

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.483 of 2015

Arising Out of PS.Case No. -47 Year- 2011 Thana -PIPRA District- SUPAUL

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Chhotelal Mandal @ Chotelal Mandal Son of Late Gohal Mandal, Resident of
village- Godhiya, P.S.- Pipra, District- Supaul

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Mahendra Thakur, Amicus Curiae.

For the Respondent/s : Mr. Sujit Kumar Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 21-11-2017

Heard learned Amicus Curiae for the appellant as well
as learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the
Judgment and Order of conviction dated 01.04.2015 and order of
sentence dated 07.04.2015 passed by Additional District and Sessions
Judge-II, Supaul in Sessions Trial No. 221 of 2011 arising out of
Pipra P.S. Case No. 47 of 2011, whereby the learned trial court
convicted the accused Chhotelal Mandal for the offence punishable
under Sections 341, 324, 326 and 307 of the Indian Penal Code and
sentenced him to undergo R.I. for ten years and slapped him with fine
of Rs. 5000/- for the offence under Sections 307 and 326 of the Indian
Penal Code each and further sentenced him to undergo R.I. for three



years for offence under Section 324 of the Indian Penal Code and S.I. for one month for the offence under Section 341 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. Factual matrix of the case is that Pipra P.S. Case No. 47 of 2011 was instituted under Sections 341, 324, 326 and 307 of the Indian Penal Code against the accused Chhotelal Mandal on the basis of the written report of Satyanarayan Mandal, Son of Late Chuman Mandal, Resident of Village- Gadhiya, P.S.- Pipra, District- Supaul with the allegation in succinct that on 08.06.2011 at around 6 AM, while his son Brahmedeo Mandal was standing at his door, in the meantime Chhotelal Mandal abruptly arrived there and gave dagger blow, one on his left rib and two on his left hand. Sustaining injury, his son made alarm and responding the same, he and his villagers rushed there and witnessed the accused Chhotelal Mandal escaping brandishing the dagger. Wound of his son was bleeding profusely and he fell senseless. He rushed his son to the clinic of Dr. Ramesh Chaudhary of Singheshwar, where he is undergoing treatment.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused under Sections 341, 324, 326 and 307 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and



perusing the same, the learned Magistrate took cognizance of the offence against the accused and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of Additional District and Sessions Judge-II, Supaul for trial.

6. Charges against the accused were framed under Sections 341, 324, 326 and 307 of the Indian Penal Code. Charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether thirteen prosecution witnesses namely, Sanjeev Kumar Mandal as PW-1, Chabhu Mandal as PW-2, Raja Ram Das as PW-3, Chhedi Thakur as PW-4, Buchai Mandal as PW-5, Chandeshwari Paswan as PW-6, Mahendra Thakur as PW-7, Shiv Narayan Mandal as PW-8, injured Brahmdeo Mandal as PW-9, informant Satyanarayan Mandal as PW-10, Dr. R.P. Sinha as PW-11, I.O. Bishwanath Prasad Singh as PW-12 and Bechan Mandal as PW-13. Out of the aforesaid witnesses, PW-13 happens to be the formal witness. The prosecution has also filed and proved several documents by way of documentary evidence.

8. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent



and falsely implicated in the case. The accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convict has preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned Amicus Curiae for the appellant that the occurrence is said to be of 08.06.2011 at 6 AM and P.S. is located at a distance of around 4 Km from the place of occurrence, but F.I.R. has been lodged after an inordinate delay of 32 hours on 09.06.2011 at 02:30 PM, which creates serious doubt about the prosecution case. It is further submitted that as per the prosecution case, injured was treated in the clinic of Dr. Ramesh Chaudhary of Singheshwar, but neither any injury report furnished by the said doctor has been brought on record nor the said doctor has been examined by the prosecution rather injury report of Dr. R. P. Sinha has been filed and proved by the prosecution by examining the



