

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.354 of 2015

Arising Out of PS. Case No. -16 Year- 2012 Thana -SIMRA District- WESTCHAMPARAN (BETTIAH)

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Ahamad Miyan Son of Mohammad Mushtaque Ansari, resident of village-
Dhakdahiya Banjariya, Police Station - Semara, District - West Champaran
(Bettiah).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Lokesh Kumar Singh, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-03-2018

Appellant, Ahamad Miyan has been held guilty for an offence punishable under Section 452 of the IPC and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for three months, additionally, under Section 324 IPC and sentenced to undergo R.I. for one year, under Section 307 IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for three months, additionally, with a further direction to run the sentences concurrently with a further direction that the period already undergone should be set off in accordance with Section 428 of the Cr.P.C vide judgment of conviction dated 19.08.2015 and order of sentence dated 20.05.2015 passed by Second Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No.319 of 2013 /301 of 2014.

2. PW.6, Shahban Mian filed written report on 10.05.2012 disclosing therein that in the preceding night i.e. on 09.05.2012 at about 11:00 PM while they were sleeping, his



daughter-in-law Shabnam Khatoon raised alarm on account of presence of an intruder whereupon, he had gone there and then seeing the person who concealed himself beneath Bed identified to be his co-villager Ahamad Miyan. He tried to catch hold of whereupon, he took out *Chhura* and began to hurl blow repeatedly and during said course, after abusing, threatened that he will cause murder. On account of inflicting of *Chhura* he has sustained injuries near his neck, chest, shoulder (left side), hand(left) as a result of which he became severely injured. His wife Koili Nesha rushed in rescue who was also assaulted with *Chhura* by the Ahamad Miyan on her back. Then thereafter, Ahamad Miyan made escape. On an alarm raised by them so many villagers have assembled. At that very moment, his daughter-in-law has disclosed that accused took away Nokia mobile having Sim No. 8084986349. Due to injuries, they were taken to hospital. After being discharged therefrom, written report was filed. On the basis of the written report Semra P.S. Case No.16 of 2012 was registered whereupon, investigation commenced and after completing the same, charge sheet was submitted facilitating the trial, meeting with ultimate result, subject matter of instant appeal.

3. 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. Furthermore, it has also been asserted that on account of borrowing of money there was dispute since before and in the aforesaid background, instant case has been registered putting false and frivolous allegation. However, nothing has been adduced in defence.



4. In order to substantiate its case, prosecution had examined altogether nine PWs who are PW.1-Shabnam Khatoon, PW.2-Harilal Yadav, PW.3-Tulasi Ram, PW.4-Indrasan Ram, PW.5-Koeli Khatoon, PW.6-Shahban Mian, PW.7-Dr. Shyam Nandan Shukla, PW.8-Suraj Kumar Gupta, PW.9-Banarasi Choudhary. Side by side had also exhibited Ext.1 Series-Injury report of informant as well as wife of informant respectively, Ext.2-Formal FIR, Ext.3 Series-Requisition of the police relating to both the injured, Ext.4-Charge sheet, Ext.5-Fardbeyan. As stated above nothing has been adduced in defence.

5. While assailing the judgment of conviction and sentence, the learned counsel for the appellant has urged that same is non-maintainable in the background of persistance of so many infirmities in the prosecution case. The first and foremost happens to be delay in institution of the case and for that, there happens to be no cogent explanation at the end of prosecution more particularly, considering the nature of the injuries not only being simple rather superficial in nature. Furthermore, it has also been submitted that the prosecution had withheld the motive which, during course of cross-examination of the witnesses is found duly exposed and that happens to be reason behind institution of instant false case arraying the appellant as an accused. Apart from this, it has also been submitted that from the evidences of the witnesses, even though they have disclosed that there happens to be absence of door in the room but PW.1 at para-7 had disclosed that after tearing the thatched wall, accused managed to escape which, the I.O. PW.8 during course of inspection had not found. In the aforesaid



background, not only the version of the prosecution became doubtful rather the manner of occurrence as alleged by the prosecution is found duly clouded. When the aforesaid event is taken together with the evidence of PW.1 para-5 as well as informant PW.6 para-6, it is evident that none of the person of the boundary came forward to support the case of the prosecution though PW.1 at para-6 had disclosed that the person of the boundary are witness of this case.

