

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.504 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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1. Binay Singh @ Binod Kumar Singh, son of Lucho Singh.
 2. Pramod Kumar Singh, son of Lucho Singh.
 3. Suro Singh, son of Baiju Singh.
 4. Shambhu Singh, son of Baso Singh.

All resident of village Bariedh, P.S. Mufassil, District Begusarai.

.... Appellants.

Versus

State of Bihar.

.... Respondent.

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Appearance :

For the Appellants : Mr. Ajay Kumar Thakur, Adv.

Mr. Ravi Ranjan, Adv.

Md.Imteyaz Ahmad, Adv.

Mrs. Babita Kumari, Adv.

For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 18-09-2017

Heard learned counsel for the appellants and
learned A.P.P. for the State.

2. This appeal has been preferred against the
judgment and order of conviction and sentence dated 27.08.2002
passed by the Additional Sessions Judge-VI, Begusarai in Sessions
Trial No.117/94, arising out of Mufassil P.S. Case No.79/92,
whereby the learned lower Court convicted the appellants, namely,



Pramod Singh, Binay Singh @ Binay Kumar Singh, Shambhu Singh and Suro Singh for the offences punishable under Section 324/34 and 341 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for six months and slapped them with a fine of Rs.2000.00 each for the offence punishable under Section 324/34 of the Indian Penal Code and in case of default of payment of fine to further undergo rigorous imprisonment for one week each while no separate sentence was passed for the offence punishable under Section 341/34 of the Indian Penal Code.

3. The factual matrix of the case is that Muffasil P.S. Case No.79/92 was instituted under Section 341, 323, 324 & 307/34 of the Indian Penal Code against the accused Pramod Kumar Singh, Binay Singh, Suro Singh and Shambhu Singh, on the basis of written report of Ramnandan Tanti, son of Late Lakhan Tanti, resident of Badi Aidhu, P.S. Muffasil, District Begusarai with the allegation in succinct that on 12.04.1992 at about 10.00 AM, while he was taking meal at his house, Pramod Singh, Binay Singh, Suro Singh and Shambhu Singh arrived there and Pramod Singh called him out. Responding the call of Pramod Singh, he came stepped out of the house. As soon as he came out Pramod Singh pointed his pistol upon him and then Binay gave one katta blow on his head. Suro Singh and Shambhu Singh assaulted him by



means of fists. After sustaining injuries, he fell senseless. Anup Das, Navin Das and others witnessed the occurrence. When he regained the sense, his mother divulged him that in course of retreating the accused persons had extended threatening that in case of filing case against him they would falsely implicate him by torching their wheat kept in the khaliyan. When his wife rushed in his rescue the accused persons assaulted her by means of brick bat.

4. The aforesaid case investigated by the police and on conclusion of the investigation, the Investigating Officer submitted chargesheet under Sections 448, 341, 323, 324, 307 & 504 of the Indian Penal Code against the aforesaid accused persons.

5. On receiving the chargesheet & case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. On transfer the case finally came in the seisin of Additional District Judge-VI, Begusarai for trial.

6. The charge against the accused Binay Singh was framed under Section 307 of the Indian Penal Code and charge against the accused Binay Singh, Pramod Singh, Suro Singh and Shambhu Singh was framed under Section 307/34, 341 and 448 of the Indian penal Code. The charges were read over and explained



to the accused persons, to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence the prosecution has examined altogether six prosecution witnesses, namely, Pramila Devi as P.W.1, Anup Tanti alias Dass as P.W.2, Ram Nandan Tanti as P.W.3, Most. Chinta Devi as P.W.4, Dr. Anand Kumar Sharma as P.W.5 and Raj Kumar Tanti as P.W.6.

8. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. The case of the defence is complete denial of the occurrence. The accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and pursuing the record, the learned trial Court passed the aforesaid judgment & order of conviction and sentence as detailed in earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present criminal appeal.

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

12. It is submitted by learned counsel for the



appellants that all the material witnesses examined by the prosecution happens to be interested witnesses being the informant, wife, brother and mother of the informant & their testimonies are full of contradictions. No independent witness has been examined by the prosecution and no explanation has been assigned for their non-examination, which creates serious doubt about the prosecution case. The I.O. of the case has also not been examined by the prosecution and for non-examination of the I.O. the place of occurrence not stand established and more over the contradiction brought between the statement of the witnesses given before the Court and that given before the I.O. under Section 161 of the Cr.P.C. by drawing their attention in this regard could not be confirmed and corroborated due to non examination of the I.O., causing great prejudice to the appellants. The katta by which the informant is said to have been assaulted has also not been recovered by the police. Thus, the prosecution has utterly and miserably failed to establish its case.

