

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.592 of 2014

Arising Out of PS.Case No. -50 Year- 2003 Thana -SURSAND District- SITAMARHI

1. Kush Paswan S/o Parmeshwar Paswan R/o village - Amana, P.S. - Sursand,
District - Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar .
2. Ram Ishwar Rai S/o Vasudeo Rai
3. Ram Kishore Rai @ Ram Kishore Rai S/o Late Ram Deo Rai
4. Sanjay Rai S/o Ram Ishwar Rai
5. Janki Rai @ Janaki Rai S/o Late Ram Deo Rai
6. Dihal Rai S/o Late Bihari Rai
7. Shankar Rai S/o Ram Hridya Rai
8. Surendra Rai S/o Late Mohan Rai
9. Sanjeevan Rai S/o Late Narayan Rai All R/o Village - Amana, P.S. - Sursand,
District - Sitamarhi.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Dinesh Jha, Adv.

For the Respondent/s : Mr. Z. Hoda, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-02-2015

Heard learned counsel for the appellant and learned
counsel for the State.

The present appeal has been filed by the appellant under
proviso to Section 372 of the Code of Criminal Procedure against the
judgment and order dated 15th October, 2014 passed by the learned 1st
Additional Sessions Judge-cum-Special Judge, Sitamarhi in Sessions
Trial No. 98 of 2005/ 108 of 2005, whereby respondent nos.2 to 9 have
been acquitted of the charges framed against them extending them the
benefit of doubt.

The prosecution case, in brief, is that the informant Kush



Paswan (P.W.5) and accused Shankar Rai (Respondent No.7) were working at Delhi. On 3rd January, 2003, when Shankar Rai was coming back to his village from Delhi, the informant gave him Rs.5000/- for handing over the same to his father in the village. On 1st February, 2003 the informant also came to his village home and enquired from his father as to whether he had received Rs.5000/- from the accused Shankar Rai on which his father told him that Shankar Rai had never handed over any money to him. When the informant enquired in this regard from Shankar Rai, he told him that since he had deposited the money in the Bank, he would pay him after withdrawing the same from the account. On 5th February, 2003 the informant sent his brother Govind Paswan to Shankar Rai for demanding Rs.5000/- given to him earlier. However, Shankar Rai not only declined to make payment of the money but also abused and assaulted him with fists and slaps. On the same day when the informant was washing his hand and face, all of a sudden, all the accused persons (Respondent Nos.2 to 9) came at his door and abused him in a derogatory manner taking the name of his caste. They also assaulted him with fists, slaps and leather belt. When his sister-in-law, brother and father came to rescue him, they were also assaulted by the accused persons. When the informant entered into his house, the accused persons also entered inside his house, dragged him out and assaulted him. On hulla, several villagers came near the place of occurrence, after which the accused persons fled away. However,

while leaving the place, accused Dihal Rai took away the cycle kept near the door of the house of the informant, accused Janaki Rai snatched silver Hasuli from the neck of the informant's sister-in-law, accused Sanjay Rai snatched wrist watch of the informant, accused Ram Kishore Rai took away 29 kg. Masoor and accused Sanjeevan Rai took away 50 kg. paddy from the house of the informant.

On the basis of the fardbeyan of the informant Kush Paswan, Sursand P.S. Case No. 50 of 2003 was registered against the accused persons under sections 147, 149, 341, 323, 448, 380, 504 of the Indian Penal Code and section 3(1)(x) and (xii) of the S.C. and S.T. (Prevention of Atrocities) Act, 1989 and after investigation the police submitted charge sheet against the accused persons for the said offence.

The learned Magistrate, before whom the police had submitted their report under section 173(2) of the Code of Criminal Procedure, took cognizance of the offence and since some of the offences were exclusively triable by the court of Sessions, the case was committed to the court of Sessions.

The Sessions court framed charge against all the accused persons under sections 147, 341, 323/149 of the Indian Penal Code and section 3(1)(x) of the S.C. and S.T. (Prevention of Atrocities) Act, 1989. Accused Janaki Rai, Dihal Rai and Ram Kishore Rai were further charged under section 380 of the Indian penal Code.

In course of trial, the prosecution examined altogether six



witnesses in support of its case, out of whom, P.W.3 Manoj Kumar was declared hostile by the prosecution. The informant of the case has been examined as P.W.5 whereas his sister-in-law Ram Pari Devi has been examined as P.W.1. The other two witnesses, namely, Charitar Paswan (P.W.2) and Feku Ram (P.W.4) are independent witnesses. P.W.6 Sachidanand Singh is the second Investigating Officer of the case. He appears to be a formal witness, who has simply proved the charge sheet of the case, which has been marked as Ext.-2. The prosecution has also proved the signature of the informant on the fardbeyan, which has been marked as Ext.-2 and the formal F.I.R., which has been marked as Ext.-4.

