

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.296 of 2015

Arising Out of PS.Case No. -16 Year- 2007 Thana -BHIMPUR District- SUPAUL

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1. Deo Kumar Mehta, son of Late Judi Lal Mehta, resident of village-Jiwachhpur,
P.S.-Bhimpur, District-Supaul.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrit Abhijat, Advocate
Mr. Manoj Kumar Gupta, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 10-03-2017

Appellant, Deo Kumar Mehta has been found guilty for an offence punishable under Section 326 of the IPC and sentenced to undergo RI for seven years as well as to pay a fine of Rs. 10,000/- and in default thereof to undergo RI for one year additionally in Sessions Trial No. 144/2008 arising out of Bhimpur PS Case No. 16/2007 vide judgment of conviction dated 28.04.2015 and order of sentence dated 29.04.2015 passed by Additional Sessions Judge-1st, Supaul.

2. Jagdeo Mehta (PW 5) filed a written report on 27.04.2007 alleging, inter alia, that in the preceding night while was sleeping at his Verandah , at about 11:00 PM, one person threw acid over his body, on account thereof, his chest, face began to burn. Then thereafter, he raised alarm over which his wife, Manju Devi came outside and identified the assailant to be Deo Kumar Mehta, his co-



villager over which, he also identified. Previous animosity has been shown to be the cause of occurrence. It has further been stated that today on 27.07.2007, he has gone to Chhatapur Hospital where Doctor has examined him and then, directed him to go to the police station.

3. On the basis of aforesaid written report, Bhimpur PS Case No. 16/2007 was registered followed with investigation. After concluding the investigation, charge-sheet was submitted facilitating the trial which ultimately concluded in a manner, subject matter of the instant appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is of complete denial of the occurrence.

5. Further it has been suggested that Manju Devi, wife of informant, happens to be of dubious character which was being protested by the informant and on account thereof, she herself had committed such an offence and then got the appellant involved and to substantiate the same, eight DWs have been examined.

6. In order to substantiate its case, prosecution had examined altogether 10 PWs out of whom, PW-1, Sita Devi, Bhaujai of informant, PW-2, Manju Devi, informant, PW-3, Sarpat Mehta, PW-4, Ramdeo Mehta, PW-5, Jagdeo Mehta, PW-6, Ramchandra Mehta, PW-7, Upendra Mehta, PW-8, Ganesh Mehta, PW-9, Hiralal Mandal and PW-10, Dr. Lalan Kumar Thakur. Side by side, also



exhibited, Ext-1, signature of informant over written report, Ext-3(wrongly numbered), injury report issued by Dr. Lalan Kumar Thakur (PW-10). Also exhibited, Material Ext-1, Chadar, Material Ext-2, positive photograph of Jagdeo Mehta. As stated above, defence had also examined eight DWs out of whom, DW-1, Upendra Mukhiya, DW-2, Jairam Mandal, DW-3, Sheo Ram, DW-4, Sheo Mukhiya, DW-5, Bachcho Mandal, DW-6, Jugal Kishore Mandal, DW-7, Buchendra Mehta and DW-8, Balram Paswan. Nothing has been exhibited on behalf of appellant.

7. Now coming to the status of the witnesses, PW-1 is Bhaujai of informant, PW-2 is wife of informant, PW-4 is brother of the informant and PW-5 is informant himself who have supported the case of the prosecution while PWs, 3, 9 became hostile and PWs, 6, 7 and 8 have been tendered. PW-10 is the doctor who examined the injured.

8. From the injury report, it is evident that on 27.08.2007, PW-10 had examined the informant, Jagdeo Mehta and found following injuries over his person:-

1. Chemical burn on face, left side of neck, left shoulder, some front part of chest caused by chemical liquid (corrosive) as the chemical which happens to be sulphuric acid and it caused discoloration of necrosis of the tissues, scarring and contracture of the affected part. As the face and neck is involved, therefore, injury has been identified as grievous in nature.

Age of injury- within 12 hours.



9. From his deposition it is evident that this PW was not at all cross-examined at the end of the appellant and on account thereof, the finding having been recorded by the doctor, (PW 10) remained intact.

10. From the written report, as is evident, the informant did not claim identification at an initial stage till presence of his wife, Manju Devi (PW 2). Then thereafter, informant asserted that he also identified. Furthermore, there also happens to be absence of source of identification. In the aforesaid background, now ocular evidence has to be dealt with and for that first of all, evidence of PW-5 is taken up.

