

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.313 of 2002

Arising Out of PS.Case No. -99 Year- 1991 Thana -Bibhutipur District- SAMASTIPUR

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Deo Narayan Mahto, S/o Late Jilebi Lal Mahto, R/o Village-Patpara, P.S. Bibhutipur, District-Samastipur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Parmeshwar Mehata

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 03-10-2017

Heard learned counsel for the appellant as well as learned APP for the State and perused the record.

2. This appeal has been preferred against the Judgment and Order of conviction and sentence dated 29.05.2002 passed by the Additional District and Sessions Judge, Fast Track Court no. 4, Samastipur in Sessions Trial no. 6 of 1992/48 of 2002 arising out of Bibhutipur P.S. Case No. 99 of 1991, whereby the learned lower court acquitted the accused Dinesh Mahto from all the charges levelled against him and convicted the accused Deo Narayan Mahto for the offence punishable under Section 307 of the Indian Penal Code and sentenced him to undergo R.I. for three months and also slapped him with a fine of Rs. 1,000/- and in default of payment of fine to undergo S.I. for one month under Section 307 of the Indian



Penal Code.

3. The factual matrix of the case is that Bibhutipur P.S. Case No. 99 of 1991 was instituted under Sections 323, 341, 504, 379 and 307 of the Indian Penal Code against accused Ram Chandra Mahto, Deo Narayan Mahto and Dinesh Mahto on the basis of written report of Ram Ashray Mahto S/o Bauo Lal Mahto R/o Village-Patpara P.S. Bibhutipur District-Samastipur dated 12.07.1991 with the allegation, in succinct that he was running a fair price shop in the partnership of his cousin namely, Deo Narayan Mahto. Later on, he himself separated from the said partnership for the last six months whereupon, the said Deo Narayan Mahto and his brother Ram Chandra Mahto were sulking with him. He had sold out his land in Rs. 1,24,000/- through Ram Chandra Mahto who had deceived him Rs. 6,000/- in the said transaction. Over the said episode, there was altercation between them few days back. On 12.07.1991 at around 07:00 AM, while he was sitting at his shop, Ram Chandra Mahto armed with pistol, Deo Narayan Mahto armed with lathi and Dinesh Mahto armed with dagger abruptly descended at his shop and started abusing him. When he forbade them from hurling abuse, at the instance of Deo Narayan Mahto, Ram Chandra Mahto pressed his neck by means of hand and shoving him on the ground, fisted and slapped him. He also pressed his neck by means of leg. On hulla made by him, local rushed there and intervened the



occurrence. Then the accused Ram Chandra Mahto took out cash of Rs. 640/- from his cash box and the accused Dinesh Mahto snatched his wrist watch and other papers and left the scene.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused namely, Ram Chandra Mahto, Dinesh Mahto and Deo Narayan Mahto under Sections 323, 341, 504, 379 and 307 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned trial court took cognizance of the offence against the accused persons and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the Additional District and Sessions Judge, Fast Track Court no. 4, Samastipur for trial. During the pendency of the case, Ram Chandra Mahto passed away, hence, only two accused persons faced the trial.

6. Charge against accused Deo Narayan Mahto and Dinesh Mahto was framed under Sections 341, 307 and 504 of the Indian Penal Code and further charge against Dinesh Mahto was framed under Section 379 of the Indian Penal Code. Charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has been able to examine altogether four prosecution



witnesses namely, Ram Sharan Singh as PW-1, informant Ram Ashray Mahto as PW-2, Sri Narain Sahni as PW-3 and Parmeshwar Mahto as PW-4. Out of the aforesaid witnesses, PW-1 (Ram Sharan Singh) happens to be the formal witness who has proved the written report and rest three witnesses namely, P.W-2 (Ram Ashray Mahto), PW-3 (Sri Narain Mahto) and PW-4 (Parmeshwar Mahto) turned hostile. In documentary evidence, the prosecution has filed and proved certain documents.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. In buttress of its case, they have neither adduced any ocular nor documentary evidence.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned 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 Deo Narayan Mahto has preferred the present 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 the learned counsel for the



appellant that the informant and other two eye witnesses of the occurrence namely, Sri Narain Sahni and Parmeshwar Mahto have turned hostile and not supported the prosecution case. The informant in his examination-in-chief has simply stated about slapping him by the accused persons. Hence, the offence under Section 307 of the I.P.C. is not made out against the appellant as there was no intention on the part of the appellant to eliminate the informant. I.O. of the case has also not been examined by the prosecution, so the place of occurrence does not stand established by it. Admittedly, there is animosity between the parties and the appellant has falsely been implicated in the case due to aforesaid animosity. The appellant does not happen to be the assailant of the case rather simply the order giver. Hence, the impugned Judgment and Order of conviction and sentence passed against the appellant under Section 307 of the Indian Penal Code is liable to be set aside.

