

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.120 of 2002

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1. Parmeshwar Chauhan son of late Sukhlal Chahan
2. Uma Chauhan son of late Lala Chauhan both are residents of village-Rabio
Beldari, PS-Sidalla, Distt-Nawada. Appellant/s

Versus

State of Bihar Respondent/s

with

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Criminal Appeal (SJ) No. 197 of 2002

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1. Prakash Chauhan
2. Gorelal Chauhan both sons of Parmeshwar Chauhan, Residents of village-Rabio
Beldari, PS-Sidalla, Distt-Nawada. Appellant/s

Versus

State of Bihar Respondent/s

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Appearance :

(In CR. APP (SJ) No. 120 of 2002)

For the Appellant/s : Mr. Vijay Kumar, Amicus Curiae

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No. 197 of 2002)

For the Appellant/s : Mr. Vijay Kumar, Amicus Curiae

For the State : Mr. S. A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 23-01-2017

Because of the fact that none appeared on behalf of appellants, Sri Vijay Kumar, learned counsel has been requested to assist the Court as an Amicus Curiae which he consented and properly assisted the Court by making prudent submission.

2. Appellants, Parmeshwar Chauhan and Uma Chauhana have preferred Cr. Appeal No. 120/2002 while appellants, Prakash Chauhan and Gorelal Chauhan have preferred Cr. Appeal No. 197/2002 against the judgment of conviction and sentence dated 12.02.2002 passed by Presiding Officer, FTC-Nawada relating to Sessions Trial No. 65/02/22/97 whereunder all the appellants including Jethan Chauhan (not appealed) have been found guilty for



an offence punishable under Sections 307/149 IPC and further, Prakash Chauhan and Gorelal Chauhan have been directed to undergo RI for one year while remaining, sentenced to undergo RI for three months, appellant, Gorelal Chauhan has further been found guilty for an offence punishable under Sections 324 IPC but no separate sentence was inflicted therefor, accordingly, have been heard together and are being disposed of by a common judgment.

3. PW-5, Gore Chauhan gave his Fard-e-beyan on 14.09.1996 at about 3:00 PM while he was admitted at Primary Health Centre, Laund alleging inter alia that in the preceding night at about 8:00 PM while he was sleeping by the side of Chilaunji (local method for trapping fish), all of a sudden Prakash Chauhan armed with Garasa, Gorelal Chauhan armed with Khanti, Parmeshwar Chauhan armed with Lathi, Uma Chauhan armed with Lathi and Jethan Chauhan armed with pistol came and began to assault. Prakash gave Khanti blow over his head while Prakash and Uma gave Lathi blow. Gorelal also gave Khanti blow. On hue and cry, his villager, Rajo Chauhan came who was also assaulted by Gorelal over his left thigh. During midst thereof, Hari Chauhan, Subhash Chauhan, Pokhi Chauhan, Rajendra and his father, namely, Bindeshwar Chauhan also arrived, seeing whom, the accused persons fled away. The motive has been assigned on account of protest having at his end on an illegal activities of the accused persons.

4. On the basis of the aforesaid Fard-e-beyan,



Sirdalla PS Case No. 81/96 was registered. Investigation on the basis thereof, was taken up and after completing the same, charge-sheet was submitted which happens to be the basis of cognizance as well as trial by the court of sessions on account of having the offence triable by the court of sessions which ultimately met with conviction and sentence against the appellants, the subject matter of instant appeals.

5. The defence case, as evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial and further of false implication in the background of inter se strained relation-ship on account of agnates and having domestic affair, being close agnate.

6. When the record has been gone through, the judgment has been minutely observed, it is apparent that after examination of all the prosecution witnesses, the parties have entered into compromise and in the aforesaid background, some of the witnesses were also recalled. However, the learned lower court ignored the same while inferring the guilt of the appellants though during course of inflicting sentence, took notice thereof, and a lenient view was taken while prescribing sentence.

