

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.116 of 2002

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1. Chhotu Chaudhary son of late Dukhi Chaudhary,
 2. Sanjay Chaudhary son of late Govind Chaudhary, both residents of Village and PS-Roh, Distt-Nawada.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Sinha, Sr. Advocate
Mr. Bhola Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 17-01-2017

Appellants, Chhotu Chaudhary and Sanjay

Chaudhary have been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for four years with a further direction to set off in terms of Section 428 CrPC over the period having undergone during course of trial vide judgment of conviction and sentence dated 15.02.2002 passed by the Presiding Officer, FTC, Nawada in Sessions Trial No. 107/2002/197/99.

2. The prosecution case as unfurled on the basis of Fard-e-beyan of informant, Narendra Paswan (PW 5) recorded on 14.05.1999 at Sadar Hospital, Nawada before Nawada Town police officials where he was admitted in an injured condition, is that on 13.05.1999 at about 2:00/3:00 PM, while he along with Mahendra Yadav and Ashok Paswan were taking tea after procuring the same from the shop of Lalchand Paswan under the shadow of a Neem Tree near Roh Primary School, at that very moment, his co-villager,



Chhotu Chaudhary and Sanjay Choudhary who were passing through carrying toddy, out of whom Chhotu Choudhary disclosed that after sitting near tree, they are doing 'Addabaji' which was resisted by him and on account thereof, Chhotu began to abuse. When he protested on that very score, both of them became enraged and under such state of affairs, Sanjay went to his house, took pistol, came back and fired. As he bent down, had a narrow escape. Subsequently thereof, Chhotu inflicted Fasuli blow over his neck with an intention to kill which was prevented by him by raising his hand, as a result of which, he sustained severe injury on his hand. Blood fell down. On hue and cry, Mahendra Yadav along with others came and rescued him. Then thereafter, Chhotu and Sanjay escaped therefrom.

3. Having the aforesaid Fard-e-beyan transmitted from Nawada Town PS, Roh PS Case No. 28/99 was registered whereupon investigation commenced and after concluding the same, charge-sheet was submitted. Because of the fact that the offence whereunder cognizance was taken was exclusively triable by the court of sessions therefore, the case was committed, trial commenced and ultimately met with conviction and sentence against the appellants, on account thereof, instant appeal has been preferred.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial of the occurrence as well as of false implication.



5. It has further been suggested that as the prosecution party was carrying due and for that they were not allowed to take toddy and for that there was scuffle and during course thereof, informant fell down and sustained self inflicted injury for which, after weaving false and frivolous story, got the appellants implicated. However, neither any DW nor any kind of document has been adduced in their defence.

6. Learned counsel for the appellants, while challenging the findings recorded by the learned lower court, has submitted that from the judgment and order impugned, it is apparent that the learned lower court had acted in a mechanical way. It has further been submitted that for want of proper judicial scrutiny of the materials which improbabilises the genuineness of the prosecution versions, had there been proper appreciation, would not have allowed the finding to come. So submitted that the finding so recorded by the learned lower court vitiates at a glance from the materials having on the record.

7. In order to substantiate such plea, it has been submitted that neither Ashok Paswan, nor Mahendra Paswan nay Lalchand, that means to say, PWs 1, 2 and 3 could be the eyewitnesses to occurrence in the background of the disclosure having made in the Fard-e-beyan, the initial version. From perusal of the Fard-e-beyan, it is evident that PW-5 had himself disclosed that on an alarm raised by him, these witnesses came at the scene along with



other villagers who rescued the informant. Therefore, accepting PWs-1, 2 and 3 and in likewise manner having presence of PW-5, the informant within the campus of primary school and further asking for tea from the shop of PW-3 remaining in company of PW-1 and 2, could not be accepted.

8. So, the manner of occurrence as suggested, the place of occurrence as disclosed and claiming of PWs-1, 2 and 3 to the eyewitnesses to the occurrence did not survive. Accordingly, the finding so recorded by the learned trial court happens to be bad.

