

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.203 of 2002

Arising Out of PS.Case No. -56 Year- 1995 Thana -Sangrampur District- MUNGER

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1. Radhey Yadav, Son of Jagarnath Yadav.

2. Sitabi Yadav, Son of Radhey Yadav

Both are resident of village – Bumber, Police Station-Sangrampur, District-Munger.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate.

Mr. Ram Sevak Choudhary, Advocate.

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

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 08-11-2017

Heard learned counsel for the appellants 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 dated 16.03.2002 and order of sentence dated 18.03.2002 passed by Presiding Officer, Additional Court (Fast Track), Munger in Sessions Trial No. 256 of 1997 arising out of Sangrampur P.S. Case No. 56 of 1995, whereby the learned



trial court convicted the accused persons namely, Radhey Yadav and Sitabi Yadav for the offence punishable under Section 325 of the Indian Penal Code and sentenced them to undergo R.I. for seven years and slapped them with fine of Rs. 2000/- each and in default of payment of fine, to further undergo S.I. for six months.

3. Factual matrix of the case is that Sangrampur P.S. Case No. 56 of 1995 was initially instituted under Sections 307 and 323 of the Indian Penal Code and subsequently added with Section 302 of the Indian Penal Code against the accused, namely, Radhey Yadav and Sitabi Yadav on the basis of the fardbeyan of Laxman Yadav, Son of Genhari Yadav, Resident of Village- Bumber, P.S.- Sangrampur, District- Munger recorded by S.I. N. B. Singh of O.P.Tetiya Bumber, District Munger on 20.06.1995 at 07 PM in the house of Dr. Arun Kumar Singh with the allegation in succinct that on 20.06.1995 at around 4 PM, Radhey Yadav was laying tile roof on his house by entering into his courtyard. On forbading him from entering into his courtyard, they entered into altercation. Thereafter, Radhey Yadav and Sitabi Yadav assaulted him by means of lathi inflicting injury on his head, shoulder and left eyebrow. Sustaining injury, he fell down on the ground and was rushed to the doctor by the villagers. His mother Shanti Devi, Ram Dular Yadav and Bhasho Yadav witnessed and intervened the occurrence.



4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the aforesaid accused persons under Section 302/34 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 against the accused persons and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of Presiding Officer, Additional Court (Fast Track), Munger for trial.

6. Charge against the accused persons was framed under Section 302 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 examined altogether seven prosecution witnesses namely, Rajesh Yadav as PW-1, Sangeeta Devi as PW-2, Shanti Devi (Kanti Devi) as PW-3, Prabhash Yadav as PW-4, Dr. Arun Kumar Singh as PW-5, Ram Dular Yadav as PW-6 and I.O. Nand Bihari Singh as PW-7. Out of the aforesaid witnesses, PW-6 turned hostile. The prosecution has also filed and proved several documents by way of documentary evidence.

8. 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 their case, in ocular evidence, the accused persons have examined one witness, namely, Nitya Nand Mishra as DW-1 and they have not adduced any documentary evidence.

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 convicts have 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 appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that four material witnesses have been examined by the prosecution. Out of them, three happen to be hearsay witnesses. Only PW-3 who happens to be mother of the informant is the eye witness of the occurrence. But her testimony is also not worth credence and reliable, as she happens to be interested witness of the case and her statement given before the court happens to be in quite contradiction



to that given before the I.O. under Section 161 of the Code of Criminal Procedure. It is further submitted that the deceased had sustained eight injuries. Out of them, injury no.1 is about semi-consciousness of the victim. The doctor has opined the injury nos. 4, 5, 6 and 7 as simple in nature caused by hard and blunt substance, but he has not given any opinion regarding nature of injury nos. 2, 3 and 8 for want of X-ray report and moreover, the said injuries do not come under the purview of the grievous injury as enumerated in Section 320 of the Indian Penal Code. Thus, the victim has not sustained any grievous injury and the appellants cannot be convicted under Section 325 of the Indian Penal Code. Thus, aforesaid judgment and order of conviction and sentence passed by the learned Trial Court is wrong and illegal and 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 though PW-1, PW-2 and PW-4 are hearsay witnesses of the case, but mother of the victim (PW-3) has fully supported the prosecution case and injury sustained by the victim and learned lower court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid Judgment and Order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be



dismissed.

14. From perusal of the record, it appears that four material witnesses have been examined by the prosecution. Out of them, PW-1, PW-2 and PW-4 are hearsay witnesses of the occurrence as PW-1 has stated in his examination-in-chief that he was in Jamui on the date of occurrence. When he regressed to his house in the evening, he learnt about the occurrence. PW-2, namely, Sangeeta Devi has stated in her examination-in-chief that on 21.06.1995 at 03:30 PM, she got information about the occurrence in Bhagalpur and PW-4, namely, Prabhash Yadav has stated in his examination-in-chief that he got information of the occurrence on 21.06.1995 at Bhagalpur at 3 PM from his villager Tunni, Son of Hari Lal Sharma. But neither PW-1 nor PW-2 has disclosed about source of information of the occurrence and Tunni has not been examined by the prosecution in corroboration of the aforesaid statement of PW-4. Hence, the hearsay statement of PW-1, PW-2 and PW-4 is not admissible in evidence. Thus, the only eye witness of the occurrence is PW-3 Shanti Devi (Kanti Devi) who happens to be mother of the informant.