7. Learned Amicus Curiae, while challenging the judgment of conviction and sentence, has submitted that the learned lower court should have honoured the feeling of the respective parties. Although two witnesses were recalled including the informant to substantiate factum of compromise in the aforesaid background as



well as considering the fact that no offence under Section 307 of the IPC was made out as is found exposed from the conduct of the appellants who, according to learned Amicus Curiae, were armed with deadly weapon but never used, more particularly, the pistol which in case, appellants had carried an intention or knowledge to commit murder of the informant, must have exercised the same during course of occurrence which ultimately would have cost the life of the informant, Gore Chauhan as there was no intervening circumstance to forbid them. Apart from this, though the injuries having been found over the person of Gore Chauhan as per evidence of doctor shows presence of six incised injuries and one injury caused by hard and blunt substance but the nature of injury suggests that it was never intended to commit murder of the informant being superficial in nature being of minimized dimension.

8. In likewise manner, though the learned lower court had dealt with injury having been sustained by Rajo with whom there was no compromise and further, tracing out it a case under Section 324 IPC, would not survive. Therefore, the cumulative effect suggests annulment of the judgment impugned.

9. Refuting such submissions, the learned APP submitted that though the case has been compromised but on account of half-hearted activity of the appellant, it has not been properly acted upon and so, the appellants have been correctly found guilty on account of their own lapses which cannot be rectified at the present



stage being the offence whereunder conviction has been recorded, non-compoundable.

10. In order to substantiate its case, prosecution had examined altogether seven witnesses out of whom PW-1 is Hari Chauhan, PW-2, is Rajo Chauhan, PW-3, is Pokhi Chauhan, PW-4 is Rajendra Chauhan, PW-5 is Gore Prasad Chauhan, PW-6 is Dr. Raj Kishore Prasad and PW-7 is Safir Khalif, I.O. Side by side, had also exhibited Ext-1 Series, injury report relating to Gore Chauhan and Rajo Chauhan, Ext-2, Fard-e-beyan, Ext-3 series, police requisition relating to injury of Gore Chauhan as well as Rajo Chauhan, Ext-4, Formal FIR. Nothing has been adduced on behalf of appellants in their defence.

11. PW-6, Dr. Raj Kishore Prasad had examined, Gore Chauhan, the informant on 13.09.96 at about 9.30 PM and found the following injuries over his person:-

1. Incised wound- 3 ½' x ½' x ½'' oblique touching frontal and parietal bone.
2. Incised wound- 4 ½' x ½' x ½'' oblique touching frontal and parietal bone left side.
3. Incised wound- 5 ¼'' x ¼'' on right scapula.
4. Incised wound 4'' x ¼'' x ¼'' on right lower front chest.
5. Bruise ½' x ½'' x superficial skin on left ear upper lob.
6. Incised wound 3'' x 1/6'' x ¼'' near right armpit upper chest.
7. Incised wound ½'' x ¼'' x ¼'' on right arm.

12. In the opinion of the doctor, injuries were



simple in nature. Out of aforesaid injuries, all except 5 were caused by sharp edged weapon while injury no.5 was by hard and blunt substance.

13. On the same day at about 9.45 PM, he had examined Rajo Chauhan and found following injuries:-

Incised wound- 6 x ½' x ½' x ½'' on left mid thigh.

Injury was caused by sharp cutting weapon.

14. Now coming to the oral evidence, it is apparent that PW-3 and PW-4 have not supported the case of the prosecution, on account thereof, they were declared hostile.

15. PW-5 is the informant who had stated that on the alleged date and time of occurrence while he was lying over a cot, in order to keep watch over trapping of fish, Prakash Chauhan armed with Garasa, Gorelal Chauhan armed with Khanti, Parmeshwar Chauhan armed with Lathi, Uma Chauhan armed with Lathi and Jethan Chauhan armed with pistol came, out of whom Prakash gave Garasa blow over his head. Gorelal had also struck over his head with Khanti. He had also assaulted over his shoulder, chest, thigh as well as inter-coastal region. Parmeshwar and Uma had assaulted with Lathi. Gorelal gave one Khanti blow over left thigh of Rajo Chauhan. Hari Chauhan, Pokhi Chauhan, Rajendra Chauhan have witnessed the occurrence. Then thereafter, they were lifted to Primary Health Centre, Laund where police came and recorded Fard-e-beyan. During cross-examination, he had stated that he sustained injuries while he



was sitting on the cot with Garasa. Blood had fallen over the cot. Then had stated that when he sustained Khanti blow, he fell down over the ground and then raised alarm. On his alarm, Rajo Chauhan came and tried to rescue him. He sustained injuries during course thereof, over which he raised alarm attracting the persons.