13. The learned A.P.P., advocating the correctness and validity of the impugned judgment and order of conviction and sentence, has submitted that all the witnesses examined by the prosecution have supported the prosecution case in toto. The ocular evidence of the prosecution also stands corroborated by the



medical evidence. The learned trial Court, after correctly appreciating the facts & evidence available on record, has rightly passed the impugned judgment and order of conviction and sentence and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that occurrence is said to be held of 12.04.1992 at about 10 AM and the F.I.R. was lodged on 12.04.1992 at about 1:10 PM but P.W.1- Pramila Devi has stated in paragraph 7 of her cross-examination that her husband had fallen senseless sustaining injury and had regained sense after 2-4 days, P.W.2-Anup Tanti @ Dass has stated in paragraph-6 of his cross-examination that he had witnessed his brother senseless on arrival from his house. P.W.4-Most. Chinta Devi, who happens to be the mother of the informant, has stated in paragraph-2 of her cross-examination that when she stepped out of her house responding hulla made by her son Ramnandan she found him lying senseless on the ground sustaining injury. Her son regained sense and became in position to speak after 2-3 days. P.W.6-Raj Kumar Tanti, who happens to be own brother of the informant, has stated in paragraph-2 of his cross-examination that his brother was senseless and he regained sense after 2-3 days. The aforesaid statement of P.Ws.1, 2, 4 and 6 candidly indicate that the



informant was senseless for 2-4 days after the occurrence. Then million dollar question arises as to how the written report was furnished by the informant before police on the date of occurrence and the F.I.R. was lodged on the basis of the said written report on the same date at 1:10 PM when the informant was senseless for 2-4 days. Thus, the aforesaid testimonies of the said witnesses creates serious doubt about the prosecution case.

15. Though P.W.1-Pramila Devi, P.W.2-Anup Tanti and P.W.4-Chinta Devi have made an abortive bid to support the prosecution case by stating in their examination-in-chief that at the time of occurrence all the accused persons arrived at the house of informant and Pramod Singh called him out and on stepping out of the house by the informant Pramod Singh pointed pistol on the head of the informant while the other accused persons assaulted him means of fists, claiming themselves to be eye-witness of the occurrence. But P.W.1-Pramila Devi has stated in paragraph-12 of her cross-examination that first of all her husband had stepped out of her house. She stepped out of the house responding 'hulla' made by him. She witnessed her husband lying in pool of blood & writhing in pain. In paragraph-11 of her cross-examination, she has further stated that while her husband was lying on the ground, witnesses had arrived there. Her brother-in-law (Bhaisur), mother-



in-law and father-in-law had arrived there. The aforesaid statement of P.W.1 candidly indicate that P.W.1 and other witnesses had arrived at the place of occurrence after falling the informant on the ground sustaining injuries. Meaning thereby that they had not witnessed the appellants assaulting the informant. Likewise P.W.2 in paragraph-6 of his cross-examination has stated that when he stepped out his house he witnessed his brother senseless. The aforesaid statement of P.W.2 also rules him out to be an eye witness of the occurrence. In paragraph-10 of his cross-examination, he has further stated that his mother (P.W.4-Most.Chinta Devi) and sister-in-law (P.W.1-Pramila Devi) had arrived at the place of occurrence after him. The aforesaid statement of P.W.2 also rules P.Ws.1 & 4 out to be eye witness of the occurrence. P.W.4 has stated in paragraph-2 of her cross-examination that her son Ramnandan Prasad made alarm from outside of the house. At that time Pramila and Anup Das were present in the house. Thereafter, they all stepped out of the house and witnessed Ramnandan lying on the ground senseless in injured condition. In the said paragraph, she has further stated that when she witnessed her son for the first time he was bloodstained and his body was swollen and the injury had turned black. The aforesaid statement of P.W.4 indicates that P.W.1, P.W.2 & P.W.4 had not



witnessed the occurrence, rather they had arrived at the place of occurrence after sustaining injury by the informant & falling on the ground in senseless condition. Thus, they have not witnessed the appellants assaulting the informant and they are not eye-witnesses of the occurrence. P.W.6-Raj Kumar Tanti has candidly stated in his examination-in-chief that at the time of occurrence he was in the Begusarai market and had regressed to his house at 8 PM & witnessed his brother Ramnandan Tanti badly injured. Thus, P.W.6 does not seem to be eye-witness of the occurrence rather a hearsay witness.

