

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.557 of 2002

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

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Ravi Nath Kumar Mishra, S/o Late Mahabir Mishra, resident of village – Basant,
P.S.-Jale, District-Darbhanga.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Rajnath Sharma, Advocate.

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

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 06-12-2017

Heard learned counsel for the appellant as well as
learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the
Judgment and Order of conviction and sentence dated 03.09.2002
passed by Adhoc District and Sessions Judge, Fast Track Court-III,
Patna in Sessions Trial No. 593 of 1993 arising out of Gardanibagh
P.S. Case No. 245 of 1992, whereby the learned trial court convicted
the accused Ravinath Kumar Mishra for the offence punishable under
Section 307 of the Indian Penal Code and sentenced him to undergo
R.I. for three years for the said offence.

3. Factual matrix of the case is that Gardanibagh P.S.
Case No. 245 of 1992 was instituted under Sections 307 and 324 of
the Indian Penal Code against the accused Ravinath Kumar Mishra



on the basis of the fardbeyan of Jawahar Lal Rajak, Son of Shiv Nandan Rajak, resident of Village-Jalalpur, P.S. Danapur, District-Patna, at present residing by the side of Rajendra Krishi Bishwavidyalaya under P.S. Phulwari recorded by A.S.I. S. N. Singh of P.S. Sachiwalya on 27.03.1992 at 08:30 PM at emergency ward of P.M.C.H., Patna with the allegation in succinct that on 27.03.1992 at 07:15 PM, while he was regressing to his house on bicycle after finishing his work at the house of Shri S. N. Sinha, I.A.S., resident of 10th Strand Road, Patna and when he arrived near nursery of Shri Hari Anne Marg, a person who is residing in the servant quarter of 10th Strand Road gave him call from the rear side, whereupon he stopped his bicycle. On coming closer to him, he asked him regarding complain made against him with the Madam. On his refusal, he whipped out dagger from his waist and assaulted him indiscriminately on his neck, cheek and head inflicting injury on the aforesaid parts of his person. He also sustained injury on both the palms during the course of escaping the assault. His attire was also stained with blood. On sustaining injury, he rushed to the resident of his officer. In the meantime, police patrolling party arrived there and apprehended the said accused giving him chase and rushed him to the P.M.C.H where he is undergoing treatment. Apprehended accused disclosed his identity as Ravinath Kumar Mishra.



4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Ravinath Kumar Mishra under Sections 341, 324 and 307 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of Adhoc District and Sessions Judge, Fast Track Court-III, Patna for trial.

6. Charge against the said accused was framed under Section 307 of the Indian Penal Code. Charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether four prosecution witnesses namely, informant Jawahar Lal Rajak as PW-1, Parmeshwar Rai as PW-2, Ram Pravesh Dome as PW-3 and Ram Pravesh Pandit as PW-4. Out of the aforesaid witnesses, PW-4 happens to be formal witness who has proved fardbeyan, formal F.I.R., seizure list and injury report marked as Exhibit-2, 3, 4 and 5 respectively.

8. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is



complete denial of the occurrence claiming himself to be innocent and falsely implicated in the case. The accused neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid 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 has preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that there are only two material witnesses of the case, namely, the informant Jawahar Lal Rajak (PW-1) and Ram Pravesh Dome (PW-3). Out of them, PW-3 does not happen to be the eye witness of the occurrence. Thus, the only eye witness of the occurrence is the informant who happens to be the interested witness of the case. Injury report has also not been legally brought on record by examining its author rather it has been proved by the formal witness who happens to be advocate clerk. Likewise, F.I.R. and fardbeyan have not been proved by its author rather by the said formal witness.



The motive of occurrence has also not been proved as as per the prosecution case, the appellant assaulted the informant for making complain against him with the Madam, but neither the said Madam nor the said Officer has been examined by the prosecution in substantiation of the aforesaid motive behind the occurrence. It is further submitted that there is no evidence on record that the informant was on duty and was regressing to his house from duty at the time of occurrence. As per the prosecution case, the appellant assaulted the informant for 15-20 minutes, but there is no eye witness of the occurrence which creates serious doubt about the prosecution case. PWs-3 and 4 have also not identified the appellant in the occurrence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and the charge levelled against the appellant beyond all reasonable doubts by adducing consistent, trustworthy and reliable evidence. Hence, the appellants are entitled to be acquitted.

