

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.660 of 2002

Against the judgment of conviction dated 25.11.2002 and order of sentence dated 26.11.2002 passed in Sessions Trial No.392 of 1996 by 1st Addl. Sessions Judge, Muzaffarpur.

1. Shankar Ram

2. Suranjan Ram,

Both sons of Domi Ram

3. Domi Ram, son of Dhaga Ram

4. Niranjana Ram, son of Moti Ram,

All are resident of village of Bajitpur Kodria, P.S. Kurhani, District-Muzaffarpur.

5. Shiv Ram, son of Mewa Ram, resident of Mohalla- Baramhpura Chamartoli, P.S. Baramhpura, District-Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pradhan Murli Manohar Prasad, Advocate

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

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 09-11-2017

The five appellants herein call in question their conviction ordered vide judgment dated 25.11.2002 passed by the 1st Addl. Sessions Judge, Muzaffarpur in Sessions Trial No.392 of 1996 convicting them for offences under Section 307/34 of the Indian Penal Code and sentencing them for imprisonment for four years,



fine of Rs.1,000/- each, in default of payment of fine, they have to further undergo R.I. for one month and further convicting them under Section 379 of the Indian to undergo two years R.I.

Appellants Domi Ram, Niranjana Ram, Shiv Ram, Suranjan Ram and Shankar Ram are convicted for offence under Section 307/34 IPC and appellant Niranjana Ram and Shankar Ram under Section 379 IPC.

It is the case of the prosecution that on 05.08.1995, the informant Ganaur Ram recorded his ferdibayan to the effect that on 05.08.1995 while he and his family members were at home at about 8 in the morning, all the accused person came to his house, appellant Shankar Ram and Domi Ram were carrying Farsa, other appellants were carrying lathi, they started abusing him and when the family members intervened, Shankar Ram gave a Farsa blow on the head of the informant. He sustained injury on his head, he fell down and at that point of time, Shankar Ram again gave him a Farsa blow on his left hand. When he raised hue and cry and when his daughter-in-law, P.W.3 Sumitra Devi came to rescue him, Shankar Ram again gave a Farsa blow on her head. It is stated that other accused also assaulted the family members and after taking away money from the shop to the tune of Rs.5,000/-, they ran away.



Based on the aforesaid, the prosecution in question was launched. The prosecution examined nine witnesses who were all family members of the informant, apart from P.W.6 Dr. Dharendra Pd. Singh, who examined the injured informant, his daughter-in-law, Sumitra Devi, P.W.3, and his wife Malhi Devi, P.W.2, who were said to have sustained injury. P.W.7 was the Investigating Officer, who was also examined and two formal witnesses, P.W.8 Kailash Paswan and P.W.9 Surendra Paswan were also examined to prove the documents, namely Ext.-2, the ferdbeyan and Ext.-3, the FIR. Based on the aforesaid incident, trial took place and the appellants having been convicted, hence, this appeal.

Learned counsel for the appellants took us through the statement of all the witnesses and argued that from the statement of P.W.2 Malhi Devi, wife of the informant, P.W.3 Sumitra Devi, daughter-in-law of the informant, P.W.4 Ram Pravesh Ram, son of the informant and the statement made in the ferdbeyan itself, when the incident took place in the morning and when lot of commotion took place, 80 to 90 villagers and neighbours came to the place, but surprisingly, none of them have been examined. Only the family members and interested witnesses have been examined and as there is a ongoing family dispute between the parties, it is a case of false implication. Learned counsel has further argued that the



informant Ganaur Ram has not been examined. He was the most crucial witness and due to his non-examination, the entire case of the prosecution fails. Learned counsel argued that two independent witnesses examined, namely P.W.1 Ram Charan Rai and P.W.5 Ram Pravesh Rai have turned hostile and have not supported the case of the prosecution. Accordingly, he argues that in the facts and circumstances of the case, the prosecution has miserably failed to prove the allegations against them. That apart, he refers to certain discrepancies in the statements of witnesses, particularly with regard to who caused the injury by Farsa blow on the informant and contradiction in the statement of P.W.3 Sumitra Devi which creates a confusion as to whether the informant was assaulted by Farsa blow by Shankar Ram or appellant Domi Ram. That apart, he argues that even if the entire case of the prosecution is analyzed and the medical evidence that has come on record, particularly the injury sustained by the injured person are analyzed, except for the Farsa blow received by Sumitra Devi and the informant Ganaur Ram, author of which would be Shankar Ram, no specific overtact is attributed to any of the other accused persons, omnibus general statements are made with regard to their assaulting with a lathi. On the basis of the such a statement, conviction of the other appellant is unsustainable. As an alternate,



he argued that even if the conviction is sustainable now in view of the fact that the incident had taken place more than 21 years back in the year 1995, the appellants be granted benefit of release on probation under Section 360 of the Cr. P.C.

