

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.24 of 2015

Arising Out of PS.Case No. -114 Year- 2010 Thana -SISWAN District- SIWAN

MAJISTER SAH SON OF YAMMUNA SAH RESIDENT OF VILLAGE -
JAGDISHPUR, P.S. SISWAN, DISTRICT - SIWAN.

.... APPELLANT/S

VERSUS

1. THE STATE OF BIHAR.
2. ANANT KUMAR DUBEY SON OF LATE RAMJAS DUBEY RESIDENT
OF VILLAGE - JAGDISHPUR, P.S. - SIWAN, DISTRICT - SIWAN.

.... RESPONDENT/S

Appearance:

For the Appellant/s	:	Mr. Ranjeet Kumar, Adv. Mr. Prince Kumar Mishra, Adv. Mr. Kundan Kumar singh, Adv. Miss. Ranjeeta Singh, Adv.
For the Informant	:	Mr. Suresh Mishra, Adv.
For the State	:	Mr. Sujeet Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 25-08-2017

Appellant, Majister Sah has been found guilty for an offence punishable under Section 308 IPC and sentenced to undergo R.I. for five years, under Section 324 IPC and sentenced to undergo S.I. for one year six months, under Section 341 IPC and sentenced to undergo S.I. for fifteen days with a further direction to run the sentences concurrently, with a further direction of set off with regard to the period already undergone during course of trial under the guise of Section 428 of the Cr.P.C. vide judgment of conviction dated 26.11.2014 and order of sentence dated 28.11.2014 passed by Additional Sessions Judge, IIIrd, Siwan in Sessions Trial No.176 of 2011.

2. PW.3, Anant Kumar Dubey filed written report



alleging inter alia that on the same day that means to say on 19.12.2010 at about 06:00 PM while he was coming to his house, found thorn fixed on the path way which he removed and in the aforesaid background, his co-villager Majister Sah came at his Darwaja and began to abuse. When he protested, Majister Sah inflicted knife blow over his stomach as a result of which he sustained injury and fell down. He raised alarm over which his elder brother Gajendra Dubey came in rescue who was also given knife blow by the Majister Sah. On hue and cry so many persons including Jai Nath Dubey and others came who have seen the occurrence.

3. The aforesaid written report led institution of Siswan P.S. Case No.114/2010 followed with an investigation as well as submission of charge sheet facilitating the trial in a manner, 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 that of complete denial. It has also been pleaded that there happens to be Gumti of accused in front of house of the prosecution party which, on the alleged date the prosecution party deomolished as a result of which he had filed complaint case and to save there from, got a collusive injury report from a doctor who happens to be relative of a Surpanch under whom PW.1 Jai Nath Dubey happens to be Panchayat Sachiv and then got this case filed.



5. In order to substantiate its case prosecution had examined altogether five PWs out of whom PW.1 is Jai Nath Dubey, PW.2 is Gajendra Dubey, PW.3 is Anant Kumar Dubey, PW.4 is Syed. Mohammad Jahid, doctor and PW.5 is Mabood Khan, Investigating Officer. Side by side exhibited Ext.1-Signature of informant over written report, Ext.2 Series-Injury report of both the injured PW.2 & PW.3, Ext.3-Endorsement over the written report, Ext.4-Formal FIR and Ext.5 Series-Injury report issued by the Investigating Officer relating to respective injured.

6. Though there happens to be admission at the end of the prosecution witnesses that a complaint was filed at the end of the accused two days after the occurrence but, same has not been brought up on behalf of defence.

7. Before coming to the ocular evidence as well as evidence of the respective injured, it is evident from the evidence of the PW.4, Doctor that he had examined informant Anant Kumar Dubey on 19.12.2010 and found the following injuries:

- (i) Incised wound 4" x ½" x 1" over left side of abdomen.
- (ii) Complain of pain on whole body.

Age of Injury within six hours caused by sharp cutting weapon. Injury no.1 has been shown to be dangerous to life.

On the same day at about same time he had also



examined Gajendra Dubey, PW.2 and found following injuries:

- (i) Incised wound 6" x ½" x ½" over left side of upper abdomen.
- (ii) Complain of pain over body.

Age of Injury within six hours caused by sharp cutting weapon simple in nature.