11. During examination-in-chief, PW-5 has stated that after taking meal, he had gone to sleep. As he was about to sleep, Deo Kumar Mehta sprinkled acid over his body and rushed away. He raised alarm and then saw, Deo Kumar Mehta fleeing away therefrom after pouring acid. He sustained burn injuries over his chest, neck and face which he shown to the court. He had also stated that bed-sheet was also burnt which he produced and marked as Material Ext-1. He had further stated that on his cry, his wife Manju Devi came out flashed torch and further identified Deo Kumar Mehta fleeing therefrom after pouring acid. The motive of occurrence has been shown as at the time of Mukhiya Election, a year ago, Deo Kumar Mehta had misbehaved with his niece, Veena Kumari and during course thereof, he was apprehended and assaulted by his brother. He



had further stated that written report was scribed by Dinesh Kumar Mehta over which he put his signature, (Ext-1). He had further exhibited positive photograph. During cross-examination, at para-8, he had stated that soon after sprinkling of acid, he got up and found Deo Kumar Mehta. In para-9, he had stated that at that very time, he was in deep slumber. After sprinkling of acid, he got up. In para-10, he had admitted inter se relationship.

12. PW-2, Manju Devi is his wife who had stated that on the alleged date and time of occurrence, her husband was sleeping at cattle shed while she was sleeping inside her house in a room. After hearing alarm of her husband, she came out from her room and saw Deo Kumar Mehta coming out after sprinkling acid over body of her husband whom she identified. Then thereafter, he managed to escape. She had gone near to her husband and found his face, chest and shoulder burnt on account of acid. Bed as well as mosquito net was also burnt. It has also been deposed that about a year ago, Deo Kumar Mehta had misbehaved with the daughter of her Bhainsur and during course thereof, her husband had caught hold of him. Being annoyed therewith, Deo Kumar Mehta had committed this offence. During cross-examination, at para-6, she had admitted inter se relationship. Further, she had shown presence of different persons in between her house as well as the house of Deo Kumar Mehta. At para-8, she had further stated that she had got only one house. Cattle shed is outside



the house. Kitchen is adjacent to her room. House is fenced by thatched wall. She had shown boundary of her house. North-Ganpat Mehta, South-Laxman Mehta, East-Nathuni Sah and West-Open land. In para-8, she had stated that her husband happens to be three brothers. Remaining two brothers are elder to her husband, having their houses adjacent to her house. In para-10, she had stated that her husband slept after taking meal. She was also going to sleep. Her house is not electrified but lamp was burning. In para-11, she had stated that 10-15 villagers had assembled on an alarm raised by her husband. In para-12, she had stated that when she came out from her room, she found Ganpat Mehta, Sumat Mehta, Arun Mehta, Dinesh Mehta, Siya Mehta, Rajesh Mehta, Laxman Mehta, Ramchandra Mehta, Yogendra Mehta near her husband. She talked with her husband and then took him to the place of doctor Ravindra along with Ganpat, Shyam, Ramchandra, Devendra and Surpat. She had stated that she returned back and then on the following morning, she had gone to Govt. Hospital where her husband was treated. She had further stated that police came.

13. PW-1 had stated that on the alleged date and time of occurrence, she came out from her house after hearing alarm. She saw her Devar, Jagdeo (informant) was sleeping at verandah where Deo Kumar Mehta had sprinkled acid over his body as a result of which, there was injury over his chest and face. On account of previous



enmity, occurrence was committed. During cross-examination, she at para-4 had admitted inter se relationship with appellant. In para-6, she had admitted that on account of misbehaviour having been done by the accused with the daughter of her Bhainsur, parties were at strained relationship. In para-13, she had stated that when she reached at the place of occurrence, she saw Sheo Kumar Mehta, Yugal Mehta, Ramchandra Mehta, Ravindra Mehta, Ramdeo Mehta, Banshidhar Mehta, Ganpat Mehta. Then thereafter, Jagdeo was taken to the hospital where doctor was not available and so, Jagdeo came back. At para-15, she stated that Jagdeo was not in a fit condition whereupon, she had not talked. In para-16, she had stated that first of all, injured had taken bath with hot water and then injury was cleaned with petrol.

14. PW-4 had deposed that on the alleged date and time of occurrence, while he was sleeping at his verandah, there was uproar over which he ran along with torch. When he flashed torch, he found Deo Kumar Mahto running from the house of Jagdeo Mehta. At that very time, he was wearing black T-shirt and Lungi. Then he came near his brother, Jagdeo Mehta and saw his face, chest burnt. Bed-sheet was also burnt. His belly was also burnt. Smoke was coming out. Then thereafter, other persons came. Jagdeo was groaning. Then they took Jagdeo to private doctor who was not available. Then thereafter, the injury was washed with hot water and petrol. On the following morning, Jagdeo was taken to hospital and then to PS. He



had further stated that at an earlier occasion, Deo Kumar had misbehaved with his daughter for which he was apprehended and assaulted. In para-4, he had admitted inter se relationship. Furthermore, in para-11, he had stated that informant has accompanied him. Informant had stated him as to what to depose but not today. In para-12, he had stated that when he reached at the place of occurrence, he found 20-25 persons. Then thereafter, other villagers also came. They talked over in what manner treatment is to be provided. On the following morning, they had taken the injured to the hospital.