6. Now coming to manner of the occurrence, it has been submitted that from the evidence it is evident that presence of appellant was shown beneath the bed of the PW.1, so how PW.6 or PW.5 got injuries unless and until bending themselves in order to move towards the appellant, which is not the case of the prosecution. It is not the case of the prosecution that accused came out from the place where he was hiding and then, brandished *Chhura* causing injuries over PW.5, PW.6 sparing PW.1. Had there been presence of accused, then in that circumstance, she (PW.1) would not have been spared. That being so, it has been submitted that witnesses may lie but not the circumstance and from the circumstances visualizing after minute observation of the manner of occurrence as suggested by the prosecution, it is apparent that it happens to be out and out cooked up story in order to implicate the appellant. PW.5, PW.6 might have sustained injuries in different way but only to digest money of the accused which they borrowed implicate the appellant and so, the judgment of conviction and sentence recorded by the learned lower court did not justify its prevalence.

7. On the other hand, the learned Additional Public



Prosecutor supporting the judgment of conviction and sentence recorded by the learned lower court has submitted that FIR should not be an encyclopedia of the occurrence. It happens to be an information with regard to commission of the occurrence. So, minute to minute detail is not warranted and that happens to be reason behind with regard to non-mentioning of some sort of strain relationship in the background of borrowing of money. It has also been submitted that had there been dubious character of the prosecution then having no document the witnesses were in a position to frankly deny the same. They have not denied and that suggest the pious conduct of the witness. In the background of which, it suggest reliability of the evidences of the witnesses. Furthermore, it has also been submitted that PW.5 and PW.6 being injured, their testimony is to be considered in the aforesaid background and, after scrutiny of the same along with evidene of PW.7, the doctor it is apparent that the finding recorded by the learned lower court happens to be based upon sound principle of law whereupon, did not attract intervention.

8. PW.7 is the doctor who had examined the respective injured on 10.05.2012 at about 01:40 AM as well as 01:45 AM and found the following:-

i. Sahban Miyan.

- a.** Incised wound on his left shoulder of size 6" x ¼" x skin deep.
- b.** Incised wound on left arm of size 4" x ¼" x skin deep.
- c.** Incised wound on his left arm of size 1" x ¼" x skin deep.
- d.** Incised wound on his neck of size 4" x ¼" x skin deep.



e. Incised wound on left forearm of size 4" x ¼" x skin deep.

f. Incised wound on middles of chest of size 2" x ¼" x skin deep.

All the above injuries were simple in nature and were caused by sharp cut weapon like knife. Age of injuries was within three hours.

ii. Koili Nisha.

Incised wound on back of size 4" x ¼" x skin deep.

Above injury was caused by sharp cut weapon like knife. Age of injuries was within three hours. Nature of injury was simple.

During course of cross-examination, this witness had admitted that the same happens to be superficial and may be manufactured if respective injured take the risk of pain.

9. PW.5 is the wife of the informant, one of the injured. She had deposed that on the alleged date and time of occurrence she was sleeping in her house. Her daughter-in-law Shabnam Khatoon was also sleeping in her room. Ahamad Miyan intruded in her room whereupon her daughter-in-law woke up and raised alarm. She rushed with torch, flashed the same and found Ahamad Miyan beneath the bed whereupon, she called her husband. After arrival of her husband accused came out to Aagan. Her husband caught hold him and threw him on the ground. Then, Ahamad Miyan took out knife and began to inflict blow causing injuries over hand, neck, intercostal region, chest. When she rushed, she was also assaulted by *Chhura* over her back. Then thereafter, he managed to escape. They were taken to Bagaha Hospital where she along with her husband was treated. Ahamad Miyan also took away her mobile. Identified the accused. During cross-examination she had stated



