

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.402 of 2015**

Arising Out of PS.Case No. -237 Year- 2011 Thana -PANCHRUKHI District- SIWAN

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Sita Ram Singh, son of Late Rameshwar Singh, resident of village-Chaumukha,
P.S. Pachrukhi, District-Siwan.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Chandra Mohan Singh-Advocate
Mr. Naresh Prasad-Advocate

For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 26-03-2018

Appellant Sita Ram Singh has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for six months with a further direction that the period having undergone during course of trial would be subject to set off in accordance with Section 428 of the Cr.P.C. vide judgment of conviction dated 15.06.2015 and order of sentence dated 16.06.2015 passed by the Additional Sessions Judge-4th, Siwan in Sessions Trial No.533 of 2012.

2. PW-6, Charan Das Sharma, who happens to be Fufa of the victim Vikas Kumar Sharma (PW-4) filed written report on 26.12.2011 disclosing therein that on the same day at about 7.30 a.m.,



he got information from the village-Chaumukha over mobile that son of his Sala namely Vikas Kumar Sharma aged about 15 years has been victimized by unknown person by way of slitting his neck in order to commit his murder and his body has been left near Sugarcane field south to the pitch road, whereupon he was taken to Sadar Hospital, Siwan, but seeing the precarious condition of the injured, he was referred to P.M.C.H. On aforesaid information, he came to village-Chaumukha and inquired from the inmates of the house, who disclosed that Vikas used to sleep along with his younger brother at upper floor of the house. He was a student of Class-X. Usually, he came out in morning to meet nature's call. Today, he received call over mobile, whereupon left the house without disclosing anything to anybody. At about 7.30 a.m. villagers informed regarding the mishappening.

3. On the basis of the aforesaid written report, Pachrukhi P. S. Case No.237 of 2011 was registered against unknown. However, during course of investigation, complicity of appellant including his son as well as his wife (since acquitted) were traced out and that being so, chargesheet was submitted against them facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. 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 pleaded that the victim Vikas Kumar was frequently teasing Sarita, daughter of the appellant and on the alleged date, he tried to make house trespass during course of which, was seen by the villagers, who chased and during course thereof, assaulted. However, neither ocular nor documentary evidence has been adduced on behalf of appellant in defence.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, who are PW-1, Lalu Chaudhary, PW-2, Draupadi Devi, PW-3, Pankaj Kumar Sharma, PW-4, Vikas Kumar Sharma (victim), PW-5, Parma Nand Sharma, PW-6, Charan Das Sharma (informant), PW-7, Bishwakarma Sharma, PW-8, Dr. Mohd. Asraf and PW-9, Ramekbal Prasad. Side by side, had also exhibited as Exhibit-1, signature of informant over written report, Exhibit-2, injury report relating to injured. As stated above, nothing has been adduced in defence.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence impugned has urged that the finding recorded by the learned lower Court happens to be contrary to the materials available on the record, whereupon is fit to be set aside. In order to substantiate the same, it has been submitted that main I.O. has not been examined and that has caused prejudice to the appellant



in the background of conflicting version of the prosecution witnesses regarding manner of occurrence and further, they also happen to be inconsistent over place of occurrence. It has also been submitted that doctor has not given any opinion regarding the nature of injury allegedly sustained by the injured. Furthermore, it has also been submitted that when the evidence of the respective PWs have been gone through, it is apparent that they have not supported the case of the prosecution and that being so, judgment of conviction and sentence recorded by the learned lower Court is fit to be set aside.

7. On the other hand, learned Additional Public Prosecutor supported the finding recorded by the learned lower Court and submitted that injury was there, which is found duly substantiated by the evidence of doctor (PW-8). Nature of injury for the purpose of adjudication of Section 307 of the I.P.C. is not at all relevant. Furthermore, it has also been submitted that specific plea has been raised on behalf of appellant relating to his conduct falling under general exception and so, in accordance with Section 105 of the Evidence Act, he was under obligation to explain wherein appellant failed. So, the conviction and sentence recorded by the learned lower Court happens to be just, legal and proper and is fit to be confirmed.