The defence has also examined three witnesses in support of innocence of the accused persons. They are D.W.1 Dasai Baitha, D.W.2 Ram Jatan Mahto and D.W.3 Shankar Rai. It is relevant to note here that D.W.3 Shankar Rai is also an accused in the present case. The defence has also proved a complaint filed in the court vide C-1/27/2003, which has been marked as Ext.-A.

I have heard Mr. Dinesh Jha, learned counsel for the appellant and Mr. Z. Hoda, learned Additional Public Prosecutor for the State. Mr. Dinesh Jha has also produced Xerox copies of the deposition of witnesses, which are taken on record.

Learned counsel for the appellant has submitted that the trial court has not appreciated the evidence adduced on behalf of the

prosecution correctly. The witnesses examined on behalf of the prosecution are all consistent. They have supported the manner of occurrence, time of occurrence and the motive behind the occurrence without any contradiction or omission.

On the other hand, learned Additional Public Prosecutor has submitted that the court below has committed no error in acquitting the accused of the charges framed against them as the witnesses examined in the court were not reliable.

Having heard the parties, I find that the informant has tried to improve his case in course of trial from stage to stage. In the F.I.R. he has not stated that any of the accused was armed with any weapon. However, while deposing in court, he has contended that the accused persons were armed with lathi, danda, bat etc.

I also find from the record that though the alleged occurrence is said to have taken place on 5th February, 2003 but the F.I.R. was belatedly lodged on 23rd May, 2003. The informant has tried to explain the delay by saying in the F.I.R. that since a panchayati was being held in the village the matter was not reported to the police earlier and as the dispute could not be resolved in panchayati, he submitted an application before the Superintendent of Police. However, while deposing in court, he has stated that on the date of occurrence itself he went to the Police Station but his statement was not recorded by the Police. He has further stated that on the very next day of occurrence he



went to the court and instituted a case. He further states in his cross-examination that he met the Superintendent of Police after two days of the occurrence. It is to be noted here that no complaint case filed in the court, as stated by the informant, has been brought on record. Further, the petitioner claims that he met the Superintendent of Police only two days after the occurrence but the F.I.R. was instituted after more than three months. There is no explanation of such an inordinate delay caused in institution of the F.I.R.

I further find from the deposition of the informant (P.W.5) that though he claims that he was working with his co-villager Shankar Rai at Delhi for past several years and he had gone to his residence for demanding the money but when a question was put to him regarding the distance of the house of Shankar Rai from his house, his answer was that he does not know at what distance accused Shankar Rai resides. This apart, the informant claims that after sustaining injury, he went to a private hospital at Sursand for treatment on a Rickshaw whereas P.W.1 Ram Pati Devi, sister-in-law of the informant has deposed that at the time of occurrence the informant Kush Paswan had become unconscious due to assault made upon him, and his family members, namely, Charitar Paswan, Govind Paswan and Parmeshwar Paswan had carried him to a private hospital at Sursand on a cot.

P.W.1 Ram Pari Devi has also stated in her deposition that when the case was not instituted in the Police Station within 24

hours, they instituted a case in the court. As noted above, there is nothing on record to suggest that any complaint was ever filed in the court by the members of the prosecution party in respect of the allegations made in the F.I.R.

I further find from the record that though the injured persons are said to have been treated by a Doctor at Sursand but the Doctor has not been examined by the prosecution in court. Not only this, no chit of paper in respect of any treatment given to any of the injured has been filed in the court. This apart, the first Investigating Officer, who had recorded the statement of the witnesses in course of investigation under section 161(3) of the Code of Criminal Procedure, has also not been examined by the prosecution in court. There is no explanation on behalf of the prosecution for his non-examination. His non-examination in court has certainly prejudiced the defence. The prosecution witnesses have stated that the injured persons had sustained bleeding injuries and they had also shown blood stains on their clothes to the Investigating Officer of the case but no material exhibit has been produced in the court.

Taking into consideration all these aspects, the court below has given benefit of doubt to the accused persons and acquitted them of the charges framed against them.

The parameters for dealing with an appeal against the judgment of acquittal have been laid down by the Hon'ble Supreme

Court in several cases. It has been held by the Hon'ble Supreme Court that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which favours the accused should be adopted. Further, if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

I have gone through the findings recorded by the learned trial court. In my considered opinion, the findings recorded by the learned trial court cannot be held to be erroneous or that there was no perverse appreciation of evidence.

In such view of the matter, I find no merit in the present appeal. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J)

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