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 informant has fully supported the prosecution case and after correctly appreciating the facts and evidence on record, the learned lower court has passed the impugned Judgment and Order of conviction and sentence, and the same is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.



14. On perusal of record, it appears that the informant Ram Ashray Mahto (PW-2) though has turned hostile, but in his examination-in-chief, he has stated that while on the date and time of occurrence, he was in grocery shop, accused Ram Chandra Mahto, Dinesh Mahto and Deo Narayan Mahto descended there and started assaulting him by means of slap. They were also armed with lathi. Sustaining injury, he fell senseless. Local rushed there and intervened the occurrence. Then the accused persons took out cash from his cash box and left the scene but he could not see as to what amount they have taken.

15. It is settled principle of law that merely being the hostile witness, entire testimony of the said witness should not be discarded rather that portion of the testimony which goes to support the prosecution case be taken into consideration against the accused.

16. From perusal of the testimony of the informant, it appears that he has simply stated that the accused persons descended his shop, slapped him and took away some money from his cash box, but he cannot disclose the quantum of money. The aforesaid testimony of the informant also appears to be in quite contradiction to the prosecution case as alleged in the written report. As in the written report, he has stated that after descending at his shop, on the order of Deo Narayn Mahto accused Ram Chandra Mahto pressed his neck by means of hand in order to eliminate him and shoving



him on the ground, fisted and slapped him and also pressed his neck by means of leg. But in his examination-in-chief, the informant has not divulged the factum of giving order by the appellant Deo Narayn Mahto and he has also not stated about pressing his neck by the accused Ram Chandra Mahto by means of hand and leg, shoving him on the ground and fisting and slapping him. As per prosecution case, only Ram Chandra Mahto assaulted the informant, but in quite contradiction to the aforesaid prosecution case, the informant has stated that all the accused persons slapped him. In the written report, there is no case of the informant that after sustaining injury he fell senseless, but in quite contradiction to the aforesaid written report, he has stated in his examination-in-chief that after sustaining injury, he fell senseless. Thus, the aforesaid testimony of the informant happens to be in quite contradiction to the prosecution case regarding the occurrence, manner of occurrence, assault, weapon used in the assault and the assailant.

17. As per prosecution case, the four F.I.R. named witnesses namely, Sri Narain Sahni, Ram Ashish Sahni, Lechar Sahni, Parmeshwar Mahto and others congregated at the place of occurrence and intervened the occurrence. Out of the aforesaid witnesses, Sri Narain Sahni and Parmeshwar Mahto have been examined by the prosecution as PWs-3 and 4 respectively, but they have turned hostile and vented their ignorance of the occurrence in



their respective examination-in-chief and thus have not supported the prosecution case. Rest two F.I.R. witnesses namely, Ram Ashish Sahni and Lechar Sahni and other independent witnesses have not been examined by the prosecution rather withheld them and no explanation has been assigned by the prosecution for non-examination of the aforesaid witnesses, hence, the adverse inference is drawn against it.

18. From perusal of the aforesaid testimony of the informant, it appears that he has simply stated that the accused persons assaulted him by means of slap in the occurrence, but he has not stated as to on which part of his person, they slapped him. Though, as per prosecution case, the accused persons were armed with pistol, lathi and dagger, but informant was not assaulted by the aforesaid weapon rather was only slapped. The aforesaid aspect of the case rules out any intention on the part of the appellant to assault the informant with intention to do away with his life in the occurrence. Hence, in my considered opinion, no offence under Section 307 of the Indian Penal Code is made out against the appellant.

19. Admittedly, there is animosity between the parties over separation by the informant from partnership in fair price shop run by the informant and the appellant Deo Narayan Mahto, and also over deceiving the informant of Rs. 6,000/- by accused Ram



Chandra Mahto in the transaction of the sale made by the informant and the animosity cuts both the edges. Hence, in view of the aforesaid contradictions between the prosecution case, and the statement of the informant regarding occurrence, manner of occurrence, assault, weapon used in the assault, assailant and not supporting the occurrence by the independent witness of the case and informant being the highly interested witness in the case, the false implication of the appellant in the case by the informant, out of the aforesaid animosity cannot be ruled out.

20. It is settled principle of law that the testimony of the interested witness should not be discarded outrightly rather should be scanned cautiously and carefully. On careful and cautious scanning and scrutiny of the testimony of the informant who happens to be interested witness in the occurrence, it appears that the testimony of the informant is full of contradictions with the prosecution case regarding the occurrence, manner of occurrence, assault, weapon used in the assault and the assailant and hence, in view of the aforesaid contradiction, the testimony of the aforesaid interested witness does not inspire my confidence to hold the conviction of the appellant relying on it. 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 does not stand established by the prosecution.



21. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and wroth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned lower court is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is on bail, he is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
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