8. In order to properly appreciate the rival submission, it looks pertinent to have scrutiny of the ocular evidence at first instance



and then, discuss the same along with the medical evidence and in order to search out whether the finding of the learned lower Court happens to be in accordance with law. After going through the evidence available on the record, it is evident that none of the independent witnesses that means to say, PW-1, PW-2, PW-3, PW-5, PW-6 and PW-9 have claimed themselves to be an eye witness to occurrence. Their source of information is the injured himself, who has been examined as PW-4 and that happens to be reason behind that case was registered at an initial stage against unknown. So, it happens to be appropriate to see the evidence of PW-4 in order to search out whether he happens to be reliable or not.

9. The basic principle governing the evidence of an injured is that his evidence should be accepted in the background of the fact that presence of injury suggest, presence of injured at the place where he had sustained injuries and in likewise manner, he would be the best person to narrate regarding the incident that means to say, the manner of occurrence. More recently in ***Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)***, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents



abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:

“28.Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

10. PW-4 had deposed that occurrence happens to be of dated 26.12.2011, it was 5.00 a.m. He was regular visitor to school as was a runner. When he reached at the Chaumukha Middle School, he saw Sita Ram Singh, Mantu Singh and one lady, who caught hold him. Out of them, the lady had ordered to shoot. On this, Mantu gagged his mouth with muffler and took him to mustered field where Sita Ram Singh and Mantu Singh tied his hand and leg and then, Sita Ram Singh inflicted knife blow over his neck. At that very time, Mantu Singh in order to facilitate the crime had caught hold his leg while the lady had caught hold his hands. Then thereafter, he was given Chhura blow (shown the scar mark). Then had stated that his right wing of body is not properly functioning. He became unconscious. When he regained sense, he found himself admitted at P.M.C.H. He regained sense on 17.01.2013, identified the accused. During cross-examination at Para-3, he had stated that at the time of



cutting of his neck neither Sita Ram Singh nor Mantu Singh nay lady were uttering anything. In Para-4, he had admitted that he used to talk over SIM No.9955209599, which belongs to Sita Ram Singh. Daughter of Sita Ram Singh is Sarita, his classmate. Then had stated that he used to talk after receiving missed call at the other side. At Para-6 of his cross-examination was confined over mode of conversation as well as subject of conversation. He had further admitted that as per call detail, he had talk on the date of occurrence itself. He had further stated that accused persons were forbidding him not to accompany Sarita in a way to school even then, he used to talk. Then had stated that on the alleged date, the accused caught hold him. He raised alarm, but till then, he was tied with the Muffler. Then had stated that there was mustered crop at the P.O. He struggled with the accused persons. They lie him down over the ground. He had not resisted. They have not tied his eye, only his mouth was gagged. He was not assaulted by the fists and slaps over his body rather he was assaulted with slap over his head. Then had stated that after sustaining wound, he became unconscious. He was assaulted from front side. In Para-7, he had stated that Sita Ram Singh had assaulted. He had further stated that Sita Ram Singh has not cut his neck. He had not cut his leg. Even after assault, he had not protested out of fear. He had not shouted. At Para-8, he had stated that he had not deposed regarding



the assault by means of knife. Then had denied the suggestion that he was a characterless person. He used to tease daughter of Sita Ram Singh and in the aforesaid background, had intruded inside the house of Sita Ram Singh, whereupon villagers seen, assembled and assaulted. Then thereafter, with an intention to harass the accused persons, got this case filed. Then, as is evident that on a prayer made by the prosecution dated 10.03.2015, both the parties were heard and vide order dated 28.04.2015, this PW-4 was recalled in order to explain Para-7 of his cross-examination, whereupon he was reexamined on 01.05.2015. At Para-9, there was question put to him in a form “by which weapon Sita Ram Singh had assaulted him. Answer-Sita Ram Singh assaulted him with knife over his neck.” During cross-examination at Para-10, he had stated that whatever been deposed by him today, is the correct evidence and whatever been deposed at his end at an earlier occasion happens to be false. Paras-12, 13 happens to be on that very score. In Para-14, he had stated that his neck was cut and at that very time, he was lying. In Para-15, he had stated that he had tried to save himself and for that, he had twisted his neck. He had also resisted by way of sprawling. Also tried to raise alarm. Neck was cut, blood had fallen over the ground as well as his cloth also became soaked therewith. In Para-20, he had further stated that he used to talk with the daughter of Sita Ram Singh. At Para-23,



he had stated that at the time of cutting of his neck, none other than he himself along with accused persons were present. Then had denied the suggestion.

