

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.100 of 2015

Arising Out of PS.Case No. -129 Year- 2000 Thana -BOCHHA District- MUZAFFARPUR

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SACHINDRA SINGH SON OF LATE BALESHWAR SINGH RESIDENT OF
VILLAGE - UNSAR, P.S. BOCHAHAN, DISTRICT - MUZAFFARPUR

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S.

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Appearance:

For the Appellant/s : Mr. Bhavesh Kumar, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 18-03-2017

Sole appellant Sachindra Singh has been found guilty for the offences punishable under Sections 307/149 and directed to undergo R.I. for ten years as well as fined Rs.3000/- in default thereof, to undergo R.I. for six months additionally, under Section 324 IPC and directed to undergo R.I. for two years with a fine appertaining to Rs.2000/- in default thereof, to undergo imprisonment for three months, additionally under Section 323 IPC and directed to undergo imprisonment for one year as well as fined of Rs.1000/- in default thereof to undergo imprisonment for one month, additionally with a further direction to run the sentences concurrently and further in case of deposit of fine amount half should be paid to the wife of informant with a further direction of set off against the custodial period under Section 428 Cr.P.C. vide judgment of conviction dated 29.01.2015 order of sentence dated 12.02.2015 by the Additional Sessions Judge, XIth, Muzaffarpur in Sessions Trial No.372/2001

2. PW.2, Parmanand Singh gave his fardbyean while he was admitted at S.K.M.C.H, Muzaffarpur on 20.07.2001 at 12:30 hours before the ASI, Ahiyapur P.S. stating therein that on 18.07.2000 at about 09:30 AM he had gone to his field lying one K.M. away from his house where he



was preparing bundle of fire wood. At that very time, Kapileshwar armed with Bhala, Sachindra Singh armed with Farsa, Sanjeet Singh armed with iron rod, Manoj Kumar Singh armed with Bhala, Rajeev Kumar Singh armed with *lathi* came and on an order of Sachindra Singh, they all began to assault. They brutally assaulted him as a result of which he fell down. Then thereafter, Sanjeet Kumar Singh tied string around his neck and threw him in a ditch full of water. Furthermore, Rajeev Kumar took away rupees eight thousand. It has further been disclosed that the accused persons have assaulted him with an intention to commit his murder. It has also been stated that his servant Bochaha was raising alarm that his master is being assaulted and further, thrown in water, then thereafter his daughter Guriya Kumari, Kamlesh Singh, Kalik Paswan, Gauri Shankar and others came and took out him from the ditch, untied his neck and then took him to Bochaha hospital and from there to S.K.M.C.H. where treatment is going on. Bablu Kumar and Malti Singh (son and wife, not examined) stood as FIR attesting witness.

3. After receipt of the fardbeyan from Ahiyapur Police Station, Bochaha P.S. Case No.129/2000 was registered on 21.07.2000 whereupon investigation commenced. Because of the fact that appellant was arrested, on account thereof, charge sheet was submitted against him keeping the investigation pending against remaining accused persons whereupon, cognizance of an offence was taken which ultimately led committal, trial and further the recording of the guilt and sentence against the appellant, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial of the occurrence as alleged apart from false implication in the background of land dispute persisting amongst the parties who are



none others than uncle as well as own full brother. However, neither any DW nor any kind of document has been exhibited on behalf of defence.

5. In order to substantiate its case prosecution had examined altogether eight PWs out of whom PW.1 is Guddi Kumari, daughter of the informant, PW.2 is Parmanand Singh, informant himself, PW.3 Rita Lal Paswan, PW.4 is Gauri Shankar Singh, PW.5 is Kamlesh Kumar Singh, PW.6 is Tirthanand Rana, PW.7 is Tapeswar Sharma and PW.8 is Umesh Thakur, formal. The prosecution had also exhibited Ext.-1 Series-Signature of informant as well as FIR attesting witnesses, Ext.-2-Injury report, Ext.-3-Formal FIR.

6. From the materials available on the record, it is apparent that neither doctor has been examined nor I.O. has been examined. While examining PW.6 formal witness, prosecution failed to substantiate the ingredients so prescribed under Section 32(1) of the Evidence Act, the cause for non-appearance of the doctor that too happens to be relating to PHC, Bochana. Neither the treating doctor of the SKMCH has been cited as a charge sheet witness nor any kind of injury report having issued from S.K.M.C.H. is available on the record. In the aforesaid background though the injury report could be an exhibit but the contents thereof would not be admissible and so, the finding so recorded therein would not be taken note of.

7. Non-examination of the Investigating Officer is another circumstance which, as is evident from facts of the case have important role to decide the fate of the instant trial.

8. In the case of **Lahu Kamlakar Patil v. State of Maharashtra** reported in **(2013) 6 SCC 417** under para-18 it has been held:

“18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the



excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar* (1996) 2 SCC 317, this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik v. State of Bihar* (2000) 9 SCC 153, it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar* (2001) 6 SCC 407, *Rattanlal v. State of Jammu and Kashmir* (2007) 13 SCC 18 and *Ravishwar Manjhi and others v. State of Jharkhand* (2008) 16 SCC 561, has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