16. PW-2, Rajo Chauhan is another injured who had stated that on the alleged date and time of occurrence, he was at his house. After hearing alarm, he ran near channel and saw Prakash armed with Garasa, Gorelal armed with Khanti, Parmeshwar and Uma armed with Lathi and brother-in-law of Prakash armed with pistol. Prakash gave Garasa blow over head of Gore. Gorelal assaulted with Khanti over Gore Chauhan (informant), over his head, chest and shoulder. When he intervened, he was assaulted by Gorelal over his thigh. Then had stated that they were lifted to hospital. During cross-examination, he had stated that informant happens to be his cousin brother. He further stated that his brother was crying, "*Maar diya, maar diya*". He further stated that he sustained seven Khanti blows. He had further stated that when he reached at the place of occurrence, he saw injuries over the person of Gore. He was crying and tossing on account of assault. Then he had stated that he had not seen the occurrence.

17. PW-1 is Hari Chouhan who had stated that on the alleged date and time of occurrence, he was going toward channel and during course thereof, he had seen the accused persons having



duly armed with. During course thereof, Prakash gave Garasa blow over the head of Gore Chauhan. Gorelal (accused) gave Khanti blow over Gore, Parmeshwar and Uma gave Lathi blow. Rajo came to his rescue who was also assaulted by Gorelal. During cross-examination, he had stated that when he reached at the place of occurrence, at that very time, Gore (informant) was collecting fish. *Maar-peet* took place in his presence. First of all, Gore (informant) had sustained injuries. Only one person was assaulted. None other was assaulted. After occurrence, Pokhi, Rajendra, Hari, Rajo and others came. He had shown the place of occurrence to the police.

18. PW-7 the Investigating Officer who had inspected the place of occurrence which lies 150 yards east to the main village. During cross-examination, he had admitted that no mark of violence was found at the place of occurrence. It is further evident that he had not found cot at the place of occurrence and in likewise manner, also no details regarding presence of instrument of fishing.

19. Now giving an analytical approach to the evidences available on the record, it is apparent that as per evidence of PW-5, all the witnesses came after sustaining all injuries at his end which PW-2 controverted during course of examination-in-chief but conceded during course of cross-examination divulging that he had not seen *maar-peet*. If the evidence, of PWs-5 and 2 who are said to be injured persons, is taken together with the evidences of PW-1, he had ruled out assault over the person of PW-2, Rajo Chauhan stating



that only one person had sustained injuries.

20. Giving anxious consideration towards the objective finding of the Investigating Officer over the place of occurrence, neither trample marks were found nor water was found in the channel, no instrument of fishing was found and so story of fishing became improbable that too in absence of finding by the Investigating Officer that he had seen cot over which PW-5 had claimed to have slept. Furthermore, no blood mark has been found at the place of occurrence.

21. That being so, the place of occurrence as suggested by the prosecution became doubtful and thus, the manner of occurrence.

22. It is settled principle of law that evidence of injured lies on an upper pedestal and must be considered to be truthful unless and until is found completely demolished.

23. The Hon'ble Apex Court in State of M.P. v. Man Singh reported in (2003) 10 SCC 414 has observed under para-9:-

“The evidence of injured witness has greatest evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly”.

24. In the background of aforesaid principle when the evidence of PW-2 as well as PW-5 is concerned, it is evident that their testimony are found completely shocked by the evidence of PW-7, Investigating Officer which completely rules out the place of



occurrence pointed by PW-5 to be actual place of occurrence whereupon also cast doubt over genesis as well as manner of occurrence as tendered by the prosecution. That being so, the evidence of PW-6, doctor will not give any kind of favour to the prosecution.

25. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial court, is set aside. All appeals are allowed.

26. Since appellants are on bail, they are discharged from the liability of bail bonds.

27. The last and the first pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Patna High Court
January 23rd 2017
Perwez/AFR

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