

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.50 of 2013

Arising Out of PS.Case No. -72 Year- 2008 Thana -null District- SUPAUL

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1. Md. Mazlum, son of Late Md. Khalil.
 2. Md. Jawahar, son of Late Rahim Mian.
 3. Md. Darwan, son of Imtaz.
 4. Ram Sunder Mandal, son of Late Jagdeo Mandal.

All resident of Village- Barhara, P.S. Marauna, District- Supaul.

.... Appellants

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Md. Abu Haider, Adv. Md. Nazir Ansari, Adv. Md. Abu Sajar, Adv.
Amicus Curiae	:	Mr. Amrit Anunay, Adv.
For the State	:	Mrs. Abha Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 17-09-2018

Heard learned counsel for the appellants, learned Amicus Curiae and learned APP for the State on this criminal appeal.

2. This appeal has been preferred against the judgment and order of conviction and sentence dated 12.12.2012 passed by the Ad hoc 1st Additional Sessions Judge, Supaul, in Sessions Trial No. 13 of 2010, arising out of Marauna P.S. Case No. 72 of 2008, whereby the learned trial Court convicted Md. Mazlum, Md. Jawahar, Md. Darwan and Ram Sunder Mandal for the offence punishable under Section 447/323/341/427/504/308/34 of the Indian Penal Code and sentenced them to undergo S.I. for one



month each, under Sections 341/34 IPC and R.I. of three months each under Section 447/34 of the Indian Penal Code and sentenced them to undergo R.I. for six months each, under Section 323/427/504/34 IPC and R.I. for five years each under Section 308/34 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. The factual matrix of the case is that Marauna P.S. Case no. 72 of 2008 was instituted under Sections 323, 342, 427, 379, 307, 504/34 of the Indian Penal Code against the accused persons, namely, Md. Mazlum, Md. Jawahar, Md. Darwan and Ram Sunder Mandal on the basis of complaint filed by Bibi Amina Khatoon with the allegation in succinct that the informant has been residing in her maternal house for the last 10 years due to demise of her husband. On day preceding to the date of occurrence, all the accused persons named in the FIR were cutting the soil of the field located adjacent to the land of her family, located near the Suraksha Bandh and getting the soil carried through labourer making passage in the mid of the paddy field of her brother. Due to making of the passage in the mid of the field, the paddy crops was being damaged. On getting the knowledge of the aforesaid occurrence, when the informant rushed to her aforesaid land, she found all the accused persons standing there and getting the work



done by the labourers. On making protest by the informant, the accused persons rapping expletives to her and extended threatening of dire consequences. They also started assaulting her by means of lathi and phatta surrounding her. Responding the hulla made by her the locals rushed there. In the meantime Mazlum snatched fasuli from her neck while Md. Jawahar snatched her nose pin. They made her nude during the course of assault and extended threatening of dire consequences in case of divulgence of the occurrence to anyone. The brother of the informant took her to the house with the help of the villagers and rushed her to the Supaul hospital to accord her medical treatment. Her villagers assured her to get the matter settled through the Panchayati but the accused persons refused to oblige the verdict of the Panches. Hence, she filed the aforesaid case.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused persons, namely, Md. Mazlum, Md. Jawahar, Md. Darwan and Ram Sunder Mandal.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the Court of Sessions and on transfer finally the case came in seisin of



the Ad hoc 1st Additional Sessions Judge, Supaul for trial.

6. Charge was framed against accused Md. Mazlum, Md. Jawahar, Md. Darwan and Ram Sunder Mandal under Sections 447/34, 323/34, 341/34, 504/34, 427/34 and 308/34 of the Indian Penal Code. Charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether five prosecution witnesses, namely, informant Bibi Amina Khatoon as PW-1, Md. Sultan as PW-2, Sushil Kumar Mandal as PW-3, Md Islam as PW-4, Dr. Shivendra Das, who has examined the victim, as PW-5. Out of the aforesaid witnesses PW-3 and PW-4 turned hostile. The prosecution has also filed and proved the injury report marked as Exhibit 1 only.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent.

9. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.



10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by the learned counsel for the appellants and learned Amicus Curiae that as per the prosecution case several persons congregated at the time of occurrence responding the hulla made by the informant and rushed her to her house but barring PWs-3 and 4 none other independent witness has been examined by the prosecution. Moreover, PW-3 and PW-4 have turned hostile. Thus, the case of the prosecution remains uncorroborated by the independent witnesses. There is no eye witness of the occurrence. It is further submitted that the ocular evidence of the informant regarding the injury does not stand corroborated by the medical evidence. It is further submitted that as per the statement of the informant police had arrived to her 15 days after the occurrence and recorded her statement but the aforesaid statement of the informant has not been brought on record rather FIR has been lodged on the basis of the complaint petition filed by her. The aforesaid aspect of the case creates



serious doubt about the prosecution case. It is further submitted that the FIR was registered on 09.09.2008 but the same was sent to the Court of CJM on 13.09.2008, after inordinate delay, and no plausible and convincing reason has been assigned by the prosecution to explain the aforesaid delay which also creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case beyond reasonable doubts by adducing consistent, trustworthy, reliable evidence. Hence the aforesaid judgment and order of conviction passed by learned trial Court is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP, advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that the informant and PW-2 has supported the prosecution case. The ocular evidence also stands corroborated by medical evidence and learned trial Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence, and the same is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From the perusal of the record, it appears that as per the prosecution case, as adumbrated in the written report, the



appellants were getting the soil carried by the labourers through the field of the informant on the date of occurrence but, in quite contradiction to the aforesaid prosecution case, the informant has stated in Para-3 of his examination-in-chief and Para-17 of her cross-examination that Md. Mazlum, Md. Jawahar, Md. Darwan and Ram Sunder Mandal were themselves carrying the soil in basket and the other labourers were not present at the Baandh. In Para 14 of her cross-examination, she has further stated that the soil was carried by tractor around one to one and half months preceding to the occurrence.