16. P.W.1-Pramila Devi has stated in paragraph-3 of her examination-in-chief that after the occurrence her husband was rushed to Mufassil police station on bicycle and from there the police sent him to Begusarai hospital and P.W.3-Ramnandan Tanti has stated in paragraph-8 of his cross-examination that all the persons took him to the police station on bicycle. But P.W.2-Anup Tanti has stated in paragraph-7 of his cross-examination that his brother was rushed to the hospital from the place of occurrence. Thus, as per the account of P.W.1 & P.W.3 the informant was rushed to the police station and from there to the hospital on bicycle from the place of occurrence, while as per the account of P.W.2 he was rushed to the hospital from the place of occurrence



on bicycle. As per account of P.W.2 the informant was rushed to the hospital from the place of occurrence. But, in quite contradiction to the statements of the aforesaid witnesses, P.W.6 has stated in paragraph-2 of his cross-examination that when he regressed to his house at 8 PM on the date of occurrence his brother was at the house by that time and he rushed him to the government hospital. As per the statement of the informant, the accused persons assaulted his wife when she rushed in his rescue but, in quite contradiction to the aforesaid statement of informant, P.W.2 has stated in paragraph-10 of his cross-examination that his mother and sister-in-law (wife of the informant) had arrived at the place of occurrence after his arrival. In paragraph-6 of his cross-examination, he has stated that when he arrived at the place of occurrence from his house he found his brother lying on the ground senseless. P.W.4 has stated in paragraph-2 of her cross-examination that at the time of occurrence Pramila Devi (P.W.1) was present along with her in the house and responding 'hulla' made by informant and they had stepped out of the house & had found him lying on the ground senseless in injured condition. The aforesaid statements of the aforesaid witnesses happens to be in quite contradiction to the statement of the informant and rules out assaulting Pramila Devi by the appellants at the time of occurrence.



As per statement of the informant, after him the appellants assaulted his wife when she rushed in his rescue. He has not taken the name of any other persons sustaining assault at the hand of the appellants. But in quite contradiction to the aforesaid statement of the informant, P.W.2 has stated in paragraph-1 of his examination-in-chief that besides his sister-in-law Pramila Devi his mother was also assaulted by means of legs and fists by the appellants.

17. From perusal of the record, it appears that P.W.1-Pramila Devi happens to be wife of the informant. P.W.2-Anup Tanti alias Dass own brother of the informant, P.W.3-Ram Nandan Tanti is the informant himself, P.W.4-Most. Chinta Devi mother of the informant, P.W.6-Raj Kumar Tanti also own brother of the informant. Thus, the aforesaid witnesses happens to be highly interested witnesses. Though the settled principle of law is that the testimony of interested witnesses should not be discarded out rightly rather be scanned and scrutinized cautiously and carefully. After cautious and careful scrutiny of the testimonies of the aforesaid witnesses, I find that it is full of contradictions regarding occurrence, manner of occurrence, number of injured etc. as discussed by me hereinabove and, in view of the aforesaid contradictions, their statements are not trustworthy, reliable and worth credence.



18. As per the written report of the informant Anup Das, Navin Das and many other persons had witnessed the occurrence but the said persons have not been examined by the prosecution and no plausible and convincing reason for their non-examination has been assigned by the prosecution. Hence, due to non-examination of the said independent witnesses adverse inference is drawn against the prosecution.