9. In the aforesaid background, the evidence of other witnesses have to be discussed. PW.2/victim/informant, though in fardbeyan had not stated that he was taken to the police station, however during course of cross-examination had stated that first of all people took him to police station. At that very time he was unconscious. He had no talk with police official. Then thereafter, he was taken to Bochaha hospital and from there he was referred to S.K.M.C.H. where, after two days he regained sense. Furthermore, from the order sheet along with the formal FIR, it is apparent that the FIR was seen by the Chief Judicial Magistrate



on 24.07.2000 that means to say completely two days after the registration of the case. That means to say on the seventh day of the occurrence the FIR reached at the office of Chief Judicial Magistrate. Had there been examination of the Investigating Officer, the aforesaid event would have been properly exposed in the background of the fact that PW.1, daughter of the victim had clearly state that they have gone to police but had not disclosed that at that very time he (PW.2) was unconscious. She had further stated that she along with her father were accompanied by Kamlesh Singh, Gauri Shankar, Kalik Paswan. She had further stated that Officer-in-charge had inquired from her. Therefore, due to non-examination of the Investigating Officer, defence could not have an opportunity to cross-examine and further, trace out whether FIR was instituted on the statement of PW.1, Guriya Kumari before registration of the instant case. In likewise manner, had there been examination of the Investigating Officer, he would have explained apart from aforesaid event, the delay having caused in transmitting the FIR to the Magistrate overlapping the statutory period.

10. From the deposition of PW.4, PW.5, it is evident that they stood as an eyewitness during course of investigation but changed their status and became hearsay witness and to that extent were declared hostile by the prosecution along with PW.3 who happens to be hearsay witness and so, their status is to be acknowledged in similar way. Furthermore, from the evidence of PW.4, it is evident that he claimed himself to be the person who took out victim from the ditch but he had not stated that any string was tied around the neck of PW.2.

11. Now remains evidence of PW.1 and PW.2. Although, they have not been properly cross-examined as well as the development which visualized during course of evidence of PW.2 inconsonance with



his earliest version, fardbeyan was not attracted. Apart from fardbeyan, it is evident from his evidence that there happens to be specific disclosure that Guriya Devi along with others reached at the spot after PW.2 was thrown in a ditch by the accused persons. That means to say after completion of the occurrence presence of Guriya Kumari, PW.1 has been perceived so, as per version of PW.2, presence of PW.1, Guirya happens to be after the occurrence on an alarm raised by the servant (not examined) of PW.2.

12. From the evidence of PW.1, it is evident that at that very time she was informed vide Kamlesh (PW.5) while she was at her house that his father was being assaulted over which she rushed and then saw the occurrence she was also assaulted. The manner wherein she deposed if taken together with the evidence of PW.2, it is apparent that she posed herself to be an eye witness since inception of the occurrence and in the aforesaid background, her status is found inconsistent with the PW.2.

13. Though from the evidence of PW.2, injured, it is evident that he had duly supported the prosecution case and further, manner of assault. In terms of Section 134 of the Evidence Act it is the quality not the quantity which requires proving of facts in issue. Furthermore, from the mode of cross-examination, it is apparent that he has not been cross-examined over the manner of assault having inflicted at the end of the accused. Therefore, even in absence of evidence of the doctor, the manner of assault has properly been depicted but, the aforesaid eventuality is to be seen in the background of the lapses having on the part of the prosecution as indicated above.

14. In ***Bijoy Singh v. State of Bihar*** reported in ***AIR 2002 SC 1949*** the delay in transmitting FIR to the Magistrate has been elaborately



considered and discussed in following way:

“7. Sending the copy of the special report to the Magistrate as required under Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 CrPC is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if tendered, no adverse inference can be drawn against it.

8. In the instant case, the copy of the report referred to in Section 157 CrPC is shown to have been received by the Magistrate on 27-8-1991. Even though there is a mention in the FIR that its copy was sent through special messenger, yet no date or time of sending the said report is mentioned. The Magistrate, receiving the copy of the report, has also not noted the time of its receipt on 27-8-1991. We are of the opinion that the Magistrates receiving reports under Section 157 CrPC, particularly when it relates to the commission of heinous crime are required to note



not only the date but also the time of the receipt of the copy thereof. Mr B.B. Singh, learned counsel appearing for the State has pointed out the existence of various circumstances which may perhaps be the cause of delay in sending the copy of the report and its receipt by the Magistrate but surely there is a difference between the “may be” and “must be”. The prosecution has apparently failed to explain the delay in sending the copy of the said report in terms of Section 157 CrPC to the Magistrate of the area. This aspect has been highlighted by the learned counsel for the appellant to contend that many of the accused were innocent and wrongly roped in the case allegedly on account of enmity existing between the complainant and the accused party. There is some substance in such a submission.”

15. On account of non-examination of doctor, in **Ram Khelawan Mistry vs. The State of Bihar** reported in **2002(1) PLJR 30**, it has been held:

“6. Though the appellant suffered conviction also under section 307 IPC on the strength of injury report brought on the record, it appears, that the doctor who examined Meena Kumari was not examined at trial and regard being had to the contentions raised at Bar, we, finding no good evidence, set aside the conviction of the appellant under section 307 IPC and also the sentence imposed on him on this court.”

16. Considering the evidence in its totality wherefrom it is apparent that land in question, alleged P.O. is found not only to the prosecution, rather to the appellants also, the branches having cut from a tree in likewise manner also carries interest of respective parties and in the aforesaid background, non-examination of the doctor, I.O. coupled with delay in transmission of the FIR to the court concerned, speaks



otherwise whereupon at least the appellants are found entitled for benefit of doubt.

17. That being so, the judgment of conviction and sentence recorded by the learned trial court is set aside. Appeal is allowed. Appellant is on bail hence is discharged from its liability

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	NAFR
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