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 supported the occurrence of assault on him by means of dagger by the appellant and the doctor has also found altogether eight injuries on various parts of the person of the informant. Thus, there is sufficient ocular



and documentary evidence establishing the prosecution case. Learned lower court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this criminal appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that three material witnesses have been examined by the prosecution in substantiation of its case. Out of them, PW-2 Parmeshwar Rai and PW-3 Ram Pravesh Dome do not happen to be the eye witnesses of the occurrence. As PW-2 in his examination-in-chief has not whispered about witnessing of the occurrence of assault on the informant by the appellant rather has simply stated that he had rushed the injured to P.M.C.H., Patna to accord him medical aid where the police had seized the blood stained attire of the injured and prepared seizure list and he had put his signature on it. PW-3 has stated in his examination-in-chief that he had seen two persons scuffling and when he arrived at the place of occurrence responding hulla, police had arrived there by that time and apprehended the miscreant, but he has neither stated about assaulting the informant by means of dagger by the said miscreant nor he has taken the name of the miscreant in his deposition. Thus, the only eye witness of the occurrence is the informant himself.



15. From perusal of the examination-in-chief of the informant, it appears that in his examination-in-chief he has candidly stated that at the time of occurrence while he was regressing to his house on bicycle from the duty from the house of Sri S. N. Sinha, I.A.S. and arrived at the place of occurrence, a person living in servant quarter of the said officer met him and asked him about making complain against him with the Madam. He took pause. Then he whipped out dagger from his waist and assaulted on his neck, cheek and hand indiscriminately inflicting certain injures to him. He made alarm. Responding the same, patrolling party arrived there and apprehended the accused and rushed him to P.M.C.H. to accord him medical aid. The said witness was subjected to cross-examination, but nothing convincing and cogent has been elicited in his cross-examination having potential to rule out his aforesaid testimony about sustaining of injury by him in the occurrence of assault at the hand of the appellant and the testimony of the said witness appears to be unblemished, reliable and trustworthy. It is settled principle of law that even on the evidence of solitary eye witness, conviction can be made if it is found to be unblemished and reliable. Though the informant may be branded as an interested witness but it is also settled principle of law that testimony of an interested witness should not be discarded outrightly rather it should be scanned and



scrutinized cautiously and carefully and on careful scrutiny and scanning of the testimony of the informant, I find it to be reliable, trustworthy and worth credence.

16. Injury report of the informant has not been legally brought on record by examining its author i.e. the doctor who had examined the informant and written the said report rather it has been proved by formal witness PW-4 who happens to be advocate clerk and he had not seen preparing of said injury report by said doctor. Moreover, from perusal of the aforesaid report, it appears that the doctor has found the injuries on the person of the informant as incised wound caused by sharp cutting weapon, but such injury having dimension as reported by the doctor cannot be inflicted by the dagger which is used for stabbing and inflicts stab wound. But as the informant has sufficiently established the factum of assaulting on his neck, cheek and hand by means of dagger by the appellant by adducing his unblemished, reliable and trustworthy ocular evidence, the nature of aforesaid injuries as found by doctor in my considered opinion has no potential to rule out the aforesaid unblemished evidence of informant.

17. From perusal of the testimony of the informant, it appears that he has nowhere stated in his statement that the appellant assaulted him by means of dagger with intention to do away with his



life rather the aforesaid occurrence is said to have taken place in the spur of moment over making complain against the appellant with the Madam by the informant and on flatly refusal by the informant regarding the same. There is nothing legally brought on record that the informant has sustained grievous injury. Hence, in my considered opinion, offence under Section 307 of the Indian Penal Code is not made out against the appellant, but as the informant has sustained injury by means of dagger which happens to be an instrument used for stabbing, at the hand of the appellant in the occurrence, the appellant is convicted for the offence punishable under Section 324 of the Indian Penal Code.

18. From perusal of the record, it appears that the appellant has already remained in custody for around seven months during the course of trial and has faced rigours of trial for a long span of time of 25 years. Hence, in the facts and circumstances of the case, the sentence is reduced to the period of custody already undergone by the appellant. Accordingly, this criminal appeal is disposed of with the aforesaid modification in the Judgment and Order of conviction and sentence.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
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