Learned counsel for the prosecution refuted the aforesaid contentions and argued that as the injury sustained by each of the injured person is proved from the statement of Dr. Dharendra Pd. Singh, P.W.6, the conviction is sustainable.

Having heard learned counsel for the parties, it is seen that to prove the allegations, the prosecution had examined the following witnesses. P.W.1 is Ram Charan Rai, who was introduced as an eye witness to the prosecution, but he has denied having witnessed the entire incident and therefore, he has been declared hostile.

P.W.2 Malhi Devi is the wife of the informant and she has stated that at 8 in the morning, all the accused persons came to her house, Shankar Ram and Domi Ram were carrying Farsa. Other accused persons were carrying lathi and she speaks about accused Shankar Ram giving a Farsa blow on the head of her husband and the daughter-in-law. She also speaks about Domi Ram assaulting her husband with a Farsa and she also getting injured in the incident. However, she speaks about falling down and became unconscious at the time of incident.



P.W.3 Sumitra Devi is the daughter-in-law of the informant. She supported the case of the prosecution and implicates Shankar Ram as the person who gave Farsa blow on the head of her father-in-law and when she went to rescue him, she also was given a Farsa blow on her forehead by the appellant Shankar Ram. According to her, omnibus general statements are made with regard to other accused persons assaulting everyone with lathi. She further says that the accused persons took away Rs.5000/-. However, she does not specifically name any person responsible for removing Rs.5000/- from the premises.

P.W.4 Ram Pravesh Ram is the son of the informant and he speaks about appellant Shankar Ram armed with a Farsa, abusing and assaulting his father. He also speaks about Shankar Ram assaulting his wife P.W.3 Savitri Devi.

P.W.5 Ram Pravesh Rai is another independent witness who was examined by the prosecution but this witness has turned hostile.

P.W.6 is Dr. Dhirendra Pd. Singh, who was the Medical Officer who had examined the three injured persons, namely the informant, P.W.3 Savitri Devi and P.W.2 Malhi Devi. From the statement of Dr. Dhirendra Pd.Singh, it is seen that he was posted in Sadar Hospital on the date of the incident. Sumitra Devi, P.W.3,



aged 28 years was examined by him on 05.08.1995 at 10 A.M. and he found that she had sustained a sharp wound on the left side of forehead which, according to him, was caused by a sharp edged weapon. He classifies the injury as simple. Ext.1, according to him is a medical report. He further speaks about examination of P.W.2 Malhi Devi on the same day at 10 A.M. Ext.-1/1, according to him, is the report about the injury sustained by Malhi Devi which is a lacerated wound on the right side of the skull and she was complaining about pain on the shoulder. However, in cross-examination, he speaks that injury could be sustained by fall on hard ground. He further examined the informant Ganaur Ram on the same day and found lacerated wound on his right elbow, occipital region, abrasion on his forearm and taking X-ray, he speaks about lacerated wound on the occipital region having a fracture. He says that the injury was caused by a sharp cutting weapon and could be classified as grievous.

P.W.7 is the Investigating Officer Kalika Ram and P.W.8 Kailash Paswan and P.W.9 Surendra Paswan are witnesses to the lodging of the FIR and Ferdbeyan, Ext.3 and 4 respectively.

Even though the informant has not been examined and he is one of the injured witnesses, but merely because he has not been examined, the entire case of the prosecution cannot be discarded.



P.W.2 Malhi Devi and P.W.3 Sumitra Devi are also injured persons and they have sustained injury and from their consistent statements which corroborates the narration made in the FIR and the Ferdbeyan, Ext.3 and 2 respectively, it is clear that incident did happen and the informant and both these witnesses sustained injuries. As far as injuries caused by Farsa blow on the informant and P.W.3 Sumitra Devi are concerned, from the statement of both these witnesses, it is clear that it is the appellant Shankar Ram who had caused the said injury both the P.W.3 Sumitra Devi and the informant Ganuar Ram. Even though, P.W.2 Malhi Devi and P.W.4 Ram Pravesh Ram do speak of appellant Domi Ram also assaulting with Farsa, but if the statement of Sumitra Devi, P.W.3 and the narration in the Ferdbeyan are taken note of, the act attributed to the appellant Shankar Ram by both these persons tallies with the Farsa injuries found on their body and, therefore, the statement about Domi Ram assaulting the informant with Farsa is not corroborated by medical evidence. Accordingly, from the statement of P.W.2 Malhi Devi, P.W.3 Sumitra Devi and the narration made in Ext.2 and 3, the Ferdbeyan and the FIR, it is clear that the appellant Shankar Ram is the author who caused the injury by Farsa blow not only on the informant, but also on the forehead of P.W.3 Sumitra Devi. Even these injuries are simple in



