

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.549 of 2002

Arising Out of PS.Case No. -29 Year- 1986 Thana -Piprahi District- SITAMARHI

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1. Ram Kalewar Singh, S/o Late Tapeswar Singh
 2. Ramchandra Singh, S/o Late Ishwar Singh.
 3. Kishori Singh, S/o Late Ishwar Singh.

All R/o Village-Chhatauna Vishunpur, P.S. Piprahi, District-Sivhar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrit Abhijat AC
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date: 01-12-2017

1. Heard learned *amicus curiae* for the appellants and learned APP for the State on this Criminal Appeal.

2. This appeal has been preferred against the judgment and order of conviction dated 05.09.2002 and order of sentence dated 06.09.2002 passed by the Additional Sessions Judge, Fast Track Court no. 4, Sitamarhi in Sessions Trial no. 123 of 1992/32 of 2002 arising out of Piprahi P.S. Case No. 29 of 1986, whereby the learned trial court convicted the accused persons namely, Ram



Kalewar Singh, Kishori Singh and Ramchandra Singh for the offence punishable under Section 307/34 of the Indian Penal Code and sentenced them to undergo R.I. for seven years for the said offence.

3. The factual matrix of the case is that Piprahi P.S. Case No. 29 of 1986 was instituted under Sections 324, 307, 323, 379/34 of the Indian Penal Code against accused Ram Kalewar Singh, Kishori Singh, Ramchandra Singh and Ishwar Singh on the basis of *fardbeyan* of Ram Kishun Singh S/o Ram Daun Singh R/o Village Lalgah P.S. Shyampur Bhatha District-Sitamarhi recorded by P.S.I. Mukul Mohan Sharma of P.S. Sitamarhi on 22.07.1986 at 21:20 hrs. in Sadar Hospital, Sitamarhi with the allegation, in succinct that on 22.07.1986, he along with Ram Pratap Singh was proceeding to his in-laws house. At around 04:00 PM when he arrived near Muth located in the Village Bishunpur, Ram Kalewar Singh, Kishori Singh, Ramchandra Singh and Ishwar Singh were standing there, Ram Kalewar Singh hurling abuse objected his visit in his village and on protest Ishwar Singh gave order to eliminate him whereupon Ram Kalewar Singh assaulted on his stomach by means of dagger. Sustaining injury, he fell down. Then Kishori Singh assaulted on his back by means of spear. When Ram Pratap Singh rushed in his rescue, Ramchandra Singh assaulted on his



stomach by means of dagger. He also fell down sustaining injury. On responding hulla made by them, Digwijay Singh and Kashi Singh rushed in their rescue and saved their lives. Ishwar Singh took out Rs. 600/- from his pocket during course of retreat.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons under Sections 341, 324, 326, 307 of the Indian Penal Code.

5. On receiving the charge-sheet 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 *seisin* of the Additional Sessions Judge, Fast Track Court no. 4, Sitamarhi for trial. During the pendency of the case, Ishwar Singh passed away, hence, only three accused persons faced the trial.

6. Charge against accused Ram Kalewar Singh, Kishori Singh and Ramchandra Singh was framed under Section 307/34 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, Ram Pratap Singh as PW-1, Digwijay Singh as PW-2, informant Ram Kishun Singh as PW-3, Dr. Awadh Kishore as PW-4, S.I. Uday Chandra Prasad as PW-5, Uma Prasad Singh as PW-6 and Jitendra Kumar as PW-7. Out of the aforesaid witnesses, PW-6 (Uma Prasad Singh) and PW-7 (Jitendra Kumar) happen to be formal witnesses. The prosecution has also filed and proved some documents by way of documentary evidence.

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. In buttress of their case, in ocular evidence, the accused persons have examined three witnesses namely, Ram Babu Singh as DW-1, Ramendra Singh as DW-2 and Raj Kishor Singh as DW-3.

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 convicts have 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 charge levelled against the appellants beyond all reasonable doubts or not.



