

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.617 of 2002

ANIL CHOUDHARY, son of Ganesh Choudhary, resident of Kila Ghat Sarai,
P.S. Tatarpur (Kotwali), District Bhagalpur

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

For the Appellant/s : Mr. Amrit Anunay, Advocate (amicus curiae)
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 27-11-2018

This appeal has been preferred by the sole appellant against the judgment and order dated 17.9.2002 passed by Sri Vijay Kumar Sinha, the then Additional District and Sessions Judge, Fast Track Court, Bhagalpur in Sessions Case No. 15 of 2001/Trial No. 214 of 2002 by which the appellant has been convicted under Section 452 of the Indian Penal Code and sentenced to undergo R.I. for three years and has further been convicted under Section 387 IPC and sentenced to undergo R.I. for seven years and has further been convicted under Section 307 IPC and sentenced to undergo R.I. for ten years and all the sentences were directed to run concurrently. By the said judgment learned trial court has acquitted co-accused Narayan Rai who was also facing the trial.

2. Prosecution case as appears from the statement of PW 4 Sangita Verma, in short, is that on 30.4.1999 at about 8 P.M. two persons came at her house and handed over a sealed envelop and when she enquired about the same she was informed that they had come from Thana Chowk and had brought a letter for Gopal Verma, the husband of the informant. It is further alleged that she became suspicious and she called them but they did



not come and thereafter she came inside and read the letter in which Rs.50,000/- was demanded from her husband within 24 hours otherwise threatening was made against him of dire consequence as was done in the case of other persons. Further prosecution case is that at 8.30 A.M. on the next day a telephone call came to her house and Rs. 50,000/- was demanded, otherwise the whole family members would be killed and her husband showed his inability to give the money. Further case is that on 2.5.1999 at 8.30 A.M. again a telephone call had come for payment of extortion and also threatened them. It is also the case of prosecution that thereafter another call had come and by incoming caller machine the number of telephone was detected as 400975 of a telephone booth and on enquiry the telephone booth owner told her that the caller was Anil Choudhary stating that he made a call to telephone No. 423165 which was of the informant. Further prosecution case is that on 2.5.1999 at 9 A.M. four miscreants armed with pistol came at the residence of the informant and started abusing her and told the informant to open the gate and it is further alleged that the informant identified one of the miscreants as Anil Choudhary, the appellant and thereafter the informant came back to her room and as soon as she tried to bolt her window, the appellant with intention to kill her fired on her, which hit the wall of the room after hitting first the net of the window and the informant could save her by bending herself and after that all the miscreants fled away from there.

3. On the basis of the aforesaid statement Tatarpur P.S, Case No. 0186 of 1999 was registered under Sections 307, 447, 387, 504/34 of the Indian Penal Code and 27 of the Arms Act. After cognizance and commitment of the case ultimately the case traveled to the file of Sri Vijay Kumar Sinha,



the then Additional District and Sessions Judge, FTC, Bhagalpur for trial and disposal.

4. During trial appellant and one accused Narayan Rai were charged under Sections 307, 387, 447, 504/34 IPC and 27 of the Arms Act.

5. In order to substantiate its case the prosecution has examined altogether seven witnesses, they are PW 1 Isha Beg, PW 2 Bijay Kumar Dhawak, PW 3 Parmeshwar Sah, PW 4 Sangita Verma, informant, PW 5 Gopal Verma, husband of informant, PW 6 Sunil Verma, son of informant and PW 7 Rajesh Ranjan, who is Investigating Officer of this case.

6. It appears that PW 1 is telephone booth owner, who has been declared hostile by the prosecution though he has identified the appellant Anil Choudhary but he has stated that he does not know as to whether Anil Choudhary has made telephone call from his booth on 2.5.1999.

7. Evidence of PW 2 disclosed that on 2.5.1999 while he was going to market he saw Anil Choudhary and Narayan Rai, standing at Surya Lane Chowk and later on he came to know that they were demanding extortion from Gopal Verma, husband of informant and firing was also made by them. From evidence of this witness it appears that he is not a witness on the point of occurrence and he claims to be a hearsay witness.