15. From perusal of the testimony of Shanti Devi (PW-3), it appears that she has stated in her examination-in-chief that at the time of occurrence, Sitabi Yadav and Radhey Yadav were laying



the roof and when her son Laxman Yadav forbade the appellants from laying his roof from his courtyard, they assaulted him by means of lathi. They smashed his head and also assaulted on his eye, shoulder, hand, rib, chest and stomach and trampled his chest climbing on it resultantly his mouth started frothing and food particles came out of his mouth. But aforesaid statement of PW-3 appears to be in quite contradiction to the prosecution case as alleged in the fardbeyan. As as per the fardbeyan of the informant, the appellants assaulted Laxman Yadav by means of lathi only on his head, shoulder and left eyebrow, but PW-3 has stated that besides aforesaid parts of his person her son has sustained injuries on his hand, rib, chest and stomach and appellants had also trampled his chest climbing on it resultantly his mouth was frothing and food particles came out of his mouth. Moreover, attention of the said witness regarding contradiction in her statement given before the court and that given before the I.O. under Section 161 of the Code of Criminal Procedure was drawn by the defence in Para-10 of her cross-examination regarding her presence at her door at the time of occurrence, smashing the head of her son by assaulting by lathi by the appellants, trampling his chest by climbing on it by the appellants resultantly frothing his mouth and coming out of food particles from his mouth, death of the deceased in the evening of Wednesday and



cremation of the dead body by her daughter and another son as per the instruction of the S.I. From perusal of the testimony of the I.O. examined in this case as PW-7, it appears that he has denied giving such statement to him by the said witness. Thus, the statement of the said witness, who happens to be the interested witness being mother of the victim, given before the court stands in quite contradiction to that given before the I.O. under Section 161 of the Code of Criminal Procedure regarding aforesaid material aspect of the case. The said witness appears to have taken altogether different stand in the court. Hence, in view of the aforesaid aspect of the case, the said witness does not appear to be trustworthy and reliable and her aforesaid statement does not inspire my confidence to hold conviction of the appellants under Section 325 of the Indian Penal Code relying upon it.

16. The informant of the case has not been examined by the prosecution. Albeit the prosecution has claimed that the informant has died succumbing the injuries, but nothing has been brought on record in substantiation of his death.

17. The informant in his fardbeyan has stated that besides Shanti Devi (PW-3), Ram Dular Yadav (PW-6) and Bhaso Yadav rushed at the place of occurrence and witnessed and intervened the occurrence, but the said witnesses who happen to be



independent witnesses of the occurrence have not been examined by the prosecution rather withheld by it and no explanation has been assigned by the prosecution for non-examination of the aforesaid independent witnesses of the occurrence. Hence, adverse inference is drawn against the prosecution. Thus the testimony of PW-3 does not stand corroborated by the independent witnesses of the occurrence.

18. From perusal of the testimony of PW-3, it appears that the attire of the victim was stained with blood and blood was fallen on the ground at the place of occurrence. But from perusal of the testimony of the I.O. (PW-7), it appears that I.O. has not stated about finding any blood stain on the place of occurrence and also about production and seizure of blood stained attire of the victim. Said aspect of the case creates doubt about happening of the occurrence at the place of occurrence.

19. From perusal of the injury report marked as Exhibit-5 and testimony of Dr. Arun Kumar Singh (PW-5) who happens to be the author of the said injury report, it appears that the victim had sustained altogether eight injuries. Out of them, injury nos. 4, 5, 6 and 7 have been opined by the doctor as simple in nature caused by hard and blunt substance while opinion regarding nature of injuries nos. 2, 3 and 8 has been kept reserved. The patient was referred to Sadar Hospital, Munger for X-ray and better treatment.



The nature of said injury has not been opined by the doctor for want of X-ray report as as per the statement of the doctor in Para-10 of his cross-examination, the patient did not turn up in the Sadar Hospital. Moreover, from perusal of injury nos. 2, 3 and 8, it appears that injury no.2 is lacerated wound of dimension of 2.25 CM x 6 MM x bone deep on right side and upper portion of forehead, injury no. 3 is lacerated wound of dimension of 3 CM x 8 MM x bone deep on mid portion of scalp and injury no.8 is the complain of pain on upper abdomen with tenderness. The said injuries do not come under the purview of grievous hurt as enumerated in Section 320 of the Indian Penal Code. Hence, the aforesaid injuries cannot be branded as grievous injury, so the appellants cannot be convicted under Section 325 of the Indian Penal Code which is regarding inflicting grievous injury to the victim.

20. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellants are acquitted from the charges levelled against them giving them benefit of doubt. As the appellants are on bail, they are



discharged from the liability of their bail bonds. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Mishra/-

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