8. From perusal of his evidence, it is evident that he had not shown the ingredients over which he had opined the injury no.1, of informant to be dangerous to life although during course of cross-examination he had stated that it was on account of paucity of blood due to profuse bleeding which, he had not incorporated in his report. Furthermore, he had also admitted his house lies in the same Panchayat and his relative Md. Ali happens to be Surpanch under whom PW.1 is Panchayat Saachiv.

9. Now proceeding towards next step, it is evident from the evidence of PW.5, the Investigating Officer para-8 that he had recorded statement of all the witnesses conjointly under para-5 of the case diary which happens to be contrary to the spirit of law. Times without number such kind of activity has been deprecated even then, the police official does similar mistake without taking a lesson.

10. After hearing rival submission, it is apparent that prosecution has not been able to substantiate the actual place of occurrence. As per evidence of PW.5, Investigating Officer, it is



evident that he had not affixed the same as in his examination-in-chief para-3, he had stated that he had inspected place of occurrence. The place of occurrence happens to be a field near middle school situated in front of house of informant but twisted the same that for removing of thorn therefrom, has been shown motive for commission of the occurrence. Moreover, during cross-examination at para-6 he had stated that in para-6 of the case diary he had mentioned the place of occurrence as a field lying behind middle school where he had not found any thorn. The aforesaid middle school happens to be by the side of road.

11. When the evidence of the PWs are taken together, it is evident that they are not at all consistent on that score. PW.1 during his examination-in-chief had not specified the exact place of occurrence rather he said that while he was at his Darwaja, heard Majister Sah abusing over which he rushed there and then narrated occurrence. During cross-examination he had not specified the exact location save and except under para-17 that the place where the occurrence took place, crop was not standing. Crop was standing in a field lying by the side of the P.O. land. P.O. is a parti land.

12. PW.2 had deposed that on the alleged date and time of occurrence he was at his Darwaja. He heard alarm of his brother coming west to his Darwaja where upon he had gone there and then narrated the occurrence. During his examination-in-chief he had not specified the place where he had gone. During cross-examination at



para-14 he had stated that whole occurrence took place over road.

13. PW.3 is the informant himself. During examination-in-chief he had stated that while he was going to his house and reached on the ridge near the field of Mukhia, Brajesh Singh, he found thorn which he lifted and kept by the side whereupon, Majister Sah began to abuse as well as also began to assault. Then narrated the occurrence. During cross-examination at para-7 he had deposed that conversation with Majister Sah took place in front of his house. Conversation took place 15+10=25 minutes. In first leg it was slowly and after ten minutes, it was loudly over which, so many persons assembled there.

14. Now coming to other aspect, PW.1 had said that when he reached at the place of occurrence he saw Majister Sah inflicting knife blow over Anant Kumar Dubey. When his brother came in rescue he was given similar treatment. PW.2, one of the injured had deposed in his examination-in-chief that when he reached at the place of occurrence, he found his brother in injured condition lying on the ground. Majister Sah had inflicted knife blow who was standing there having knife. When he reached there, he was also given a knife blow by the Majister Sah which he shown to the court. From his cross-examination at para-9 he had stated that when he reached at the place of occurrence, both the parties were grappling each other, indulged in scuffle, push and pull was going on. Then had said that after sustaining knife blow, his brother fell down. In para-10 he had further



said that during course of scuffle he had not tried to save his brother but again corrected and said that he tried to pacify but both of them did not accede to his effort. PW.3, the informant had stated that as soon as he removed the thorn near the field of Brajesh from a ridge, Majister Sah began to abuse as well as assaulted. Thereafter, he inflicted knife blow. When his brother came in rescue he was also given knife blow. As stated above, in para-7 he had given a different story.

15. Considering the totality of the event it is crystal clear that the prosecution could not be able to substantiate the place of occurrence and in likewise manner the manner of occurrence. Furthermore, the admitted position as coming out from PW.3 para-15, it is evident that they are hostile to the Mukhiya group on account thereof, some sort of darkle activity could not be ruled out and that happens to be sufficient to undo the finding recorded by the learned lower court. Accordingly, 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.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	28.08.2017
Transmission Date	28.08.2017