that it was a dark night. It was raining day. Her son used to remain outside to earn his livelihood. She had further disclosed the boundary of her house. North-Allaudin, South-Nabi Mian, East-drain, West-She herself. Then had disclosed the names of the person who came on her alarm. In para-6 she had stated that at the time of occurrence all the family members were sleeping. Accused escaped therefrom after tearing the thatch wall. She had seen her fleeing therefrom. In para-7 she had admitted that there happens to be some sort of dispute relating to money in between her as well as accused, since before the occurrence. They have lend money to different persons before the occurrence which, accused is forbidding them to return. In para-8 she had stated that first of all they have gone to hospital. After treatment, they came to police station. In para-9 she had stated that police had recorded her statement. She had further stated that she had talked with her husband who had disclosed who assaulted him. In para-10 she had stated that he fallen over the ground from the injuries, blood spread over ground, police had not seized blood stain earth. Police also not seized blood stain cloth. Then had said that her husband had disclosed that while accused was fleeing in order to save himself, was apprehended by him on account thereof he inflicted blow over him. Then had denied the suggestion that she had falsely deposed and in likewise manner after obtaining false injury report this case has been found.

10. PW.6 is the informant. During examination-in-chief he had stated that on the alleged date and time of occurrence while he was asleep, his daughter-in-law Sabnam, who was sleeping in a room west to his room, raised alarm whereupon his wife gone with



torch and in flash light had identified the accused to be Ahmad. Then he had gone there. Ahmad came out from the room and gave Chhura blow over him repeatedly (5 times) over his stomach, hand, neck. When his wife came, he assaulted her over her back. Had shown the scar mark of injuries. On hue and cry villagers came. They were lifted to hospital where were treated and then, gone to the Police Station were submitted written report. He had further stated that his cloth became soaked with blood coming out from the injuries which, he had produced in court but was returned back. Identified the accused. During cross-examination he had stated that it was a dark night. His son was away on the alleged date of occurrence. His daughter-in-law is aged about 17-18 years. Then had disclosed that he happens to be issueless and so he had adopted son of his brother-in-law (Sala). He had further disclosed boundary of the house at para-6. North-House of Rahman, South-House of Nabi Miyan, East-House of Meradhari and West-He himself. Then had disclosed that they also came but they are not witness. Then at para-7 had disclosed that he had not stated before the police that he had identified the accused in torch light. Then had stated that accused in order to save himself ran away. In para-8 he had stated that after sustaining Chhura injury, he became unconscious. He regained sense after 2-3 days. When he returned at his house, he was conscious. Then had stated that he had gone to hospital from his house. Police had not come to hospital to record his statement. Then he had gone to police station from the hospital. Police had seen the injuries. Then at para-9 he had stated that he had not lend money to anybody. Again stated that it is upon the wisdom of the accused whether he intends to return back money or not. Then at



para-10 had denied the suggestion that on the alleged date and time of occurrence thieves have made house trespass and during course thereof, he had indulged in scuffle with them during course of which he sustained injuries and getting an opportunity got this case filed against accused putting false and frivolous allegation.

11. PW.1 is the daughter-in-law. During her examination-in-chief she had reiterated the version. During cross-examination at para-4 she had stated that it was moon light. First of all Ahmad was corded in the house as a result of which, in order to save himself he brandished *Chhura* causing injury. Then at para-5 had disclosed the boundary of her house North-House of Nabi, Sought-House of Rahman, East-field, West-Her own field. At para-6 he had disclosed that the persons of the boundary had come who are also witness of this case. Then had stated that first of all her father-in-law came then, her mother-in-law. Then had narrated at para-7 that before arrival of the witnesses, accused after tearing thatched wall ran away. Then had denied the suggestion. In para-9 she had stated that she had not sustained injury. Her father-in-law became unconscious while mother-in-law was conscious. Her father-in-law regained sense after 2 and 2 ½ hour. He was treated at government hospital, Bagaha in the same night. At para-10 had admitted that her father-in-law had lend money to Yunush Ashraf. Accused is provoking them not to return back money. Then had disclosed that if the amount is returned back then in that circumstance, case will be compromised. Again said that accused is threatening to compromise the case. At para-11 she had also disclosed that there was panchayati on that very score in the village. Then had denied the suggestion that she



has deposed falsely.

12. PW.2 is not an eyewitness of occurrence nor he had disclosed the name of assailant when, had gone to the place of informant after hearing uproar and had seen informant Shahban as well as his wife in an injured condition. Defence, during cross-examination had not suggested anything in the aforesaid background.

