

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.29 of 2015

Arising Out of P.S. Case No. -86 Year- 2004 Thana -SC/ST PS District- DARBHANGA

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Baidyanath Yadav, son of Ram Narayan Yadav, resident of village - Rani Bhitthi,
P.S. Sadar, District – Darbhanga

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharmendra Jha-Advocate

For the Respondent/s : Mr. Z. Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 23-11-2017

Appellant Baidyanath Yadav has been found guilty for an offence punishable under Section 3(i)(x) S.C./S.T. (Prevention of Atrocities) Act and sentenced to undergo S.I. for six months as well as fined of Rs.500/-, in default thereof, to undergo S.I. for one month additionally, under Section 504 of the I.P.C. and sentenced to undergo S.I. for six months with a further direction to run the sentences concurrently vide judgment of conviction and sentence dated 16.12.2014 passed by the Special Judge, S.C./S.T. (Prevention of Atrocities) Act, Darbhanga in S.C./S.T. Case No.86 of 2014.

2. PW-3 Visho Paswan filed written report on 20.09.2004 for an occurrence allegedly committed on 26.06.2004, disclosing therein that his pumping set, which was hired by a brick-kiln owner as informed by Phool Babu Mandal on 26.06.2004 at about 6.30 p.m. that his pumping set was being unscrewed, he rushed and had found Baidya Nath Yadav, Ravindra Yadav taking away the articles. He raised hue and cry, whereupon Suraj Paswan came and forbidden the accused. He also arrived there. Baidya Nath Yadav and Ravindra



Yadav shown gun and threatened that *Dushadhwa* in case of protest or raising alarm then you will be murdered. Then thereafter, Ravindra Yadav snatched away his wrist watch. Then had gone to the site and found bricks thrust inside the pipe of the boring as well as some parts were also scattered.

3. After registration of S.C./S.T. Samastipur P.S. Case No.86 of 2004, investigation was taken up and after concluding the same, appellant Baidya Nath Yadav was sent up for trial while Ravindra Yadav was not, whereupon matter was heard in length and then, vide order dated 12.01.2010, the learned lower Court had acceded with the finding of the I.O. whereupon, Baidyanath Yadav (appellant) solely faced the trial, met with the ultimate consequence, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been submitted that at an earlier occasion, there was dacoity in the house of one Aditya Narayan Singh wherein informant Visho Paswan was one of the accused. It has also been pleaded that appellant/ accused Baidyanath Yadav was one of the employee of aforesaid Aditya Narayan Singh on account thereof, getting the opportunity, he has been implicated in this case by the informant. To substantiate the same, defence had also exhibited deposition of concerned witnesses relating thereto as well as also examined three witnesses.

5. In order to substantiate its case, prosecution had examined altogether three PWs, out of whom, PW-1 Suraj Paswan, PW-2 Phool Babu Mandal and PW-3 Visho Paswan, but failed to exhibit the relevant document including the written report. On the other hand, defence had examined three DWs viz. DW-1 Ramjeevan Paswan, DW-2 Ram Prit Yadav and DW-3 Lakshmi Yadav as well as had also exhibited the documents viz. Exhibit-A, deposition of



witness Shiv Lal Mandal, Exhibit-A/1, deposition of witness Jiwachh Yadav relating to Trial No.493 of 1977.

6. The controversy which has got impact upon the prospect of instant appeal relates with validity of the trial. Admittedly, date of occurrence happens to be of the Year 2004, case has been registered in the Year 2004. From the chargesheet, it is evident that case was investigated by the A.S.I., K.N. Pandey as well as S.I. Nathuni Jha, S.N.P. Mandal, so certainly they were not Deputy Superintendent of Police. There happens to be notification at the end of the State of Bihar authorizing A.S.I., S.I. to be competent enough to investigate the case registered under any of the provision of S.C./S.T. (Prevention of Atrocities) Act and the aforesaid notification happens to be of dated 03.06.2002, but was published in official gazette of the State of Bihar on 09.08.2008. That matter was challenged in *Smt. Ram Deni Devi and others vs. State of Bihar and others reported in 2011(1) P.L.J.R. 1097* and it has been held:-

"8. It may be noted that Section 9 of the Act of 1989 confers power upon the State Government to empower any government officer to exercise the power of a police officer by notification in the Official Gazette. It is, therefore, imperative that such notification has to be published in the Official Gazette of the State. Any notification issued in exercise of the said power unless published in the Official Gazette of the State would not be effective. In the present case though the impugned Notification was issued on 3rd June 2002 it was not published in the Official Gazette until 9th August 2008. It



must, therefore, be held that the impugned Notification became effective from the date of its publication in the Official Gazette i.e. on and from 9th August 2008.

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18. For the aforesaid reasons, we declare that the impugned Notification dated 3rd June 2002 is not ultra vires the Act of 1989 or the Rules made thereunder. It is further declared that the impugned Notification dated 3rd June 2002 has become effective from the date of its publication in the Official Gazette of the State of Bihar i.e. on and from 9th August 2008. Investigation and consequent prosecution lodged by a police officer empowered under the impugned Notification, though lower in the rank than a Deputy Superintendent of Police, on or after 9th August 2008 will be valid although the offence in question may have been committed prior to 9th August 2008. It is further declared that the investigation made by a police officer below the rank of a Deputy Superintendent of Police after the date of the Rules, i.e. 31st March 1995 and prior to 9th August 2008 and consequent prosecution will not stand validated by the impugned Notification dated 3rd June 2002 published on 9th August 2008."

