

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.46 of 2011

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1. Om Prakash Khetan S/o Late Binda Khetan R/o Village-Khirhar, P.S.-Khirhar, Distt.-Madhubni
 2. Pappu Khetan @ Mahesh Kr. Khetan S/o Om Prakash Khetan R/o Village-Khirhar, P.S.-Khirhar, Distt.-Madhubni
 3. Sambhu Khetan S/o Late Satya Narayan Khetan R/o Village-Khirhar, P.S.-Khirhar, Distt.-Madhubni
 4. Arun Kumar Khetan @ Arun Khetan @ Laddu S/o Late Satya Narayan Khetan R/o Village-Khirhar, P.S.-Khirhar, Distt.-Madhubni

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Gopal Jha, Advocate Mr. Kumar Chandra Shekhar, Advocate Mr. Rajesh Kumar Verma, Advocate Mr. Shree Pal Jha, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP
For the Informant	:	Mr. Sanjay Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 15-05-2018

Heard learned counsel for the appellants, learned APP for the State as well as learned counsel appearing on behalf of the informant.

2. The present appeal has been preferred against the judgment of conviction and order of sentence dated 14.12.2010, passed by Mr. Devendra Prasad Keshri, learned Additional Sessions Judge, F.T.C. No.1, Madhubani in Sessions Trial No.855 of 2006, arising out of Harlakhi (Khirhar) P.S. Case No.108 of 2002, by which accused persons have been convicted under Section 323 of the Indian



Penal Code but acquitted from the charge under Section 307 of the Indian Penal Code. Besides this Pappu Khetan in addition to the aforesaid conviction has also been convicted under Sections 279 and 337 of the Indian Penal Code and all the four appellants have been sentenced to undergo three months of SI and fine of Rs.1000/- for committing offence under Section 323 of the Indian Penal Code and in default of payment of fine further one month of SI; whereas appellant Pappu Khetan in addition to that has been sentenced to undergo six months of SI each for committing offence under Sections 279 and 337 of the Indian Penal Code, however, as per direction all the sentences shall run concurrently.

3. Being aggrieved and dissatisfied with the aforesaid judgment, the appellants have preferred the present appeal.

4. Learned counsel for the appellants submits that it is an admitted position that both sides were on inimical terms as land dispute exists in between them, cases were also pending before the court, such position is admitted by the informant in his testimony. There is also vital contradictions with regard to the manner of occurrence as according to the informant, Ramashish Panjiyar (PW9), the Sumo vehicle bearing Registration No. BR-7P-7293 being driven by Pappu Khetan hit his motorcycle from back side and as a result he fell in a ditch and the Sumo vehicle also turned turtle thereafter all the persons on board in Sumo vehicle came out and assaulted the informant with fists and slaps; whereas Laxmi Das, PW8 has deposed



that he saw that Sumo jeep lying the ditch thereafter all the persons on board, namely, Pappu Khetan, Om Prakash Khetan and Arun Khetan were coming out from the vehicle. Further he also saw a motorcycle fallen in the ditch and Ramashish Panjiyar, PW9 was lying in an injured condition but he has not deposed that these accused persons coming out of the vehicle assaulted the informant.

5. In this case, 11 witnesses have been examined and out of them PWs. 3, 4 and 5 were declared hostile by the prosecution.

6. Gajendra Yadav, PW6 has not seen the accused persons assaulting the informant whereas Upendra Mandal, PW7 is a hearsay witness.

7. Learned counsel for the appellants submits that the informant sustained only four injuries in the shape of three bruises over head, left forearm, left thigh and over right ankle above the heel but all injuries are simple in nature caused due to informant Ramashish Panjiyar fell in the ditch. Further submission is that there is no evidence to show that appellant Pappu Khetan, the driver of the Sumo vehicle was driving the vehicle negligently. The Investigating Officer, Shiwanand Singh, PW10 also admits that though the Sumo vehicle was seized but no MVI report was sought in this case. He also admits in paragraph-6 that Ram Sakal Yadav, PW2 has not stated before him that accused persons assaulted the informant.

8. The case of the prosecution is that while the informant Ramashish Panjiyar, PW9 was going to his village on 10.12.2002



about 7.30 P.M., on the way a Sumo vehicle being driven rashly and negligently followed his motorcycle, so the informant stopped his motorcycle and also stopped Sumo vehicle and asked the driver that why he was driving the vehicle in negligent way and following him but the driver ignored him and went ahead. There were four persons on board in the vehicle and the vehicle was being driven by Pappu Khetan and at 8.30 P.M. while he was going from Barhar Chowk by motorbike the Sumo vehicle hit his bike from back intentionally to kill him as a result he fell down in the ditch by the side of the road and Sumo also fell down in the ditch, then all accused persons came out of the vehicle and assaulted him by fists and slaps and appellant Shambhu Khetan committed theft by taking Rs.5000/- from his pocket and also took his LTI on a blank sheet of paper; whereas learned APP for the State as well as learned counsel appearing on behalf of the informant submit that the prosecution witnesses have proved the case beyond all reasonable doubt and there is no major contradiction in the evidence of the prosecution.

9. Having considered rival submissions and on perusal of the record, the Court finds that only five witnesses are relevant in the present case, i.e., PWs.1, 2, 9, 10, and 11. There is evidence on the record that on account of road accident with Sumo vehicle of accused persons, the informant (PW9) as well as accused persons fell into a ditch by the side of the road and sustained injuries. At the very outset, a relevant fact coming out from evidence is existence of civil litigation



pending between both sides, so a deeper scrutiny of the evidence of the prosecution side is required in order to ascertain the veracity of truth relation to the prosecution case. The prosecution evidence only establishes the fact that the accident took place as a result vehicles of both sides fell into a ditch. There is contradiction in the evidence on the point that after the accident the appellants came out of the vehicle and assaulted the informant. The injuries sustained by the informant are one bruise over the head, two bruises on the left forearm and left thigh and one abrasion near the right ankle. The injuries appear to have been caused as a result of motorbike falling into the ditch. As far as evidence regarding rash and negligent driving is concerned, in order to bring home the charge under Section 279 of the Indian Penal Code, the Court finds complete lack of evidence on this point. There is no evidence on record establishing the negligent driving indicating manner of negligence regarding driving by the accused, what was the speed of the vehicle and the manner of driving. In order to constitute an offence under Section 279 of the Indian Penal Code, it has to be established that the driving was rash or that the accused was driving the vehicle in a rash and negligent way exceeding the prescribed speed limit or driving the vehicle in a drunken condition. The accident may also be caused due to technical defects of the vehicle. The Investigating Officer, PW10 admits that no MVI report of the Sumo after its seizure was done so the appellants Pappu Khetan is entitled for giving benefit of doubt. As far as offence under Section 337 is



concerned, no such ingredient constituting the said offence is found established by the prosecution, so it also fails. Considering the contradiction in prosecution evidence with regard to hurt caused to the informant, the appellants are also entitled of giving benefit of doubt of the charge framed against them under Section 323 of the Indian Penal Code.

10. In view of aforesaid discussion, the Court comes to the conclusion that the prosecution has failed to establish the charge against the appellants under Section 323 of the Indian Penal Code against all the accused as well as under Sections 279 and 337 of the Indian Penal Code against Pappu Khetan, so all the appellants are acquitted of the aforesaid charges. Since all the appellants are on bail, they are also discharged from liabilities of their respective bail bonds.

11. The appeal stands allowed.

(Arun Kumar, J)

S.KUMAR/-

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