19. The doctor has been examined by the prosecution as P.W.5 who has proved the injury report of the informant and his wife marked as Exts.2 and 2/1 respectively. From perusal of the injury report and the statement of the doctor, it appears that the informant had sustained altogether four injuries all are lacerated wound, tenderness and abrasion caused by hard and blunt substance and simple in nature. Doctor has not found any oozing of blood from the said injury. But in quite contradiction to the aforesaid medical evidence all the witnesses have stated in their statements that blood was oozing from the wound of the informant and was fallen on the ground. The doctor has not found any external injury on the person of the wife of informant rather only pain complained by her. As per statement of P.W.1-Pramila Devi as recorded in paragraph-1 of her examination-in-chief and paragraph-7 of her cross-examination the informant was assaulted



by katta by the accused Binay Singh which happens to be sharp edged weapon made of iron but no sharp cut injury on the head of the informant has been found by the doctor rather the lacerated injury caused by hard and blunt substance has been found. Thus, the aforesaid ocular evidence of the prosecution also does not stand corroborated by the medical evidence adduced by the prosecution.

20. I.O. of the case has not been examined by the prosecution and for non-examination of the I.O. the place of occurrence does not stand established by the prosecution. Moreover, from perusal of the testimonies of P.W.1 recorded in paragraph-8 of her cross-examination, P.W.2 in paragraph-9 of his cross-examination and P.W.4 in paragraph-3 of her cross-examination, it appears that attention of the aforesaid witnesses towards contradiction between their statement given before the Court and that given under Section 161 Cr.P.C. before the police have been drawn by the defence and from perusal of the case diary, it appears that the statement of the aforesaid witnesses given in the Court happens to be in quite contradiction to that given before the I.O. but the I.O. of the case has not been examined to corroborate the same causing great prejudice to the prosecution case.

21. When the I.O. of the case is not examined by the prosecution and the attention of the witnesses has already been



drawn towards their earlier statements and the Investigating Officer could not be brought to give his evidence, then in my considered opinion, the Court can peruse the case diary and find out as to whether or not the attention of the witnesses towards their previous statements were correctly drawn and to satisfy itself as to whether or not they had given similar statement before police. There are two parts of the case diary. First part contains such portion of the diary in which the Police Officer has recorded statement of the witnesses, about the incident or about other relevant facts which to that Police Officer, would be hearsay. The Second party of the case diary contains that portion in which the Police Officer has himself seen or heard a particular fact and has recorded a fact out of his own perception. To this category would come recording about the inspection of place of occurrence making of seizure of certain incriminating articles or in some cases, when the Police Officer reaches the place of occurrence where the occurrence has not finished and he sees himself whole or part of the occurrence, recording of that. The latter part of the case diary cannot be used by the Court unless the Investigating Officer is examined because that would amount to using that portion of the case diary as evidence. Only the Investigating Officer can tell the Court in witness box as to what were his findings out of his own perception,



so that he can be put to cross-examination over that. However the first part of the case diary consists, as already noted, the statement recorded by the witnesses. If the Investigating Officer comes to the Court for evidence and if he is asked to confirm those portion of the statement of the witnesses to which the attention of the witnesses was drawn, the Investigating Officer will say only what he has recorded as his statement in the case diary and cannot go beyond that. Now, the question is, whether that portion of the case diary can be looked into by the Court and used in the trial to aid the Court in reaching at a correct decision when the Investigating Officer is not brought before the Court. Sub-Section (2) of Section 172 of Cr.P.C. provides that the Court cannot only call for the case diary but may also use such diary to take aid in such trial. If the Court only has the power to look into the case diary and whatever it peruses to keep it only in mind and then to proceed to record the judgment keeping such impression only in mind that, in my opinion, cannot be the intention of the legislation. In my considered opinion, if the Court peruses any such things and uses it to its aid in trial, this must go in black and white as part of the judgment. The only limitation is that the court cannot use any portion of the case diary as evidence. In view of the aforesaid proposition of law and in view of the contradiction between the



statements of the aforesaid witnesses, as given before the court and that given before the I.O. under Section 161 Cr.P.C., the testimonies of the aforesaid witnesses given before the court do not inspire my confidence to hold the conviction of the appellants relying upon the same.

22. In view of the aforesaid facts, I find and hold that the prosecution has utterly and miserably failed to prove the charges levelled against the appellants beyond all reasonable doubt by adducing trustworthy, cogent and reliable ocular and documentary evidence, so the appellants are entitled to get benefit of doubt. Hence, the impugned judgment and order of conviction & sentence passed by the learned Court below is set aside and the appellants are acquitted from all the charges levelled against them. As the appellants are on bail, they are discharged from the liabilities of their bail bonds.

23. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.10.2017
Transmission Date	06.10.2017