15. The evidences of remaining witnesses are not at all relevant in the background of the fact that they had already been tendered. Admittedly, the Investigating Officer has not been examined. The effect of non examination of Investigating Officer has been discussed in detail in the case of *Lahu Kamlakar Patil v. State of Maharashtra* as reported in (2013) 6 SCC 417, under para-18 which is as follows:-

“18. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar[(1996)2 SCC 317], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar[(2000)9 SCC 153], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such



circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar*[(2001)6 SCC 407], *Rattanlal v. State of Jammu and Kashmir*[(2007)13 SCC 18] and *Ravishwar Manjhi and others v. State of Jharkhand* [(2008)16 SCC 561], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

16. Although, there happens to be some sort of lapses at the end of appellant while cross-examining the informant, but from perusal of the written report, it is evident that on all the relevant points, where date is scribed by the use of whitener, the same has been erased and further is found substituted by date '6' as well as '7'. In likewise manner, when the injury report, Ext-3 (wrongly mentioned) has been gone through, the same has got over-writing. '7' is found scribed by way of over-writing. After perusal of the formal FIR as well as written report, it is apparent that the same has been received by the CJM on 30.07.2007. Certainly, on account of non examination of the Investigating Officer, the aforesaid eventuality is found unexplained and further, if taken together, in consonance with the



receipt of the FIR at CJM's office on 30.07.2007, it may suggest, the status of the present litigation in ante-dated manner.

17. Though there happens to be no controversy with regard to status of the appellant, apart from being co-villager, is inter-related. Therefore, even in absence of source of light, proper identification would not be improbable one. In the aforesaid backdrop, it would have been more acceptable for the prosecution to stick over initial version, which, as is evident, been left out and substituted with introducing theme of source of light for proper identification against the appellant. However, after going through the evidence of PWs, it is evident that PW-1, PW-2, PW-3 have not shown any kind of source of light while PW-4 had stated that he rushed with torch, at the other hand PW-5, informant had said that his wife had flashed torch. So, none of the PWs had identified other to have torch in his/her hand and on account thereof, the story of source of light became doubtful. In likewise manner, there happens to be inconsistency over place of occurrence, amongst the PW. As per evidence of PW-1, PW-4, PW-5 have identified verandah to be place of occurrence where informant, PW-5 was sleeping while PW-2, his wife had stated that he was sleeping at cattle shed. Therefore, on account of non examination of I.O., the place of occurrence has also not been properly found substantiated.

18. As held above, being a co-villager, known to each



other being relative, would not have required source of light to facilitate identification, however, prosecution in order to affix as well as to strengthen manner of identification, which as per initial version, found shaky, introduced the same and on account thereof, its authenticity is to be adjudged. None of PWs have stated that they have seen the accused as well as identified in torch light, though PW-4 had stated that he rushed with torch and on flash, he saw accused, while PW-5, informant had deposed that in the torch light flashed by PW-2, his wife, he saw the accused, which not at all corroborated. In remote places, the villagers are accustomed to early bed and early rise, and on account thereof, having PW-2 awaken upto 11 PM, that too having no electric connection, also improbabilizes her version, moreover, is found not supported with the evidence of PW-5, informant. Therefore, non examination of the Investigating Officer has again caused prejudice to the appellant who, in case, would have been examined, must have deposed over the factum of production of source of identification before him.

19. Apart from this, from the evidence of PW-1, PW-2, it is evident that though claimed to arrive at the place of occurrence after hearing cry of PW-5, informant which PW-5 raised after sustaining injuries, but they posed themselves to be an eyewitness to occurrence. PW-4 also imbrued himself on this very score. That being so, their activities are found influenced with juggle.



20. From the evidence having adduced on behalf of respective parties, it is evident that nature of the injuries not at all been controverted. Even then, on account of persistence of infirmities as indicated herein above, it looks unsafe to encircle the appellant to be author of the injury. Enmity, as is evident, is persisting. Enmity happens to be double edged sword. It may be motive for commission of the occurrence, while it may be a cause for fake implication. Furthermore, it is settled at rest that suspicion cannot substitute proof. That being so, giving anxious consideration over materials having available on the record, it is found that appellant, at least, is found entitled for benefit of doubt, and on account thereof, the judgment of conviction and order of sentence recorded by the learned lower court is set aside. Appeal is allowed.

21. Appellant is under custody, hence, is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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