9. It has further been submitted from the evidence of the respective PWs, it is apparent that there happens to be no animosity amongst the parties since before. Even accepting the prosecution case, there happens to be some sort of conflicting, contradictory statement of the witnesses regarding activity of appellant, Sanjay Choudhary and on account thereof, his complicity during course of occurrence became doubtful and so, would have been given benefit thereof. Apart from this, it has also been submitted that prosecution version as suffers from improbability, also gives a bleak possibility in getting the finding recorded by the learned lower court confirmed because of the fact that there happens to be complete absence of the event at the end of the prosecution at the point of time relating to appellant, Chhotu Choudhary who, after disappearance of appellant, Sanjay Choudhary for taking pistol from his house, actually remained there with “Labhni” as well as “Fasuli”, the instrument which was subsequently



used for commission of occurrence and if so, whether altercation in between informant as well as Chhotu continued during intervening period. Even if the aforesaid event is considered in such a way, then in that event, the occurrence as alleged had committed on account of spontaneous reaction over an altercation going on and in the aforesaid background, one could not suggest nor could infer that the assault having at the end of Chhotu was with the knowledge that such assault will ultimately conclude killing the informant nor there could be an intention whereupon, the finding relating to conviction and sentence of the appellant, Chhotu Choudhary to the extent of Section 307 of the IPC is found non maintainable. So submitted that the judgment of conviction and sentence recorded by the learned lower court should be set aside.

10. On the other hand, learned APP while supporting the finding having recorded by the learned lower court, has submitted that from the judgment impugned, it is evident that the learned trial court had considered all kinds of pros and cons visualizing in the prosecution case. Therefore, the counsel for the appellants happens to be incorrect in suggesting that the judgment impugned has been passed in a mechanical manner. It has also been submitted that consistent evidence of the witnesses including the injured PW-5 that he sustained injury at the hands of Chhotu Choudhary and at that very time, presence of Sanjay Choudhary, who just a few minutes earlier, had also attacked upon the life of the informant though having



miraculous escape would not spare him from his identification in terms of Section 307 of the IPC along with appellant, Chhotu Choudhary. That being so, the judgment impugned is fit to be confirmed.

11. In order to substantiate its case, prosecution had examined altogether 6 PWs out of whom PW-1 is Ashok Paswan, PW-2 is Mahendra Yadav, PW-3 is Lalchand Paswan, PW-4 is Dr. Arbind Kumar, PW-5 is Narendra Paswan, (informant) and PW-6 is Harinath Choubey. Side by side, had also exhibited Ext-1, Injury Report, Ext-2, Fard-e-beyan, Ext-3, Formal FIR.

12. Before coming to scrutinize the oral evidence, it looks pertinent to have a glance over the medical evidence coming through PW-4, Dr. Arbind Kumar. PW-4 had examined the informant Narendra Paswan on 13.05.1999 at about 5:00 PM and found following injuries over his person:-

1. Incised wound – 7 x ½” x depth varying from skin to bone with tailing line on left elbow up to upper forearm.
2. Incised wound 6” x ½” x depth varying from skin to bone with tailing line on a ventero medial aspect of upper arm and part of axilla. Both the injuries had caused damage to nerves, muscles and vessels. In X-ray of left forearm, no bony lesion was found. The injuries were caused within 6 hours and were grievous in nature. They were caused by sharp cutting weapon. The injury report is Ext-1.

The aforesaid injuries found by the doctor establish the assault by accused by Pasuli. The injuries were long with tailing and were towards upper arm and part of axilla.



13. From the cross-examination, it is evident that the defence could not be able to dislodge his findings save and except that there was every possibility of presence of such kind of injury, in case, a person falls over a sharp glass or broken glass. Although, the doctor had found injury to be grievous in nature and for that, as it appears from para-7 of the cross-examination, defence had himself taken the risk in getting the same explained. Therefore, there happens to be no inconsistency in coming to the fore with regard to injury of the injured, PW-5 having caused by means of sharp cutting weapon and some of the same have been identified to be grievous in nature.

14. Because of the fact that evidence of injured lies on higher pedestal, it looks better to deal with the evidence of PW-5 firstly, before taking up the evidences of witnesses.

15. PW-5 had stated that on 13.05.1999 at about 3:00 PM, while he was sitting along with Mahendra Yadav and Ashok Paswan at Primary School in his village for the purpose of taking tea. After getting it from the shop of Lalchand Paswan, they were sipping the same and at that very moment, Chhotu Choudhary and Sanjay Choudhary came. Chhotu began to say that you people are doing “Addabaji” which was resisted by him on the plea that they were taking tea over which, Chhotu started abusing them. Sanjay after saying that he is just coming from his house, left the scene and came back with a pistol and shot at him. He had a miraculous escape. Then thereafter, Chhotu Choudhary inflicted Fasuli over his neck which he



prevented by his hand causing injury thereupon. Chhotu repeatedly hurled the blows and in similar circumstance caused another injury over his hand. Mahendra Yadav, Lalchand Paswan and Ashok Paswan intervened, otherwise Chhotu was adamant to kill. He was taken to Sadar Hospital, Nawada where he was treated. His Fard-e-beyan was recorded at that very place (exhibited). Identified the accused persons.