12. It is submitted by the learned counsel for the appellants that there are only three material witnesses of the case. Out of them, PW-2 (Digwijay Singh) does not happen to be eye witness of the case as he was not present at the place of occurrence at the time of occurrence rather he had arrived at the place of occurrence responding hulla made by the informant after culmination of the occurrence. It is further submitted that all the material witnesses happen to be interested witness of the case as PW-1 (Ram Pratap Singh) and informant (Ram Kishun Singh) happen to be alleged injured of the case and PW-2 (Digwijay Singh) happens to be nephew of the PW-1 (Rampratap Singh). It is also submitted that the aforesaid witnesses are inimical to the appellants as property dispute is pending between them since before. It is further submitted that as per prosecution case and statement of PW-1 (Ram Pratap Singh) and informant PW-3 (Ram Kishun Singh), the informant had sustained only two injuries, one dagger blow at the hand of Ram Kalewar Singh and another spear blow at the hand of Kishori Singh, but doctor has found three injuries on his person. Thus, the ocular evidence does not stand corroborated by the medical evidence. The place of occurrence does not stand established by the prosecution as the I.O. has stated place of occurrence altogether different to the informant and PW-1 has stated



third place of occurrence. As per the statement of the informant, the place of occurrence is located at 5-7 lagga corresponding to around 60-70 feet from the Muth, but, I.O. has reported the place of occurrence located at 500 yards from the Muth. As per the account of witnesses, the blood was fallen from the wound of the informant and PW-1 at the place of occurrence, but I.O. has not found any blood at the place of occurrence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned lower court is liable to be set aside and 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 informant and two other material witnesses of the occurrence have fully supported the prosecution case and the ocular evidence also stand corroborated by the medical evidence and learned lower court correctly appreciating the facts and evidence on record has rightly passed the impugned 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 record, it appears that there are three material witnesses of the case as PWs-1, 2 and 3. Out of them, PW-2 (Digwijay Singh) does not happen to be eye witness of the occurrence. As as per the statement of informant recorded in the fardbeyan, the informant and Ram Pratap Singh sustaining injury inflicted by the accused persons, fell down on the ground and made hulla, then PW-2 (Digwijay Singh) and Kishori Singh rushed in their rescue and saved their lives. Though, informant has stated in quite contradiction to the aforesaid statement as given by him in the fardbeyan that PW-2 (Digwijay Singh) and Kashi Singh were also accompanying him at the time of occurrence, but PW-1 (Ram Pratap Singh) who happens to be one of the companion of the informant has not taken the name of PW-2 as their companion and PW-2 has stated in paragraph 8 of his cross-examination that while he was regressing from the market, he listened hulla and responding hulla made by the informant, he found bleeding wound on the person of Ram Kishun Singh and Ram Pratap Singh and the injured were lying on the ground. The aforesaid statement of PW-2 itself rules him out to be eye witness of the occurrence. As as per the aforesaid statement, he had arrived at the place of occurrence after culmination of the occurrence responding hulla and found bleeding



injury on the person of Ram Kishun Singh and Ram Pratap Singh lying on the ground.

15. As per prosecution case and the account of informant (PW-3), informant had sustained two injuries, one dagger blow on his stomach and another spear blow on his back. But, PWs-1 and 2 in quite contradiction to aforesaid prosecution case have stated that the informant had sustained two injuries on his back at the hand of Kishori Singh. Moreover, from perusal of paragraph 10 of the cross-examination of PW-2, it appears that attention of the said witness was drawn by the defence towards contradiction between his statement given before the court and that given before the I.O. under Section 161 of the Cr.P.C. regarding aforesaid aspect of the case *inter alia* and corroboration of the aforesaid contradiction has been taken by the I.O. in paragraph 13 of his cross-examination. From the aforesaid contradiction, it appears that PW-2 has not stated about the manner of occurrence, injury etc. to the I.O. as stated by him before the court. Thus, PW-2 appears to have altogether taken different stand before the court and he does not appear to be trustworthy and reliable witness and his evidence does not appear to be worth credence.