That means to say, though the cases instituted at an earlier occasion, but investigated or continued to be investigated after



gazette notification, then in that circumstance, the impact of notification was very much inclined to validate the same though earlier part happens to be non-recognizable in the eye of law. The case was registered in the Year 2004, but chargesheet was submitted on 01.02.2009 that means to say after gazette notification and so, lastly of investigation having been at the end of the officials lower than Deputy S.P. is found duly validated, axing upon its legal identity, so far earlier part is concerned.

7. Now, coming to other aspect, it is apparent that the case has been instituted after near about three months of the date of occurrence. Neither in the written report nor during course of evidence nay informant (PW-3) had explained the delay. In criminal proceeding, delay has always been seen with suspicious eye that too, when the conduct of prosecution is not found above board, PW-3, informant was repeatedly cross-examined regarding his involvement in connection with theft case having been launched on account of commission of theft in the house of Aditya Narayan Singh and Exhibit-A and Exhibit-A/1 happens to be on that very score, which prior to the alleged date and time of occurrence.

8. Apart from this, neither PW-1 brother nor informant (PW-3) had claimed on their own to have seen the accused persons indulged in theft of his pumping set rather it is the PW-2, Phool Babu



Mandal, who informed, whereupon they both have gone there. So, first of all, PW-2 is to be seen. He had stated that on the alleged date and time of occurrence while he was getting his she-buffalo grazed, he saw Ravindra Yadav engaged in unscrewing the pumping set, whereupon he forbidden him, who failed to obey the same. Then thereafter, he had gone to Visho Yadav and disclosed that Ravindra Yadav was unscrewing the pumping set, whereupon Visho Yadav and Suraj Paswan rushed to the spot where they were assaulted as well as wrist watch of Suraj Paswan was snatched away. So many persons assembled there. Then he returned back to his house. During cross-examination, he had stated that boring is out of order for the last 8-10 years as pumping set was also out of order. House of Visho Paswan lies 3-4 kilometers away from the P.O. land. He had gone to Visho Paswan 20-25 minutes after the occurrence. He had firstly gone to his house, tied his she-buffalo and then, had gone to the place of Visho Paswan. In such circumstances, was it possible for Visho Paswan to cover such a long distance of 3-4 kilometers and till then, whether it was probable that accused persons will continue to sit wrenching the pumping set. More particularly, when they were forbidden by the PW-2. Apart from this, from his evidence, it is apparent that he had not shown presence of appellant Baidyanath Yadav rather he had shown presence of only Ravindra Yadav. As



PW-2 happens to be the source of information so presence of Baidyanath Yadav (appellant) has become doubtful.

9. In the aforesaid background, when the evidence of PW-1 is taken up, it is evident that he had shown his presence along with Visho Paswan coming to the place of occurrence and stated that when they both came towards the place of occurrence, they saw Ravindra Yadav, Baidyanath Yadav fleeing there from, whom they obstructed from forward, whereupon Baidyanath Yadav threatened that *Sale Dushadh*, you will be shot at. Then thereafter, cash appertaining to Rs.5,00/- as well as a wrist watch was snatched away from Visho Paswan. During cross-examination, he had stated that boring is out of order for the last 15 years. Pumping set is also lying there. Then had stated that only head of pumping set was stealthily taken up. Again said that nozzle, element along with head was stolen away. He had further stated that being a Harijan, he was supplied a pumping set costing Rs.35,000/- and so, theft was of Rs.35,000/-. He is unable to say whether police came or not. He had further stated that stolen article was of 40-50 k.g.

10. PW-3 is the informant. He had disclosed that after being informed by Phool Babu Mandal, he rushed to the place of occurrence. He came there and then, cordoned both of the accused. Then raised alarm whereupon, his brother came. Baidyanath Yadav



shown gun and said that be away *Sale Dushadh*, otherwise they will be shot at. Accordingly, he gone away there from. They have snatched his wrist watch and then, gone. During cross-examination, he was confronted with the earlier version as well as with regard to his status relating to theft case lodged by Aditya Narain.

11. After going through the evidence available on the record, it is apparent that there happens to be inconsistency amongst the evidence of all the PWs as PW-2 had not disclosed presence of Baidyanath Yadav, appellant, gun having been shown or used, giving any kind of derogatory words, action while PW-1 had disclosed that he accompanied informant (PW-3) at the place of occurrence where both the accused were engaged and then, abusing by his caste name as well as snatching of wrist watch from the possession of Suraj Paswan (PW-1) and further, snatching of wrist watch as well as Rs.5,00/- from PW-3, Visho Paswan while PW-3 had stated that he alone reached at the spot. On his cry, PW-1 came and then, with regard to subsequent event whereunder, apart from using filthy language calling by caste name, they snatched away wrist watch. Neither PW-1 nor PW-3 had stated that PW-2 also accompanied. That means to say, presence of all the three at a common place at same time. Furthermore, non-presence of public would not attract application of Section 3(i)(x) of the S.C./S.T. (Prevention of



Atrocities) Act has become doubtful. That being so, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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