16. During course of the cross-examination at para-5, he had spoken that he had got no animosity with the accused persons. In para-6, he had further stated that none was injured on account of firing. In para-7, he has been tested over manner of his assault whereunder he stated that Fasuli blow was inflicted from the front side at a distance of 1-2 hand. Fasuli was about a feet long having sharp edge. At that very time, he was standing having east front while assailant was standing having west front. At that very time, he was wearing pant and shirt. Cloth was cut on account of Fasuli blow. Police had seen the cloth. Blood had oozed out. In para-8, he had stated that place of occurrence lies by the side of the school. At that very time, none came.

17. PW-6 is the Investigating Officer. After receipt of the Fard-e-beyan from Nawada PS, Roh PS Case No. 28/99 was registered and then thereafter, investigation was entrusted to him. He had visited the place of occurrence and inspected the same as pointed out by Ashok Paswan. He had detailed the same which happens to be “Sahen Zameen” in front of Primary School which lies east to Durga



Asthan in Village-Roh where one Neem Tree was standing. He identified that place with boundary. North-Primary School, South-Sunil Kumar and Rambriksh Choudhary's Gumti and then there is road, west- Mill of Karamchand Gandhi, East- barren land. House of accused lies 50 yards away therefrom. Shop of Lalchand was 20 yards away to that place. After recording evidence of witnesses, obtaining injury report, he had submitted charge-sheet. During cross-examination in para-11, he had stated that Ashok Paswan had shown the place of occurrence. Nothing was recovered from the place of occurrence. No cross-examination has been made by the accused on which date place of occurrence was inspected. That could have a bearing in the background of the fact that during course of inspection of place of occurrence, blood stain was not at all found. Furthermore, no cross-examination has been made on behalf of appellants on the score whether clothe having worn by PW-5 had ever been seen by him or not. Apart from this, from the evidence of this PW, it is apparent that no contradictions relating to other witnesses have been perceived by the defence.

18. Now coming to the remaining witnesses, PW-1 is Ashok Paswan who had deposed that he along with Narendra Paswan, Mahendra Yadav were near Neem Tree on the alleged date and time of occurrence and were sipping tea after getting it from the shop of Lalchand Paswan which lies 4-5 bamboo away therefrom. A primary school also lies in its vicinity which was closed. At that very time,



Chhotu and Sanjay came with *Labhni* of toddy as well as Fasuli from western side. Chhotu, out of them, said that they are doing '*Addabaji*' over which they began to disclose that they have come to take tea over which, he began to abuse and so was resisted. Then thereafter, Sanjay Choudhary had gone to his house which lies 5-6 bamboo north, returned therefrom with the pistol and shot at Narendra Paswan having miraculous escape. Thereafter, Chhotu gave Fasuli blow over neck of the Narendra which he prevented through his left hand, on account of which he sustained injuries at two different locations over his hand. Then thereafter, Narendra was taken to hospital. Police came whom he had shown the place of occurrence. He had given statement. Identified accused. During cross-examination at para-9, he had stated that he is unable to say whether there was presence of any customer inside the shop at the time when they were taking tea under the shadow of Neem Tree. At that very moment, only Chhotu Choudhary and Sanjay Choudhary came. They were possessing one *Labhni* toddy each. They had indulged in abusive manner for 2-3 minutes. During course thereof, none came. Even after occurrence, none came. He cannot say whether empty cartridge or wads of cartridge had fallen down or not. In para-12, he was cross-examined over the occurrence, said that at the time of assault, Narendra and Chhotu were in front of each other. At that very time, *Labhni* was not in the hand of Chhotu. It was kept on the earth. He had inflicted Fasuli blow by his right hand. There was no injury over the neck of Narendra. Twice attempts were



made and Narendra ward off the blow by his left hand on account thereof, no injury was caused over neck rather it was over his left hand. Narendra was wearing a full shirt. He had seen cut mark on the shirt. Blood was also there. Blood had also fallen down on the earth. In para-14, he had further admitted that there was no dispute persisting since before. Para-15 is the contradiction but as indicated above, the attention of the Investigating Officer had not been drawn up and on account thereof, it looks worthless to peep into the same.