16. It is the specific case of the informant as narrated by him in the fardbeyan and in his examination-in-chief that he had



sustained one spear injury on his back at the hand of Kishori Singh, but the doctor has found two penetrating injuries on his left scapular region. Thus, the ocular evidence of prosecution also does not stand corroborated by medical evidence.

17. From perusal of record, it appears that as per witnesses account, the blood was fallen on the ground from the wound of the informant and PW-1, but I.O. has not found any blood on the place of occurrence. As per the I.O., there is a road on the side of place of occurrence while toward west there is a tree of sisam and mango and towards east paddy field of Ram Chandra Singh. But, PWs-1 and 3 have given altogether different place of occurrence as given by I.O and place of occurrence disclosed by the PWs-1 and 3 also happen to be contradictory to each other. As per account of informant, the place of occurrence located at 5-7 lagga corresponding to 60-70 feet from the muth, but the I.O. has reported the place of occurrence located at 500 yards from the muth. Thus, the place of occurrence does not stand established by the prosecution.

18. From perusal of record, it appears that occurrence is said to be of 22.07.1986 at around 04:00 PM and the fardbeyan of the informant was recorded on the same date at around 09:20 PM, but FIR has been lodged on 24.07.1986 at around 08:30 AM and the



same was sent to the court on 25.7.1986 and no plausible explanation has been assigned by the prosecution to explain the aforesaid delay in lodging the FIR.

19. As per statement of informant, Ram Babu Singh and Rijhan Singh had arrived at the place of occurrence and rushed them to hospital, but aforesaid witnesses have not been examined by the prosecution and withheld by it. Rather, the aforesaid Ram Babu Singh has been examined in the case by the defence as DW-1 and he has denied taking place of any such occurrence rather has stated that informant and Ram Pratap Singh were plundered by some unknown miscreants on the way and were assaulted by them and when he rushed at the aforesaid place responding hulla, the accused persons left the scene, then he rushed the injured to the hospital. Thus, the aforesaid independent witness has ruled out taking place of such an occurrence as alleged by the prosecution.

20. Though PWs-1 and 3 appears to have supported the prosecution case by narrating the occurrence and manner of occurrence as alleged in the FIR, but from perusal of the statement of the aforesaid witnesses and that of PW-2, it appears that they are on inimical terms with the appellants. As the informant in his fardbeyan itself has stated that a dispute of in-laws property is going on between him and the appellants. In paragraph 2 of his



examination-in-chief, he has also stated that bone of contention is pendency of the case regarding property before Joint Director, Chakbandi. In paragraph 7 of his cross-examination, he has further stated that case was pending between him and the appellants regarding property of his father-in-law. Consolidation Officer had passed the order in his favour. Against the said order, the appellants have filed appeal before Deputy Director, Consolidation. In paragraph 9 of his cross-examination, he has further stated that Tapeshwari Singh, father of appellant Ram Kalewar Singh had filed Appeal no. 46/78 in the court of Deputy Director, Consolidation against the order passed by the Consolidation Officer in favour of his wife which was decided in favour of Tapeshwari Singh on 09.01.1985. Likewise, PW-1 (Ram Pratap Singh) has stated in paragraph 11 of his cross-examination that the case was pending between him and Tapeshwari Singh, father of the appellant Ram Kalewar Singh since before this case and PW-2 happens to be own nephew of PW-1. Enmity cuts both the edges, but in view of aforesaid contradictions between prosecution case and evidence of witness and between the ocular and medical evidence, non-establishment of place of occurrence and delay in lodging the FIR etc. false implication of the appellants due to aforesaid animosity cannot be ruled out.



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 charge levelled against the appellants 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 appellants are acquitted of the charges levelled against them. As the appellants are on bail, they are discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

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