

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.565 of 2016

Arising Out of PS.Case No. -119 Year- 2006 Thana -JAGDIHSPUR District- BHOJPUR

1. Indrajit Chaudhary, son of late Sukhen Chaudhary, resident of village-Ayer,
Police Station-Ayer, in the district of Bhojpur

.... Appellant/s

Versus

1. The State of Bihar,
2. Sunil Chaudhary, son of Sri Fatigan Chaudhary,
3. Fatigan Chaudhary, son of Late Gulijani Chaudhary,
4. Kamlesh Chaudhary, son of Sheo Kumar Chaudhary,
5. Birendra Chaudhary, son of Sri Sarvanand Chaudhary,
6. Lal Babu Chaudhary, son of Sri Fatigan Chaudhary,
7. Sheo Kumar Chaudhary, son of Sri Fatigan Chaudhary, All Sl. Nos. 2 to 7
residents of village- Ayer, Police Station- Ayer, in the district of Bhojpur

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate with
Mr. Prabhu Narayan Sharma, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

&

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-10-2016

This appeal is directed against the judgment and order, dated 06.04.2016, passed by the learned Sessions Judge, Bhojpur, Ara, in Sessions Trial No.338 of 2007, which arose out of Jagdishpur (Ayer) P.S. case No. 119 of 2006, registered under Sections 147,148,149,341,342,323,324,307,379 and 504 of the Indian Penal Code (in short IPC) read with Section 27 of the Arms Act, whereby the learned trial Court has acquitted all the accused

persons (i.e., respondent Nos. 2 to 7 herein) of the charges framed against them and set them at liberty.

2. Assailing the judgment aforementioned, the instant appeal has been preferred, primarily, on the ground that the learned trial Court has not correctly appreciated the evidence and, therefore, the findings arrived at are not sustainable in law and need to be interfered with.

3. We have heard Mr. Akhileshwar Prasad Singh, learned Senior Counsel appearing for the appellants, and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor appearing for the State.

4. The learned counsel for the appellants has submitted that different persons react differently to a particular situation and as such, there may be minor variations in the evidence of prosecution witnesses and for minor inconsistencies and variations, the prosecution's version ought not to have been ignored or thrown away by the learned trial court.

5. We have gone through the judgment, under appeal, and what attracts our attention, almost immediately, is that the defence has been able to show, by exhibiting several documents, that there was previous enmity between the parties and several criminal cases have been instituted between the parties



prior to this incident. It, thus, becomes material that the prosecution witnesses examined were all close relatives of the informant. We are mindful of the fact that previous enmity is a double-edged weapon, but possibility of false involvement, especially, because of the past enmity, has to be confidently ruled out.

6. It has been testified by prosecution witnesses that at least, one of the accused was carrying pistol and he fired at the villagers, when they attempted to rescue the victim. We must point out that no bullet or empty cartridge has been recovered from the place of occurrence, though the police arrived there within minutes of the incident. If we keep this major lacuna in mind and also analyze the evidence in the light of the fact that previous enmity existed, then, the inconsistencies and variations, in the evidence, would not be possible to be termed as inconsequential.

7. The consistent version of the prosecution witnesses was that the accused persons were carrying sharp-edged lethal weapons and one of them was armed with the pistol. The witnesses, including the victim, have deposed that the *sharp cutting* weapons were used against the victim. The doctor, whilst under examination as PW 6, has, however, deposed that only

lacerated injuries were found caused and that the nature of the injuries was simple. The evidence of the medical officer, thus, runs contrary to the version of the ocular evidence that sharp cutting weapons were used.

8. It is true that when there is cogent eye witness's account, medical opinion recedes to the background. However, when there are reasons to believe that prosecution witness have tried to improve the prosecution's version, it definitely is a matter of concern and cannot be ignored. In such a situation, it is difficult to say that one must believe the tainted eyewitness's account and keep the medical evidence aside. In *Anjani Chaudhury Vs State of Bihar*, reported in (2011) 4 SCC 249, the Supreme Court was confronted with a similar situation, where there was no injury, which was caused by *lathi* and the weapon used were stated to be *lathis*. In such a situation, the prosecution case was held to be doubtful and the accused were acquitted of the charges.

9. Reverting to the case at hand, we find that the presence of the prosecution witnesses at the place of occurrence is itself doubtful. One of the witnesses, we may, now, point out, deposed that the occurrence had taken place late in the evening, at about 7 PM; whereas, according to the informant, the incident took place in the early hours of the morning. Other witnesses have

also described the incident differently, some stating that incident was brief, while other claiming that it lasted for as long as 30 minutes.

10. What also cannot be ignored is that the incident took place in the midst of a village and, admittedly, a taxi stand was next door. Prosecution witnesses admitted, during cross-examination, that not less than 15-20 persons always remain at the taxi stand. In other words, independent witnesses were present, but none has been examined by the prosecution to prove the veracity of its version.

11. According to the informant, because of the assault, he had fallen unconscious. The informant examined as PW 5 would, however, depose that the police came to the place of occurrence immediately after the occurrence and took him, in their jeep, to the police station, where he regained consciousness and his *fard beyan* was recorded by the police officer and his signature was also obtained. Belying the evidence of the informant (PW 7), so given, the investigating officer (PW 6), has deposed that the informant came to the police station after his treatment at the local hospital and his *fardbeyan* was recorded at about 4 PM on the date of the incident. In other words, the investigating officer avers in a manner, which materially contradicts the version of the informant

and further goes to show that the *fard beyan* was not recorded immediately after the occurrence.

12. The previous enmity, the contradictions between medical opinion and ocular evidence, the absence of empty cartridge, at the place of occurrence, the non-examination of independent witnesses and the other factors described above, when joined together, go to show that there is major chink in the prosecution's case and it would not be safe to act upon the testimonies of infirm witnesses to fasten penal liability. There is too much improvement and embellishment, which make the prosecution version suspect and, as such, only one conclusion follows, the conclusion being that the prosecution has failed to prove its case beyond reasonable doubt.

13. This appeal is devoid of merit and, thus, not admitted and shall accordingly stand dismissed.

(I. A. Ansari, CJ)

J.Alam/-

(Dr. Ravi Ranjan, J)

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