

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.27 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

=====

Rupa Thakur, son of Tila Thakur, resident of village Harinarainpur, P.S. Madhuban,
District East Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Shanti Suman Kumar, Advocate

For the Respondent/s : Mr. S.A. Ahmad, APP

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-01-2018

The appellant stands convicted under Section 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year by the judgment and order dated 10.12.2002 passed by Sri Bimal Kumar, Additional Sessions Judge-cum-Presiding Officer, FTC III, East Champaran, Motihari in Sessions Trial No. 292/169 of 1986/02.

2. Prosecution case, in short, is that Madhuban P.S.Case No.78 of 1986 was registered on the basis of written report of Ramashish Thakur (P.W.6) wherein he has stated, inter alia, that while he was sleeping at his verandah on 12.7.1986 and his wife Rakturni Devi was sleeping inside the house in the Angan and at about 11 P.M. in the night he heard a sound of sudden cry and he went inside the house. His wife told him that Roopa Thakur with Garasi and Vaidyanath with Lathi took out her Hasuli from her neck and his



wife, cost of which was Rs.400/-. His wife tried to catch hold of them and in the course of it Roopa Thakur assaulted his wife with Garasi which hit her beard as a result of which bleeding started and the reason behind the occurrence is with respect to land.

3. After investigation charge sheet has been submitted, cognizance has been taken and the case has been committed to the court of sessions, which ultimately came to the file of Sri Bimal Kumar, the then Additional Sessions Judge, Presiding Officer, FTC III, East Champaran, Motihari for trial and disposal.

4. During trial six witnesses have been examined on behalf of prosecution, they are P.W.1, Kailash Rai, Chaukidar, P.W.2 Mohan Thakur, villager, P.W.3 Malti Devi, daughter of informant, P.W.4 Urmila Devi, daughter-in-law of informant, P.W.5 Rakturni Devi, wife of informant and P.W.6 is informant.

5. No ocular or documentary evidence has been adduced on behalf of defence. The defence as per trend of cross examination and under Section 313 Cr.P.C. is said to be of false implication and no such occurrence has taken place. Neither Doctor nor I.O. has been examined in this case.

6. Learned trial court after conclusion of trial has convicted the appellant under Section 323 IPC and acquitted other accused person.

7. Contention of learned counsel for the appellant is that



there are several discrepancies in the evidence and no such occurrence has taken place and the evidence of wife of informant (P.W.5) itself shows that no such occurrence has taken place and whatever she has stated she has stated on the basis of instructions of her husband and there are discrepancies in the evidence of other witnesses and moreover neither Doctor nor I.O. has been examined in this case but learned trial court on the basis of aforesaid discrepancies convicted the appellant under Section 323 IPC.

8. On the other hand, learned counsel for the State has supported the impugned judgment by which appellant has been convicted under Section 323 IPC on the ground that evidence of Doctor or I.O. is not essential as there is consistent evidence on record and, as such, there is no infirmity in the impugned judgment.

9. In the background of aforesaid submissions this Court is going to examine evidence of P.W.6, the informant in which he has supported the prosecution case as he has stated that on hulla from his house he went towards his house and saw appellant Roopa Thakur and Vaijnath Thakur coming from the house and Roopa Thakur told him that he will be teaching a lesson and he went inside the house and saw his wife crying and he saw cut injury on her face and then his wife told him that Vaijnath Thakur assaulted her by lathi and Roopa Thakur assaulted her by Garasa and Vaijnath Thakur took out Hasuli from her neck and Roopa Thakur caused injury on her by Garasi. This



witness has been cross examined at length. But it appears from the evidence of P.W.5 (wife of P.W.6) that though she has supported the prosecution case in her evidence but in her cross examination she has stated that on receiving injuries she woke up and found her daughter and daughter-in-law present there and daughter-in-law had Garasi in her hand and when her husband told the name of accused persons as Roopa Thakur and Vaijnath Thakur to her and then she has stated before police. She has admitted in her cross examination that she is aunt of Vaijnath Thakur and Roopa Thakur is son of Vaijnath Thakur and against Vaijnath Thakur a Title Suit is going on and in that connection the present case has been filed. Though the court has given its opinion that the lady is not of much understanding. However, evidence of P.W.5 clearly demolished the prosecution case as it appears that whatever she has deposed she has deposed on the basis of instructions of her husband and she has given a further new story. So far other witnesses are concerned, P.W.1 in his chief claims that on hulla he went there and saw injuries on the left chick of wife of Ramasish Thakur, the informant and Roopa Thakur has assaulted her by Garasi and Vaijnath Thakur snatched Hasuli from her neck. However, paragraph-4 of cross examination shows that wife of informant wore any ornaments at that time. He has also admitted that he has not seen the occurrence and further stated in his cross examination in paragraph-5 that he went there and saw Roopa Thakur



and Vaijnath Thakur were present there.

10. P.W.2 Mohan Thakur does not appear to be an eye-witness to the occurrence as he has stated that on hulla he went there and saw wife of informant in injured condition and he has also admitted that he is own uncle of Ramasish Thakur.

11. So far P.W.3 Malti Devi is concerned, she appears to be daughter of informant and she has stated that on hulla she woke up and saw Vaijnath Thakur snatching Hasuli and Roopa Thakur assaulted her by Garasi and thereafter accused persons fled away and further she has stated that where she was sleeping there was none else there and further stated that when she woke up Vaijnath Thakur has fled away and P.W.4, daughter-in-law of informant, has supported the prosecution case and her evidence in chief disclosed that after occurrence the accused persons fled away. However, if the evidence of P.Ws. 1 and 2 is believed, the claim of P.Ws. 3 and 4 as eye-witnesses is doubted. Apart from that neither Doctor nor I.O. has been examined in this case.

12. Considering the entire discussions made above, mainly the evidence of P.W.5, who is injured in this case, suggests that whatever she has stated, she has stated on instructions of her husband and her husband told her the name of accused persons and her evidence disclosed that when she woke up she saw her daughter there. No doubt, the court has given its opinion that she is not of much



understanding. Neither P.W.6, husband of P.W.5, nor P.w.3 and P.W.4, daughter and daughter-in-law has stated that P.W.5 is of less understanding. The aforesaid evidence creates a doubt about the prosecution case and moreover evidence of P.Ws. 3 and 4 also creates a doubt about the claim of the informant that he had seen the accused persons fleeing from the place of occurrence.

13. Learned trial court has not considered the aforesaid discrepancies in right perspective and convicted the appellant.

15. In view of the discussions made above, the impugned judgment suffers from infirmities, as such, the same is not sustainable in the eye of law.

16. Accordingly, this appeal is allowed and the impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.02.2018
Transmission Date	02.02.2018

