

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 3 of 2011

1. BALESHWAR MOCHI, S/O LATE SHYAM SUNDAR MOCHI
2. KAULESHWAR MOCHI, S/O LATE SHYAM SUNDAR MOCHI
3. AJAIY MOCHI, S/O RAM SWAROOP DAS
4. VIJAY MOCHI, S/O RAM SWAROOP DAS
5. KRISHNA MOCHI @ KRISHNA DAS, S/O BHAIJU DAS
6. MOTU DAS, S/O MUSAFIR DAS
7. NIRANJAN KUMAR, S/O BALESHWAR MOCHI
8. RAM PRAVESH MOCHI, S/O BALMIKI DAS
All are R/o Vill. Lalse Bigha, P.S. Kako, District - Jehanabad

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Madan Jeet Kumar
For the Respondent/s : Mr. Pranav Kumar (APP)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date : 11-04-2018

Heard learned counsel for the appellants and learned
Additional Public Prosecutor, appearing on behalf of the State.

2. This appeal has been filed against the judgment of
conviction dated 14.12.2010 and order of sentence dated
20.12.2010 passed by the Additional District and Sessions Judge,
Fast Track Court-V, Jehanabad in Sessions Trial No. 454 of 2004 /
69 of 2005 arising out of Jehanabad P.S. Case No. 502 of 2002,
whereby the appellants have been convicted under sections 323,
325 and 307 of the Indian Penal Code read with section 149 of the
I.P.C. and sentenced to undergo Simple Imprisonment for 6
months and Rigorous Imprisonment for 2 years as well as fine of



Rs. 1,000/- and further 7 years of Rigorous Imprisonment and fine of Rs. 5000/- each of the appellants. All the sentences have been directed to run concurrently. In default of fine, they have to undergo Simple Imprisonment for one month and Rigorous Imprisonment for three months.

3. The prosecution case, in short, as alleged in the First Information Report is that on 30.12.2002 at about 20:30 o'clock *fardbeyan* of the informant was recorded by Sub-Inspector at Sadar Hospital, Jehanabad that when the informant came at his house, all the appellants along with Binesh Mochi organised a meeting regarding cleaning of drainage of their village. When he reached there, all the appellants, including Binesh Mochi started to abuse him. Appellant no. 6 Motu Das and Binesh Mochi armed with *Khanti* and other appellants with *lathi-danda*, in the meantime, Kauleshwar Mochi/appellant no. 2 ordered to kill him. Thereafter, Binesh Mochi gave a *Khanti* blow on his head, as a result of which, the informant fell down on the ground. Ram Pravesh Mochi/appellant no. 8 and Motu Das/Appellant no. 6 started assaulting to the informant. On *hulla*, grand-father of the informant and his wife came to save him, but they were also assaulted by the appellants and Binesh Mochi. It is also alleged that the informant received several head injuries. The grand-father



of the informant and his wife received injury on waist, hand and elbow. Thereafter, they were brought to the Sadar Hospital, Jehanabad with the help of villagers where they were treated.

4. On the basis of the aforesaid *fardbeyan* of the informant, Jehanabad P.S. Case No. 502 of 2002 was instituted for the offence under sections 323, 325, 307 read with sections 149 of the Indian Penal Code. After investigation, the Police has submitted the charge-sheet. Thereafter, cognizance has been taken and the case has been committed to the Court of Sessions. Charge has been framed against the appellants for the offence under sections 307, 341 and 504 of the I.P.C. Against accused Binesh Mochi, charge was framed under section 307 of the Indian Penal Code.

5. During Trial, the prosecution has examined altogether 6 witnesses. P.W. 1/Bhajju Das, P.W. 2/Barahan Das, P.W. 3/Gita Devi, who is wife of the informant, P.W. 4/RamKhelawan Mochi, who is Grand-father of the informant, P.W. 5/Sachchidanand Prabhakar/informant and P.W. 6/Dr. Deepak Kumar. During the course of trial, accused Binesh Mochi died and rest eight accused persons had faced trial.

