

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.10 of 2007

Arising Out of PS.Case No. -0 Year- null Thana -null District- SEKHPURA

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1. Ramprit Yadav S/o Chetu Yadav
 2. Dhuri Paswan S/o Sito Paswan
 3. Sanju Paswan S/o Sukhdeo Paswan
 4. Nawal Paswan S/o Late Maulvi Paswan
 5. Charitar Yadav S/o Late Biku Yadav
 6. Bhekho Yadav S/o Chetu Yadav &
 7. Abhay Paswan S/o Nawal Paswan
- All resident of village-Sugiya, P.S. Shekhopur Sarai, District-Sheikhpura

.... Appellants

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pankaj Kumar, Advocate.

For the State : Mr. Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date: 01-12-2017

Heard learned counsel for the appellants and the State.

This Cr. Appeal has been directed against the judgment and order dated 11-12-2006 passed in S.T.No. 72 of 2003/Tr. No. 49 of 2006 by A.D.J. (F.T.C. IVth), Sheikhpura whereby and whereunder the learned Judge was pleased to hold guilty accused persons in S.T.No. 72 of 2003/Tr. No. 49 of 2006 arising out of Shekhopur Sarai P.S. Case No. 143 of 2001. The learned Judge was pleased to convict the appellant No. 1 under Sections-148, 324, 504 of the Indian Penal Code. Appellant No. 4 was held guilty for offences punishable under Sections-148, 324, 504,380 of the



Indian Penal Code and rest appellants were held guilty for the offences punishable under Sections-147, 323 and 504 of the Indian Penal Code.

The appellant No. 4 was sentenced to undergo R.I. for two years for the offence u/S 148 of the IPC and R.I. for two years for the offence under Section-324 of the Indian Penal Code and R.I. for one year for offence u/S 504 of the Indian Penal Code and R.I. for six months for the offence under Section 448 of the IPC and R.I. for two years for the offence under Section-380 of the Indian Penal Code.

Appellant No. 1 has been sentenced to undergo R.I. for two years for offence under Section-148 of the Indian Penal, R.I. for one year for offence u/S 504 of the Indian Penal Code and R.I. for six months for the offence under Section-448 of the Indian Penal Code. Appellant Nos. 2 & 3 were sentenced to undergo R.I for one year for offence under Section-147 of the Indian Penal Code, R.I. for one year for offence u/S 323 of the Indian Penal Code and R.I. for one year for the offence under Section-504 and two years for the offence punishable under Section-380 of the Indian Penal Code and for six months for the offence under Section-448 of the Indian Penal Code and rest appellant Nos. 5, 6 & 7 were sentenced to undergo R.I. for one year for offence under Section-147 of the Indian Penal Code and one year for offence under Section-323 of the Indian Penal Code and one year for offence under Section-504 of the Indian Penal Code. The learned Judge was also pleased to order that all sentences will run concurrently.

Counsel for appellants has submitted that the independent



witness P.W. 1 has stated time of occurrence to be 5.00 p.m. whereas as per case of the informant, occurrence took place at 1.30 p.m. in the afternoon. It has further been submitted that there are contradictions in statement of witnesses with regard to manner of occurrence as well as manner of injuries caused to the injured. It has further been submitted that the doctor and I.O. have not been examined in the case. It has further been submitted that not a single document has been marked as exhibit on behalf of the prosecution in this case. It has been submitted by the appellant that the lower court has based conviction merely on the oral evidence given by the prosecution which are stated in parrot like manner.

Learned APP has submitted that all the witnesses who have been examined in this case as eye witnesses, have supported the prosecution case.

From the impugned judgment, it appears that total 7 witnesses have been examined in this case on behalf of the prosecution. P.Ws. 4, 5, 6 & 7 are all injured witnesses. P.W.s 1, 2 & 3 are said to be independent witnesses.

P.W. 1 Sanjay Yadav has claimed himself to be present at the place of occurrence but he has stated that occurrence took place at 5.00 p.m. He narrated about the assault done by different accused persons to the members of the informant party. PW. 2 Suresh Yadav and P.W. 3 Bindeshwar Yadav have stated that they were in their house. On hulla, they came to the place of occurrence and thereafter, they saw assault done by the accused persons to the members of informant party by different weapons.