19. PW-2 is Mahendra Yadav who had deposed that on the alleged date and time of occurrence, he along with Narendra and Ashok were sipping tea under a Neem Tree in front of the shop of Lalchand. Chhotu and Sanjay came and said that you people are doing '*Addabaji*'. Narendra resisted followed with an altercation. Then Sanjay had gone to his house and brought a pistol and fired at Narendra who had a miraculous escape. Chhotu came with Fasuli and gave blow aiming on the neck of the Narendra which he ward off through his left hand causing injury thereupon. Blood oozen out. They intervened into the matter and rescued Narendra, otherwise, the accused might have committed murder. During cross-examination, at para-3, he had stated that they were taking tea at the shop of Lalchand where only three persons were present, he, Narendra and Ashok. In para-4, he had stated that first of all, Chhotu had come. Chhotu was possessing one Labhni full of Toddy. Sanjay was also carrying one Labhni with Toddy. Chhotu was also possessing one Fasuli. Both of



them indulged in an abusive manner for 2-3 minutes. During course thereof, none came. However, after the occurrence so many persons assembled there. In para-6, he had stated that he had not seen firing. In para-7, he had stated that Narendra and Chhotu were in front of each other at the time of infliction of Fasuli blow. At that very time, Chhotu was not carrying Labhni, rather it was kept on the earth. He had inflicted Fasuli blow repeatedly. On both occasions, Narendra sustained injuries over his left hand. No injury was caused over his neck. In para-8, he had stated that there was cut over shirt worn by Narendra. Blood had fallen down over the earth. So from his evidence, it is apparent that save and except identifying presence of both the appellants one by one, the manner of occurrence is found intact in terms of PW-1 as well as PW-5, the injured.

20. PW-3 is Lalchand Paswan, the shopkeeper who had deposed that on the alleged date and time of occurrence, he was at his shop where Narendra, Mahendra and Ashok came and sat under the Neem Tree which lies at a distance of 2-3 bamboo of his shop. At that very time, Chhotu came with Labhni and Fasuli. Sanjay had also come with Labhni. Chhotu directed Narendra why you people are doing *Addabaji* which was resisted by Narendra and on account thereof, Chhotu and Sanjay began to abuse which was protested. Sanjay, then thereafter, ran to his house and brought pistol and fired at Narendra having miraculous escape. Then thereafter, Chhotu gave Fasuli blow with an intention to kill which was prevented by Narendra



and on account thereof, he sustained injury over his left hand. Repeated blows were given. They intervened and saved Narendra from further assault. Identified the accused in the dock. During cross-examination, he had admitted in para-3 that all the three had come to his shop for taking tea and sat beneath the Neem Tree. He had further admitted that at that very time, none other was present. Sanjay and Chhotu came having one Labhni each. There was uproar for 5-7 minutes and during course thereof, none came. In para-4, he had stated that none had sustained injury from firing. In para-5, he had stated that at the time of infliction of Fasuli, both were in front of each other. At that very time, Chhotu had kept the Labhni on the earth. Chhotu had given Fasuli blow by his right hand. No injury was caused over the neck of Narendra but as at each occasion, Narendra ward it off by his left hand, on account of which he sustained injuries over his left hand. Blood oozen out. Blood had also fallen over the ground. In para-8, there happens to be contradiction but that has got no relevancy in the background of the fact that PW-6 was not cross-examined on that very score.

21. After due appreciation of the evidences, it is crystal clear that presence of Sanjay Choudhary at the place of occurrence has not been properly substantiated, rather is found in inconsistent way. Furthermore, the activity having assigned to Sanjay Choudhary, in case, would have his presence, must be proved meeting with the ultimate result as, armed with pistol would not have spared Narendra



that too when he had already sustained severe injuries making incapable to defend. Accordingly, the conviction and sentence recorded against Sanjay Choudhary is set aside. He is on bail so, is discharged from his liability.

22. So far complicity of Chhotu Choudhary is concerned, considering the consistency amongst the evidences of the PWs, more particularly, that of injured being corroborated by the medical evidence, I do not see any cogent reason to interfere with the findings having been recorded by the learned trial court.

23. That being so, the instant appeal relating to Chhotu Choudhary is dismissed. He is on bail, hence his bail bond is cancelled directing him to surrender before the learned trial court to serve out the remaining part of sentence failing which, the learned trial court will be at liberty to proceed against him in accordance with law.

(Aditya Kumar Trivedi, J)

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