13. PW.3 in likewise manner had disclosed that after hearing alarm, he had gone to the house of informant Shahban Miyan where he had seen injuries over them and during course thereof, they disclosed that accused /appellant had inflicted the aforesaid injury. Because of the fact that he had disclosed the occurrence to be one and one month ago, he was declared hostile by the prosecution and during course thereof, he had accepted that the occurrence happens to be more than a year. During cross-examination, first of all he had stated that police had recorded his statement but subsequently denied. Then had stated that he arrived from Delhi on the date of occurrence itself. Firstly, he said that he came to know on the following morning but again corrected that in the night itself he came to know about the same. In para-4 he had also admitted that both the parties are on strain relationship over cash transaction.

14. PW.4 had reiterated the version of PW.3 and said that when he reached at the place of occurrence, he found the informant and his wife in an injured condition. On query they disclosed that they were assaulted by Ahmad Miyan. During cross-examination at para-3 he had stated that he reached at the place of occurrence five



minutes after escape of the accused after inflicting *Chhura* blow . In para-4 had stated that he had talked with Sabnam Khatoon who disclosed that accused was cordoned in the house whereupon, in order to save himself gave *Chhura* blow and then managed to escape. In para-5, he had stated that his statement was not recorded by the police. He had further stated that he had instituted case against Shahban Miyan who happens to be uncle of Ahmad. In para-6, he had stated that he had not accompanied informant and his wife to hospital. At para-8 he had shown ignorance with regard to any kind of cash transaction having effected in between informant as well as accused. Then had disclosed the boundary of the P.O. East-Panchayat Bhawan, West-Land of Madan, North-House of Shahban's brother whose name is not remembering. Then had denied the suggestion that as he happens to be hostile to the family of the accused on account thereof, has falsely deposed the same.

15. After close scrutiny of the evidence available on the record, it is apparent that both the injured that means to say PW.5, PW.6 are consistent over the manner of occurrence place of occurrence found duly supported with the evidence of PW. Injuries whatever been categorized at the end of the PW.7, was found and for that, injured were treated at such wee hour that means to say at 01:40 AM on 10-05-2012 and further, is found duly substantiated that after treatment of their injuries at the Government Hospital, Bagaha they rushed to the Police Station where written report was filed, the basis of prosecution.

16. PW.8 is the I.O. who after having been entrusted with the investigation recorded further statement of the informant as well



as statement of the witnesses. Also seen the injuries of the respective injured and then, issued the injury report (Ext.3 Series). Inspected the place of occurrence which he detailed, recorded statement of the witnesses, procured the injury report and then submitted charge sheet. During cross-examination at para-7, he had stated that till the time he was entrusted with the investigation, both the injured have come back from the hospital after treatment. He had seen the injuries after removing bandage but he is not remembering colour of the injury. Then at para-8 had stated that witness Harilal Yadav and Tulsi Ram, Indrasan Ram have not claimed to be an eyewitness to occurrence. In para-9 he had further stated that he had not seized the blood stain earth. He had not seen blood stained cloth of the injured.

17. From close scrutiny of the evidences of the PWs, it is crystal clear that there happens to be no infirmity in the evidence of the witnesses in order to doubt over prosecution version. That being so, Appellant being author of the injuries over the respective injured is found duly proved. Now the only question remains under what provision of penal law appellant should be held guilty. From the evidence it is apparent that appellant had not inflicted Chhura blow till the time he became apprehensive of being caught hold and, after hurling the same he managed to escape. It is also evident that Chhura was hurled but nature of injuries suggest that it was hurled not with intention to kill, rather only to have safe escape otherwise, the injuries would not have been superficial in nature.

18. That being so, considering the evidence in its entirety, the conviction and sentence recorded by the learned lower court to



the extent of Section 452 of the IPC as well as 324 of the IPC is found duly proved. So far Section 307 of the IPC is concerned that it not at all attracted in the background of the facts already dismissed herein before. So far sentence is concerned, the sentence recorded by the learned lower court relating to Section 452 of the IPC to undergo R.I. for three years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for three months, additionally, is directed to be reduced under go R.I. for one year relating the sentence inflicted by the learned lower court relating to Section 323 IPC. In the background of admitted case of animosity over lending of money. Sentences are directed to run concurrently with a further direction that the period already undergone will be set off in accordance with Section 428 of the Cr.P.C. Accordingly, appeal is partly allowed. Appellant is on bail, his bail bond is cancelled directing him to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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