating to a dacoity case having committed at the house of Ram Babu Sah and further, directed to sworn an affidavit failing which, will be murdered. During



midst thereof, Ali Ahmad Naddaf took out pistol and fired by saying that he should be murdered, fortunately, the pistol gone out of order as a result of which, it was missed fire. He raised alarm over which they both escaped there from, however, were chased by the villagers and Md. Munna @ Mustafa was apprehended while Ali Ahmad Naddaf succeeded in his escape along with pistol. Furthermore, the aforesaid written report discloses production of the accused/appellant.

3. On the basis of the aforesaid written report (Exhibit-1), Simri P. S. Case no.93 of 1997 was instituted whereupon investigation commenced and after concluding the same, chargesheet was submitted on account of which appellant had faced trial before the learned lower Court meeting with ultimate result, the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial as well as that of false implication. However, neither any DW nor any kind of document has been adduced in his defence.

5. The prosecution in order to substantiate its case had examined altogether eight PWs, out of whom PW-1 Ram Charitar Sah, PW-2 Dev Sharan Paswan, PW-3 Dilip Bhagat, PW-4 Mantu Thakur, PW-5 Kebal Thakur, PW-6 Tribeni Devi, PW-7 Sanjeev Kumar Jha and PW-8 Md. Illiyas as well as had also exhibited the documents as Exhibit-1 written report, Exhibit-2 endorsement over written report and Exhibit-3 formal F.I.R. As stated above, nothing has been brought up at the end of appellant by way of defence.

6. While assailing the judgment of conviction and sentence, the learned counsel for the appellant submitted that the learned lower Court while concluding the judgment had analyzed the evidence adduced on behalf of



prosecution in mechanical manner otherwise there happens to be presence of sufficient material which, in case properly considered would have dispelled the prosecution version. To support the same, it has been submitted that admittedly the appellant happens to be resident of different village and identifying the appellant by name and parentage is indicative of the fact that both the parties were known to each other since before the occurrence. From the evidence of PW-1, Sarpanch along with other witnesses, it is apparent that they belonged to a particular political party C.P.M. and as the appellant had resisted expansion of communist party as found hazardous to the society in the background of its activities, been involved in this case after maneuvering the police officials otherwise the prosecution could have produced the documentary evidence relating to institution of a dacoity case, if any, having committed at the house of Ram Babu Sah and in likewise manner, the chargesheet identifying the appellant to be an accused in that very case along with status of the informant to be witness in that very case. Furthermore, it has also been submitted that I.O. (PW-8) during course of his evidence had disclosed regarding chequered history of the appellant and further, stated that appellant while was under custody of Chaukidar succeeded in his escape, but had not deposed regarding dacoity case at the behest of Ram Babu SAh on account of commission of dacoity in his house and in likewise manner, identifying the appellant to be one of the dacoits as well as the informant (PW-7) to be the witness. That being so, there was no occasion for the appellant to go to the place of informant, got himself indulged in an occurrence and further, permitted his apprehension with a subsequent allegation that he slipped while having under custody of Chaukidar, who has not been examined to support the same.

7. As such, it has been submitted that assertion as well as

allegation, so attributed by the prosecution, against the appellant did not justify the conviction and sentence recorded by the learned lower Court. In an alternative, it has also been submitted that taking into account the nature of allegation in consonance with the period of custody approximately two and half years did justify interference on the score of sentence.

8. Per contra, the learned Additional Public Prosecutor supporting the finding recorded by the learned lower Court has submitted that appellant happens to be victim of his own wrong, because of the fact that testimony of PW-2, PW-3 and PW-4 have not been challenged at his end and on account thereof, there happens to be no occasion for discarding or disbelieving their evidences. It has further been submitted that having associated with a particular political party is not going to discredit testimony of a witness unless and until, there happens to be cogent, conclusive material having placed to counter-meet the same. Mere suggestion, will not harvest benefit to the appellant.

9. Coming to merit of the case, it has been submitted that apart from PW-7 (his mother), PW-6 had also claimed identification of appellant along with his associate at her Darwaza while they were scolding the informant as well as threatening of dire consequence in case he refuses to accede with their demand. As such, the finding of the learned lower Court is just, legal and proper and has been passed after due appreciation of the materials available on the record.

10. From the written report (Exhibit-1) as well as after going through the evidence of PW-7, it is apparent that presence of appellant along with his associate Ali Ahmad Naddaf was for the purpose of directing the informant to sworn an affidavit on account of being a witness relating to dacoity having committed in the house of Ram Babu Sah wherein the appellant happens to be an accused. Certainly, there happens to be no document adduced on behalf of

prosecution on that very score. Furthermore, from Para-21 of his cross-examination, he had categorically stated that he had not deposed in a case launched by Ram Babu Sah. He had further stated that he is unaware with the fact whether he stood as a witness in that very case. Being so, the motive as assigned by the prosecution vanished.

11. Mere apprehension, as disclosed but not supported by the prosecution, in the background of non-existence of the motive as assigned makes the version doubtful and that being so, the present appeal found with substance. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellant is on bail, hence, is discharged from its liability.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-20.08.2015
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