6. Learned counsel appearing on behalf of the appellants submits that P.W. 1 Bhajju Das and P.W. 2 Barahan Das were



declared hostile. The rest other witnesses are family members of the informant, except P.W. 6, who is the Doctor. P.W. 3 Gita Devi admitted in her evidence that accused Binesh Mochi had filed case against prosecution party. It is also admitted that wife of appellant no. 6, namely, Sudha Devi had also registered First Information Report against the prosecution party, which shows that there is admitted enmity between the parties. Learned counsel further submits that it is admitted that at the time of occurrence, there was darkness and the witnesses had not seen which appellants had assaulted on which persons of the informant's side. All the injuries are found simple in nature, except injury no. 1 of the injured Ram Khelawan Ram, which is on non-vital part of the body. As such, as per evidence, section 307 of the Indian Penal Code is not made out against the appellants.

7. Submission of learned counsel for the appellants is that in the present case, it is said in the counter case, Binesh Mochi was also assaulted on his head by *Khanti*, regarding which, first information report was lodged for the offence under section 307 of the Indian Penal Code against the members of the prosecution side, but in the trial, the defence party could not place their case properly due to which the injury report of Binesh Mochi and the aforesaid first information report could not be brought on record.



But the witness Gita Devi in her cross-examination has admitted this fact that the accused Binesh Mochi also has lodged case against her side.

8. Further it has also been submitted that in this case, the Investigating Officer has not been examined, due to which the place of occurrence could not be established. The prosecution witness nos. 1 and 2 became hostile but due to non-examination of the Investigating Officer, in spite of attention being drawn towards the earlier statements of these witnesses, the same could not be rebutted. Besides that, questions could not be asked from the Investigating Officer about the counter case. For the aforesaid reasons, the accused persons have been adversely affected.

9. Before reaching to any conclusion, it is necessary to look into the evidence of the prosecution witnesses:

i) P.W. 1/Bhajju Das and P.W. 2/Badhan Das have stated in their evidence that they do not know about anything about the alleged occurrence. The prosecution has declared them hostile and has brought attention towards their earlier statements.

ii) P.W. 3/Geeta Devi, who herself is an injured, has reiterated her statement made in the first information report, which is not required to be repeated again, but



she stated in her cross-examination that accused Binesh Mochi has lodged case against her side. She also stated that Sudha Kumar, wife of appellant Motu Das has also lodged a case against her side, which is pending.

iii) P.W. 4/Ramkhelaban Mochi, who himself is an injured, has also reiterated his statements made in the first information report. In cross-examination, he has stated that he does not know that accused persons have also lodged case against his side.

iv) P.W. 5/Sachidanand Prabhakar, who is informant of this case and is also an injured, has also reiterated the statements made in the first information report, which is also not required to be repeated again. Informant has also proved his signature (Exhibit-1) on the *fardbeyan*. This witness in his cross-examination has also admitted that in connection with the same occurrence, counter case has also been lodged against us.

v) P.W. 6/Dr. Deepak Kumar has proved the Injury Reports (Exhibits-2 and 2/4) of all the three injured. The injuries caused on the body of Gita Devi and Sachidanand Prabhakar was found simple and the injuries of injured Ramkhelaban Mochi was found



grievous in nature, but has also said that the injuries are not on vital parts of the body. It is also stated that the report has been submitted on the basis of X-ray report, which is not available now with him. He also stated that the injuries of Ramkhelaban may be caused due to fall on the ground from the side of the hand. This witness has also stated in his evidence that he does not know on what basis he had written the report that this injury is dangerous to life.

10. All the accused persons in their statement recorded under section 313 Cr. P.C. have claimed themselves to be innocent and have stated about giving defence evidence, but they have not adduced any defence evidence.

11. In this appeal, all the points/grounds raised by the appellants are not so important and the only one point to be considered is that the P.W. 3/Geeta Devi, in her cross-examination, admitted that the accused Binesh Mochi (died in course of trial) and Sudha Kumari, wife of accused Motu Das have also lodged the case against her side. P.W. 5/informant, in his cross-examination, has also admitted about the counter case. This means that the prosecution has not come up with clean hands and the entire trial became vitiated.



12. In view of the facts and circumstances of the case and the discussions made above, this Court finds that the judgment of conviction dated 14.12.2010 and order of sentence dated 20.12.2010 passed by the Additional District and Sessions Judge, Fast Track Court-V, Jehanabad in Sessions Trial No. 454 of 2004 / 69 of 2005 arising out of Jehanabad P.S. Case No. 502 of 2002, is not sustainable in the eye of law. The same is, hereby, set aside. Accordingly, this appeal is allowed.

Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	15.11.2017
Uploading Date	12.04.2018
Transmission Date	12.04.2018