15. As per the prosecution case, responding the hulla made by the informant during the course of occurrence, the locals rushed there and her brother with the help of the villagers rushed her to her house. But, in quite contradiction to the aforesaid statement, the informant has stated in Para-18 of her cross-examination that she did not witness the arrival of any one at the place of occurrence, as she fell senseless sustaining the injury and remained senseless 4-5 days.

16. As per the account of the informant given by her in Para- 18 of her cross-examination, she fell senseless sustaining injury and remained senseless 4-5 days. But from the perusal of the injury report marked as Ext.1 and evidence of Dr. Shivendra



Das (PW-5), it appears that the victim was examined by the doctor on the following day of occurrence but the doctor has not reported the victim to be senseless. The aforesaid aspect of the case creates serious doubt about the prosecution case.

17. PW-2 Md. Sultan though has made an abortive bid to support the prosecution case by giving statement in consonance to the prosecution case in his examination-in-chief but the said witness does not appears to be eye witness of the occurrence. As in Para-5 of his examination-in-chief itself he has stated that the responding the hulla made by the victim he also arrived there and found the victim senseless. In Para-25 of his cross-examination, he has further stated that when he arrived at the place of occurrence he found Amina senseless and lying in the field. The aforesaid statement of the PW-2 eloquently indicates that the said witness had arrived at the place of occurrence after culmination of the occurrence and found the victim senseless. He had not witnessed the occurrence of assaulting the victim by the appellants. Thus, the aforesaid statement of the informant remained uncorroborated by PW-2.

18. As per the prosecution case several persons had arrived at the place of occurrence responding the hulla made by the informant and rushed her to her house. PW-2 has stated in Para-27



of his cross-examination that Ayub, Qaum, Dobhi and others arrived at the place of occurrence 2-3 minutes later to his arrival and Ayub had arrived there preceding to him. But the aforesaid independent witnesses have not been examined by the prosecution in corroboration of the ocular evidence of the informant and no plausible and convincing reason has been assigned by the prosecution for their non examination. Hence, the adverse inference is drawn against the prosecution and the aforesaid ocular evidence of the informant remains uncorroborated by any independent witness of the occurrence.

19. From perusal of the medical evidence adduced by the prosecution it appears that ocular evidence of the prosecution also does not stand corroborated by the medical evidence. As as per Paras-3 and 4 of examination-in-chief of the informant, the accused persons assaulted her below her waist, thigh and on the eye which means the informant has sustained altogether three injuries in the assault. But from perusal of evidence of the doctor PW-5 and injury report (Ext.1), it appears that doctor has found altogether six injuries on her person, besides the bruise with swelling on right eye and bruise over right thigh the doctor has found bruise over right forehead, bruise over right aspect of the neck, bruise over mid chest and bruise over left scapular region.



Doctor has not found any injury below the waist of informant.

20. From perusal of the Paras-22 & 24 of the cross-examination of the informant, it appears that in Para- 22 of her cross-examination, she had stated that she has rushed to the Police Station 10-15 days later on not obliging the verdict of the Panches given thrice by the accused persons at the instance of the Panches. But in quite contradiction to the aforesaid statement of the informant she has stated in Para-24 of her cross-examination that police had arrived at her house 10-15 days later and recorded the case. Moreover, the aforesaid statement of the informant on which the police had lodged the case. **has been** concealed by the prosecution and not brought on record. More so from perusal of the record and complaint petition filed by the informant, it appears that the occurrence is said to be of 05.06.2008 and the aforesaid complaint petition was received by the learned CJM on 11.06.2008 i.e. after six days of occurrence. Thus, there appears to be quite contradiction in statement of the informant regarding the lodging of the case. As as per the statement of the informant given by her at one place she had rushed to the Police Station 10-15 days later to the occurrence on failure of the panchayati thrice at the instance of the panches while at another place she has stated that 10-15 days later to the occurrence police *suo motu* had arrived at her house



and recorded the case but the aforesaid complaint petition indicates that the informant herself lodged the complaint petition in the court of CJM after six days of the occurrence. Thus, the aforesaid contradictory statement given by the informant regarding lodging of the case creates serious doubt about the prosecution case and credential of the informant.

21. From the perusal of the record, it appears that the FIR was lodged by the police on 09.09.2008 at about 4:00 PM but the aforesaid FIR was sent to the Court of learned CJM on 13.09.2008 i.e. after inordinate delay of four days and the prosecution has not assigned any plausible and convincing reason for the aforesaid delay in sending the FIR to the Court which creates serious doubt about the prosecution case and in view of the non corroboration of the ocular evidence of the informant by any independent witnesses of the occurrence, medical evidence, contradictory statement given regarding the lodging of the FIR by the informant false implication of the appellant in the case cannot be ruled out.

22. In view of the aforesaid facts and circumstances, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable ocular and



documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellants are acquitted from the charges levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, this appeal is allowed.

23. Let a copy of the first and the last page of this judgment be handed over to the learned amicus curiae. Learned amicus curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
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