P.W. 4 Sumitra Devi has stated that she was in her house at the time of occurrence. The accused persons arrived in her house after the afternoon. She stated that Ramprit Yadav assaulted her husband with Gadansa on his head and Nawal Yadav assaulted with Gadansa on his right leg. She was also assaulted by the accused persons with Lathi causing injury in her leg, hand and on head. P.W. 5 Birendra Yadav is another injured witness who has stated that time of occurrence was in the afternoon. He was in his Dalan. The accused persons arrived armed with different weapons. The accused persons assaulted this witness and Sumitra Devi. P.W. 6 Chintaman Yadav is another injured who has stated that occurrence took place after the noon hours. He was in his house. All the accused persons arrived armed with weapons as described in the evidence. Ramprit assaulted the informant on head and Nawal Yadav assaulted on his leg with Gadansa. The accused persons also assaulted the wife of the informant causing fracture in both her hands. Ramjee Yadav P.W. 7 is the informant. He has stated that occurrence took place after the noon hours. He has stated that all the accused persons assaulted with different weapons as described in his evidence. Ramprit Yadav assaulted him with Gadansa on head and Nawal Yadav assaulted him on right leg with Gadansa. He became unconscious. He got sense in the police station. The police recorded his statement in the police station. Both the hands of his brother got fractured due to assault by the accused persons. His wife and nephew were also assaulted by the accused persons. He was referred to PMCH for treatment. His injured brother Chintaman Yadav was also referred to PMCH. He



remained in hospital for 16 days.

The defence of the accused persons is that they have been falsely implicated in the case by the informant in order to save himself from the case filed by Chetu Yadav against the informant and others vide Barbigha P.S. Case No. 144 of 2001. The defence has filed certified copy of formal FIR and the written report of Barbigha P.S. Case No. 144 of 2001. The defence has also filed certified copy of the cognizance order and order of framing of charge, which have been marked as Exbt. A & A/1 respectively.

Certified copy of formal FIR and certified copy of written report of Barbigha P.S. Case No. 144 of 2001 has been marked as Exbt. B and B/1 on behalf of the appellant.

This court on perusal of the entire evidence of the prosecution witnesses finds that the doctor and I.O. of the case have not been examined. This court further finds that the prosecution has not got the FIR, injury report etc marked as exhibit in the case, although the informant and another injured persons have stated that they have sustained injury.

This court feels that not-exhibiting the documents on behalf of the prosecution during trial is very vital lacuna. Mere adducing oral evidence on behalf of the prosecution was not sufficient to prove the charge in absence of any document in support of those oral evidence, adduced in the court below. The doctor was not examined by the prosecution to prove the injury sustained by the injured. The I.O. of the case was not examined by the prosecution to prove the place of occurrence.



The defence also suffered great prejudice due to non-examination of the I.O. as there was vital contradiction in the evidence of the prosecution witnesses with regard to place of occurrence manner of occurrence and the manner of injury caused to the injured persons.

The informant has stated in the written report that occurrence took place at 1.30 p.m. The informant in his evidence in court has stated that the occurrence took place after the noon hours. The fardbyan was not exhibited by the prosecution to support the statement of informant in the court. Similarly, no formal FIR was exhibited to substantiate that the case was registered on the basis of fardbyan in the police station. The doctor was not examined to prove the injury sustained by the injured. These are vital lacuna committed by the prosecution and on account of such lacuna, manner of occurrence, place of occurrence as well as nature of injuries sustained by the injured, cannot be said to have been proved. There are vital contradictions in the oral evidence of the prosecution witnesses examined during trial. Therefore, the prosecution has failed to prove charges against the accused persons beyond reasonable doubts.

The defence of the accused is that they have been falsely implicated by informant in order to save himself from the case filed by Chetu Yadav against the informant and others vide Barbigha P.S. Case No. 144 of 2001. The defence has filed relevant documents of Barbigha P.S. Case No. 144 of 2001 including the written report, FIR which have been marked as exhibits.

Therefore, the judgment of conviction and order of sentence



dated 11-12-2006 passed by A.D.J. (F.T.C. IVth), Sheikhpura in S.T.No. 72 of 2003/Tr. No. 49 of 2006 arising out of Shekhopur Sarai P.S. Case No. 143 of 2001 is not in accordance with law and the same is hereby set aside.

All the accused persons (appellants) are acquitted of the charges levelled against them. They are discharged from the liabilities of their bail bonds.

This Criminal Appeal is accordingly, allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	NAFR
CAV DATE	N/A
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