nature, but they are on vital part of the body. As far as injury on the skull of P.W.2 Malhi Devi is concerned, the same seems to have been caused by fall on a hard ground. She herself admits that she fell unconscious and fell down and, therefore, the injury being caused by falling cannot be ruled out. There are three injuries on the person of the informant Ganaur Ram and P.W.3 Sumitra Devi, one on the forehead of Ganaur Ram and another on his right hand which could be caused by Farsa and in the forehead of Sumitra Devi, P.W.3, which is also caused by a sharp weapon. That being so, this statement of injury being caused by Shankar Ram on the person of P.W.3 Sumitra Devi and the informant is further corroborated from the statement of P.W.4 Ram Pravesh Ram, son of the informant.

From the aforesaid evidence that have come on record, it is clear that the incident did take place and Shankar Ram, the appellant herein, had assaulted the informant and P.W.3 Sumitra Devi with a Farsa. All other appellants are shown to be present on the spot with a lathi, except Domi Ram who was present with a Farsa. However, the injury present on the body of the injured persons, namely the informant, P.W.2 Malhi Devi and P.W.3 Sumitra Devi does not show that they have been assaulted brutally by all the accused persons. Sumitra Devi, from the medical report,



has sustained one injury on the left side of her forehead caused by a sharp weapon. She has not sustained any other injury, meaning thereby that she has sustained only one injury caused by Farsa blow of Shankar Ram. P.W.2 Malhi Devi has sustained injury on the skull which could be caused by her fall and she has complained of only pain in the shoulder, but no injury is reported in the shoulder in the medical report Ext.1/1. Finally, the informant, Ganaur Ram, has skin deep injury on his right elbow, abrasion on the forearm and deep injury on the occipital region and defused swelling in the right hand which has caused a fracture. The injury caused by him on the occipital region and the hand are attributed to the assault by Shankar Ram and abrasion in the forearm is the only other injury.

Accordingly, if the injuries sustained by the three injured persons are scrutinized, it is seen that except for Farsa blow given by Shankar Ram, none of the other appellants have caused any serious injury or is there any evidence to show assault on the complainant or the witnesses by any lathi. That apart, except for the statement of P.W.3 Sumitra Devi, appellants took away Rs.5000/-, there is no evidence available on record to show that the accused took away the money as alleged.



Keeping in view the totality of the facts and circumstances, I am of the considered view that in the facts and circumstances based on the analysis of the evidence, as detailed hereinabove, it can be only held that Shankar Ram, appellant, is guilty of offence under Section 307 of the Indian Penal Code on account of Farsa blow given by him to Savitri Devi, P.W.3 on her forehead and the informant on his occipital region and, therefore, his conviction has to be sustained. As far as other appellants are concerned, only omnibus statement with regard to their presence is available. No specific overt act is attributed to them and no injuries are available on the persons of the three injured persons to attribute that any of the other accused persons have brutally assaulted the injured persons. That being so, they have to be acquitted of the charges levelled against them under Section 307 of the Indian Penal Code and let them free now in view of the circumstances that have come on record. As the charges levelled against Niranjana Ram and Shankar Ram under Section 379 IPC are also not proved, they are acquitted to the charges.

Even though, the other appellants except Shankar Ram have been convicted with the aid of Section 34 of the Indian Penal Code, mere presence of these persons in the place of the incident is not sufficient enough to uphold their conviction under Section 307



IPC in the absence of there being cogent evidence to show any overtact attributable to them and any injury or damage caused to the person or property to the informant or his family members by any positive act done by these appellants. Now, after more than 21 years, in the facts and circumstances of the case, merely on the basis of Section 34 IPC, looking into the nature of the evidence that have come on record, their conviction cannot be approved.

Accordingly, this appeal is allowed in part, conviction of appellant Shankar Ram for offence under Section 307 IPC is upheld, conviction of all the other appellants are set aside and they are acquitted of the charges levelled against them.

As far as punishment to be inflicted now on appellant Shankar Ram is concerned, it is clear that he assaulted both the persons, namely the informant and a lady Sumitra Devi, P.W.3, when she came to rescue her father-in-law, he had used the Farsa and had assaulted them on vital parts of the body and, therefore, his conviction has to be uphold and as he has been only sentenced to four years, I see no reason to interfere with his conviction looking to the manner in which he had assaulted the informant Ganaur Ram and P.W.3 Sumitra Devi and he is seen to be the main brain behind the entire incident.



Keeping in view the aforesaid, the appeal as far as appellant Shankar Ram stands dismissed, his bail bond be cancelled, he be taken back into custody to undergo the remaining part of his sentence.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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