11. PW-8 is the doctor, who had examined the victim on 26.12.2011 at Sadar Hospital, Siwan and found the following:-

1) Lacerated wound 3" x 2" x bone deep in front side over the neck.

2) Lacerated wound 2" x 1 ½" x bone deep on the left side of the neck.

3) Lacerated wound 1" x 1 ¼" x bone deep beside the injury no.2.

In the opinion of the doctor, age of injury was within six hour as patient was referred to Higher Centre on account thereof, he had restrained himself to give any kind of finding concerning the same. During cross-examination at Para-5, he had stated that he had not mentioned the weapon by which aforesaid injuries were caused. In likewise manner, he had also stated that he had not mentioned the nature of the injury.

12. PW-7 is the Part I.O., who took up investigation on 23.04.2012. Gone through the case diary, apprehended the accused and then thereafter, submitted chargesheet. From his cross-examination, it is evident that he had not actively participated during course of conduction of investigation, save and except merely



submitting chargesheet.

13. From the evidence available on the record, it is apparent that other witnesses have not claimed themselves to be an eye witness to occurrence. Although the alleged date of occurrence happens to be during midst of winter season on account thereof, there would have been densely fogged, but in absence of cross-examination, those things would not be taken into consideration. More particularly, whether it was possible for the injured to go to the school at such wee time and further, where was possibility of the accused persons to be present since before, is another circumstance. When the evidence of the injured is minutely gone through, it is apparent that although call details are not an exhibit of the record, but he had specifically stated at Para-6 that as per call details, he had talked with Sarita Kumari on the day of occurrence itself in the morning hour and so, probability of PW-4 at the place of accused could not be ruled out. When this fact is taken together with the evidence of other PWs including PW-4, victim himself, they have not deposed that in which side from the school, PW-4 was taken away and further, distance in between house of the accused to the school though in Para-6 of cross-examination of PW-4, he had stated that the house of the accused lies one thousand meter away from his house while the house of the girl lies at a distance of 400 meter from the P.O. In a remote area having no street light, no



light at the school premises, is another circumstance to be taken into consideration. Now, coming to next step, it is evident that PW-4 himself happens to be infirm as he lost consistency during course of his evidence. Apart from this, it is also evident from the evidence of PW-4 that in examination-in-chief at Para-1, he had stated that Chhura blow was inflicted upon him while at Para-3, he had stated that his neck was cut. In Para-7, he again stated that Sita Ram Singh had given blow which he clarified on recall at Para-9 that Sita Ram Singh cut his neck by knife, which he also elaborated in Para-14. If the evidence of PW-8 is taken together, he had not found slitting of neck or cut injury at the neck rather there was three injuries over neck in different dimensions. Apart from this, there happens to be lacking of the subsequent injury report at the end of the prosecution, which could have properly explained the weapon by which injuries were committed. Although, no cross-examination has been made by the defence to PW-8, but as is evident, all the injuries were found to be lacerated and as per *Modi's Medical Jurisprudence and Toxicology*, injuries are being classified as abrasion, contusion or laceration.

14. Again, the nature of injury also did not corroborate the allegation as leveled at the end of the prosecution. Last but not least, PW-4 at Para-10 on recall had stated that whatever been deposed at his end today is the truthful version and whatever been



deposed by him at an earlier occasion was false, is a most hazardous event for the prosecution.

15. Considering the character of the injured witness, who in the present facts and circumstances of the case, became unreliable in consonance with inconsistency coming out from the evidence of doctor (PW-8) ruling out the manner of occurence, the version of the prosecution is found deficient one, whereupon it looks unsafe to rely. That being so, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellant is on bail, hence, is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

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