said doctor who has examined the injured on 09.06.2011 at 06:30 AM i.e. after 24 hours of the occurrence. The informant has also not stated about the treatment of the injured by the said doctor in his written report. It is further submitted that only injured Brahmdeo Mandal happens to be the eye witness of the occurrence as as per the F.I.R. itself, informant and villagers rushed at the place of occurrence responding halla made by the injured after sustaining injury. It is further submitted that as per the F.I.R. and account of witnesses, the wound of the injured was bleeding profusely and it has fallen on the ground, but I.O. has not mentioned about finding of any blood on the earth and collection of the blood stained soil by him which also creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and the charges levelled against the appellant beyond all shadow of doubt. Hence, the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the injured who happens to be the eye witness of the occurrence has supported the occurrence and the informant and other witnesses have also corroborated the occurrence of assault made on the injured Brahmdeo Mandal by the



accused Chhotelal Mandal by means of dagger. The ocular evidence also stands corroborated by the medical evidence and learned lower court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that the appellant is said to have assaulted Brahmdeo Mandal by means of dagger inflicting two injuries on his left hand and one injury on his left rib. The injured of the case, namely, Brahmdeo Mandal has been examined in this case as PW-9. The said witness has stated that while he was standing at his door and interacting with Mahendra Thakur (PW-7), Chhotelal Mandal rushed there from rear side and assaulted on his left rib and left arm by means of dagger inflicting two injuries on his left hand and one on his left rib. Sustaining injury, he fell down. Responding halla, Chabhu Mandal and others rushed there and then Chhotelal Mandal left the scene.

15. All the material witnesses including the informant have stated about giving dagger blow to the injured on his rib and on his left hand by the appellant. From perusal of the testimony of the informant and other witnesses, it appears that they have made an abortive bid to support the occurrence of assault upon the injured by



the appellant by means of dagger claiming themselves to be the eye witnesses of the occurrence, but the written report filed by the informant itself candidly rules out the informant and other witnesses to be eye witnesses of the occurrence. As in the written report, it is candidly and precisely mentioned that after sustaining injury by the injured Brahmdeo Mandal at the hand of the appellant, he made alarm that he has been assaulted by means of dagger and responding alarm, the informant and other witnesses rushed there and witnessed the appellant escaping brandishing the dagger. The aforesaid statement of the informant given in his written report eloquently indicates that neither the informant nor any witness has witnessed the occurrence of assaulting the injured by means of dagger by the appellant rather they had seen the appellant escaping with the dagger. Moreover, the injured Brahmdeo Mandal (PW-9) in Para-9 of his cross-examination has stated that at the time of occurrence, his father (informant) was sitting at the barandah. There was a wall between the place of sitting of his father and the place where he was standing. His father arrived at the place of occurrence within 2-3 minutes of the occurrence. The aforesaid statement of the injured eloquently indicates that the informant had not seen the occurrence of assaulting the injured by the appellant, as there was wall between the place of occurrence and place of sitting of the informant at the time of



occurrence and the informant had rushed at the place of occurrence within 2-3 minutes of the occurrence. As per the written report of the informant, other witnesses had rushed at the place of occurrence along with the informant, so aforesaid statement of the injured also eloquently rules out witnessing of assault on him by the appellant by the said witnesses as the said witnesses had arrived at the place of occurrence along with the informant within 2-3 minutes of the occurrence and they had no occasion to witness the occurrence of assault.

16. Raja Ram Das (PW-3) has stated in Para-5 of his cross-examination that he witnessed Chhotelal Mandal escaping to his house with the dagger. He was standing on the road near his door at that time. In Para-11 of his cross-examination, he has stated that he had himself not seen the occurrence of assault by means of dagger. Aforesaid statement of PW-3 indicates that he had not seen the occurrence of assault on the injured by the appellant rather had seen him escaping with the dagger. The aforesaid statement of PW-3 also rules out witnessing of occurrence of assault by other witnesses, as in Para-2 of his examination-in-chief, he has stated that on halla, he, Chhabu Mandal (PW-2), Buchai Mandal (PW-5), Shiv Narayan Mandal (PW-8), Chhedi Thakur (PW-4) and others arrived at the place of occurrence responding halla. PW-4 has stated in Para-6 of



