

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.252 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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Srimati Shanti Devi, wife of Sushil Das, resident of village Sipar, P.S. Basantpur,
District Siwan

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 253 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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Ram Bachan Prasad, son of Sukan Prasad, resident of village Sipar, P.S. Basantpur,
District Siwan

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.252 of 2003)

For the Appellant/s : Mr. Akhileshwar Kumar Shrivastava, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.253 of 2003)

For the Appellant/s : Mr. Rajnath Sharma, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-02-2018

Two appellants in both the appeals stand convicted under Sections 324/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and a fine of Rs.1000/- with default clause vide judgment and order dated 21.4.2003 passed by Sri Anant Prasad Srivastava, the then Ad hoc District and Sessions Judge, Presiding Officer, 1st Additional Fast Track Court at Siwan in Sessions Trial No. 445 of 1995/153 of 2002.



2. Prosecution case based on the statement of informant Niwal Das recorded on 3.8.1990 at about 11.30 A.M. is that while he was going along with his son Sunil (injured) aged about five years at about 10 A.M. there was a quarrel over tying of cattle on the land in between the land of his younger brother Sachidanand Das and Sushil Das and it is alleged that when the informant and his younger brother were returning, accused Sushil Das appeared in front of him and he abused him and informant was stopped from proceeding ahead and on hulla other persons assembled there and in the meantime accused Sushil Das (absconding), appellants Ram Bachan Prasad and Shanti Devi came there concealing acid in their hands and sprinkled acid on the face of the informant and his son Sunil causing injuries on their persons and thereafter they were taken to hospital.

3. On the basis of aforesaid narration Basantpur P.S.Case No. 81 of 1990 was registered under Sections 307 and 326 IPC and police after investigation submitted charge sheet showing the accused Sushil Das as absconder and cognizance has been taken and after commitment the case came to file of Sri Anant Prasad Srivastava, the then Ad hoc District and Sessions Judge, Presiding Officer, 1st Additional Fast Track Court at Siwan for trial and disposal.

4. During trial altogether seven witnesses have been examined on behalf of prosecution, they are P.W.1 Hansnath Prasad, P.W.2 Shiv Kumar Prasad, P.W.3 Shiv Nath Thakur, P.W.4 Shankar



Mishra, P.W.5 Chandrama Prasad, P.W.6 Sachidanand Das (injured) and P.W.7 Nand Kishore Prasad, who has proved Ext.1. It appears that all the witnesses except P.Ws. 6, who was injured, have been declared hostile and neither the informant nor the I.O. nor the doctor has been examined in this case and even the other injured, younger son of the informant has not been examined.

5. Apart from that, the following documents have been brought on record as Exhibits, they are Ext.1 formal F.I.R. and Exts.2 to 2/8 injury reports. It further appears that injury report has been brought on record under Section 294 Cr.P.C. On behalf of defence one witness has been examined, Ram Surat Prasad, who described the genealogy of the appellants and the informant from which it appears that they are agnates and he has also stated that a sale deed was executed in favour of Sukan Prasad, father of appellant Ram Bachan Prasad with respect to the land.

6. Learned trial court after conclusion of trial and on considering the evidence available on record has convicted the appellants in both the appeals under Sections 324/34 IPC and sentenced them as stated above.

7. Contention of learned counsel for the appellants is that the judgment of conviction is not sustainable in the eye of law on the ground that neither the informant nor the I.O. nor the Doctor has been examined in this case and the injury report has been brought on record



under Section 294 Cr.P.C., which is not permissible in the eye of law, as such, the injury report is not admissible and secondly Doctor has not been examined in this case and there is no expert opinion on the injury sustained by the injured by sprinkling of acid. It further appears that in this case except P.W.6 all other witnesses have been declared hostile and from the evidence of P.W.6 it appears that there are several discrepancies and inconsistencies in it as he is a resident of village Bithara, whereas P.O. village is Sipar and there is no evidence of sprinkling acid against any of the appellants rather it is general and omnibus allegation and there is land dispute between the parties and a sale deed has also been executed in their favour. Further submission is that even the burnt clothe has not been brought on record to show that the injuries are of acid.

8. Learned counsel for the State has defended the judgment on the ground that there is ocular evidence of throwing acid by P.W.6 but there is nothing in his cross examination to discredit his evidence and, as such, the conviction of the appellants appears to be just and proper and does not require to be interfered by this Court.

9. In the background of rival submissions of the parties, on evaluation of evidence it appears that this case is based on solitary evidence of P.W.6, who has stated about throwing of acid on him by accused persons causing injury to him but it appears from the record that neither Doctor has not been examined nor injury report has



legally been brought on record and this aspect of the matter has been considered by a Division Bench of this Court in a unreported decision in the case of **Rajeev Singh @ Rajeev Kumar vs. State of Bihar [Cr.Appeal(DB) No. 1310 of 2010]** wherein also the Doctor has not been examined as he died and the medical report has not formally proved by some other witness and this Court has discussed the same and formulated following points for consideration in paragraph-38 of the judgment, which are as follows :

“38. There are two situations:

- (i) One, where the prosecution has withheld the Doctor, and the post mortem report was exhibited formally by a person who is not acquainted with medical science; and
- (ii) If the Doctor is dead or cannot be found or who has become incapable of giving evidence or whose attendance cannot be procured without a prolonged delay or much expense, which to Court may appear to be unreasonable in the circumstances of the case and the post mortem report is exhibited by a person conversant with his signature and hand writing.”

and thereafter examined the matter and after considering the catena of decisions of the Hon’ble Apex Court as well of High Court has come to the conclusion in paragraph-46 of the said judgment, which is as follows :

“46. On consideration of provisions of law, particularly section 32 of the Evidence Act and conspectus of the decisions on the issue, we hold (a) where the prosecution has withheld the doctor and the injury report or post mortem report was exhibited formally by a person who is not acquainted with the medical science, the same would be inadmissible in evidence as the contents of the report would not stand provided.....”



and even under Section 294 Cr.P.C. his evidence cannot be recorded as Section 294 does not enumerate the injury report in the category as defined therein.

10. It further appears that in this case I.O. has also not been examined and there is land dispute between the parties and further there is story that they received burn injury and hence there must be burnt cloth which might have been seized but in absence of examination of I.O. that has also not been brought on record, considering the aforesaid facts and also considering the fact that injury report has also not legally been brought on record and there is no medical evidence as Doctor has not been examined and it is settled view that evidence of Doctor is substantive evidence not the injury report and in absence of medical evidence prosecution failed to establish that injury is caused by acid or not and, as such, conviction of appellants does not appear to be sustainable.

11. For conviction under Section 324 IPC also, examination of Doctor appears to be essential and this has been held by a learned Single Judge of this Court in a decision in the case of **Chandradeep @ Chandeeep and others vs. The State of Bihar : 2014(2) PLJR 286**. Considering the same the conviction of the appellants under Sections 324/34 IPC appears to be variance of law in absence of examination of Doctor. Moreover, there is no corroboration to ocular evidence of P.W.6, as such, the conviction under Sections 324/34 IPC



is not sustainable in the eye of law.

12. Accordingly, these appeals are allowed. Impugned judgment of conviction and order of sentence are set aside. As appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

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