8. PW 4 is the informant in this case and she has supported the prosecution case as letter was being brought by two persons on 30.4.1999 at 8 P.M. showing that the letter was for Gopal Babu and on opening of letter she came to know that there was demand of extortion within 24 hours and she has also supported the prosecution case in her evidence in chief that the letter was addressed to husband of informant (PW 5) and on 1.5.1999 there was telephone call, which was attended by her husband, for demand of



Rs.50,000/-, otherwise of dire consequence. Her evidence also shows that on 2.5.1999 at 8.30 A.M. again a telephone call came on which her husband refused to pay the amount and thereafter her husband was threatened. Her evidence further disclosed that from the telephone caller, she came to know that the telephone was coming from telephone No. 400975 and on enquiry she came to know that the telephone call had come from a booth and on enquiry from telephone booth she came to know that Anil Choudhary had made a telephone call. Her evidence further disclosed that in the night at 9 P.M. 4-5 persons came to her house and tried to open the gate and thereafter abused her and fired which did not hit her. Thereafter police came and she informed them about the occurrence. In her cross examination she has stated that she does not know two persons, who have brought the letter, even by their face and she did not know the handwriting of Anil Choudhary in the letter. Her evidence further disclosed that on the basis of name given in the letter she disclosed the name of the accused and she identified them by face and she has not seen their face due to darkness.

9. PW 5 is husband of the informant (PW 4) and his evidence disclosed that though he has supported the prosecution case of demand of Rs.50,000/- and of threatening and later on call for demand of Rs.50,000/- but his evidence in paragraph-2 disclosed that at the time of firing he was not present at the house and when he came back he came to know about the same and informed the police. In paragraph-3 of his cross examination he has stated that he did not know any of the accused persons personally.

10. PW 6 is the son of informant (PW 4) and his evidence disclosed that 2nd May at 9 P.M. he was sitting along with his sister and at that time there was knocking of the door and when his mother came to see them



there was firing. He has also supported the prosecution case of coming of letter and demand of Rs.50,000/- and thereafter the call. His evidence further disclosed that he did not identify the person who made firing. In his further cross examination he has stated that at the time firing two persons were not present there.

11. PW 7 is the I.O. and his evidence disclosed that he has not sent the letter for examination by handwriting expert as accused has confessed before the police.

12. Defence of the accused person is of total denial and of false implication.

13. On conclusion of trial, learned trial court has convicted the appellant while acquitting another accused.

14. Being aggrieved by the aforesaid judgment, the present appeal has been preferred by the appellant.

15. Contention of learned amicus curiae is that in this case there is absolutely nothing to show the involvement of the appellant in this case as none of the witnesses, including informant has identified the appellant and according to evidence of Pws. 5 and 6, who are husband and son of the informant, they were not present there and PW 2 is not an eye-witness. PWs. 1 and 3 are concerned, they have been declared hostile in this case. It has also been argued that at best the prosecution has proved the manner of occurrence but so far identification is concerned, there is nothing available on record to implicate the appellant in the present case, but learned trial court, on the basis of statement made in the fardbeyan and the statements made before police during investigation, which cannot be legal evidence, convicted the appellant



which does not appear to be sustainable in the eye of law, thus the impugned judgment and order are fit to be set aside.

16. Learned counsel for the State has supported the judgment of guilt but could not point out any evidence so far identification of appellant in this case.

17. From perusal of the record and evidence as discussed above, so far prosecution case regarding manner of occurrence is concerned, evidence of PW 4, informant, and other witnesses PWs. 5 and 6 appear to be consistent. However, so far involvement of the appellant is concerned, it appears that informant has not named the appellant and only she has stated that four miscreants had come to her house and she has named Anil Choudhary only on the basis of the name written in the letter and evidence of Pws. 5 and 6 disclosed that they were not present at the place of occurrence and they have not named the appellant. PW 2 is not an eye-witness and Pws 1 and 3 have been declared hostile, evidence of I.O. (PW 7) disclosed that he had not sent the letter for examination by handwriting expert. However, what appears from perusal of paragraphs 15 and 16 of the judgment that learned trial court considering the fardbeyan and statement made before the police during investigation and also considering the evidence of PW 1 though has been declared hostile, has found the complicity of the appellant in the present case and convicted the appellant and failed to appreciate that those evidences were not legal evidence. Hence, conviction of appellant is not sustainable in the eye of law as there was no legal evidence available on record to show the complicity of the appellant in the present case.

18. In that view of the matter, the impugned judgment and order do not appear to be sustainable in the eye of law.



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

20. Before parting with the judgment, the Court appreciates the valuable assistance rendered by amicus curiae and directs Patna High Court Legal Services Committee to pay him as per entitlement.

(Vinod Kumar Sinha, J)

spal/-

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CAV DATE	
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