his cross-examination that when he arrived at the place of occurrence, Brahmdeo was lying on the ground and PW-5 has stated in Para-6 of his cross-examination that he had arrived at the place of occurrence after the occurrence. Mahendra Thakur (PW-7) has stated in Para-6 of his cross-examination that he had seen Chhotelal Mandal escaping to his house. Shiv Narayan Mandal (PW-8) has stated that he had seen Chhotelal Mandal escaping from around two Jareeb corresponding to around 132 feet. After his arrival at the place of occurrence, Raja Ram Das (PW-3), Lal Bahadur Mandal, Chhabu Mandal (PW-2), Chhedi Thakur (PW-4), Buchai Mandal (PW-5) and Chandeshwar Paswan (PW-6) had arrived there. The aforesaid statements of said witnesses eloquently indicate that the aforesaid witnesses had not seen the occurrence of assaulting the injured by means of dagger by the appellant. Thus, the statement of injured does not stand corroborated by the informant and independent witnesses.

17. As per witnesses account and prosecution case, the injured had sustained two injuries on left hand and one on left rib by means of dagger but from perusal of the injury report of the injured, it appears that the doctor has found two sharp cut injury on his left arm and one stab injury on the back of the chest on left side on eight to tenth ribs. The aforesaid injury nos. 1 and 2 have been opined by the doctor inflicted by the sharp cutting weapon while injury no.3



inflicted by means of dagger. The aforesaid injury report of the injured happens to be in quite contradiction to the prosecution case. As as per the prosecution case, the appellant had assaulted the injured by means of dagger and not by any sharp cutting weapon, but doctor has found the injury nos. 1 and 2 inflicted by means of sharp cutting weapon. As per the statement of the injured as given by him in his examination-in-chief, sustaining injury he fell senseless and regained sense at Patna. But Dr. R. P. Sinha who happens to be Medical Officer of PHC, Pipra and who has examined the injured on the following day of the occurrence has not found the victim senseless rather in Para-3 of his cross-examination, he has stated that the injured was in sense and was speaking.

18. As per the F.I.R., immediately after the occurrence the victim was rushed to the clinic of Dr. Ramesh Chaudhary of Singheshwar, but neither injury report furnished by Dr. Ramesh Chaudhary has been brought on record nor the said doctor has been examined by the prosecution rather Dr. R.P. Sinha was examined by the prosecution and injury report furnished by him has been proved by it. As per witness account, injured was treated in Patna, but no injury report about treatment of the injured in Patna has been brought on record by the prosecution. As as per the F.I.R. and the witness account, after sustaining injury, the victim fell senseless and the



occurrence is said to be of 08.06.2011 at around 6 AM, but Dr. R.P. Sinha had examined the injured on 09.06.2011 at 06:30 AM i.e. after 24 hours. Moreover, the said doctor has stated in his cross-examination that he had not treated the injured rather had bandaged his wound. As the injured was senseless sustaining injury then why he was rushed to the doctor after 24 hours. The said act of the prosecution happens to be against the natural course of conduct. As natural course of conduct is that if a person falls senseless sustaining injury, he is rushed to hospital / clinic of the doctor immediately to accord him medical aid to save his life and is not left unattended for long span of time of 24 hours which happens to be crucial time for the injured. The aforesaid aspect of the case creates serious doubt about prosecution case. Thus, the ocular evidence of the prosecution does not stand corroborated by the medical evidence.

19. As per the prosecution case and the witnesses' account, the wound of the injured was bleeding profusely and as per Para-9 of cross-examination of the informant (PW-10), earth was stained with blood, but I.O. has not stated about finding any blood on the place of occurrence and collecting of blood stained soil there from. Aforesaid aspect of the case also creates serious doubt about the prosecution case and happening of the occurrence at the aforesaid place of occurrence.



20. In view of the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case and the charges levelled against the appellant beyond all reasonable doubt by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellant is acquitted from the charges levelled against him giving him benefit of doubt. As the appellant is in custody, he is directed to be released forthwith, if not wanted in any other case. Accordingly, this appeal is allowed.

21. Let a copy of first and last page of the judgment be furnished to the Amicus Curiae free of cost and the prescribed fee of the Amicus Curiae be paid by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
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