

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.214 of 2013

Arising Out of PS. Case No.-68 Year-2005 Thana- KEOTI District- Darbhanga

Md. Amanullah S/o Late Junaid Alam Resident of Village- Jalwara, P.S.-
Keoti, District- Darbhanga. Appellant.

Versus

The State of Bihar Respondent/s

WITH
Criminal Appeal (SJ) No. 216 of 2013

Arising Out of PS. Case No.-68 Year-2005 Thana- KEOTI District- Darbhanga

1. Md. Quamre Alam S/o Late Abdul Kalam Resident Of Village-
Asraha, P.S.- Keoti, District- Darbhanga.
2. Gabbar @ Badre Alam S/O Late Abdul Kalam Resident of
Village- Asraha, P.S.- Keoti, District- Darbhanga. Appellants.

Versus

The State of Bihar Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 214 of 2013 and In Criminal Appeal (SJ) No. 216 of 2013)

For the Appellants	:	Md. Kamran, Advocate Md. Abul Kalim, Advocate
For the Informant	:	Mr. Vinay Kumar Mishra, Advocate
For the State	:	Mr. Z.Hoda, APP Mrs. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
Date : 03-12-2018

As both the criminal appeals have cropped up from the common judgment and order of conviction and sentence, hence, they are taken up together for consideration and disposed of by this common judgment.

2. Heard learned counsel for the appellants, learned counsel for the informant and learned APP for the State on both these criminal appeals.



3. These criminal appeals have been preferred against the judgment and order of conviction dated 20.02.2013 and order of sentence dated 22.02.2013 passed by Ad hoc Additional District and Sessions Judge-IV, Darbhanga in Sessions Trial No. 255 of 2006, arising out of Keoti P.S. Case No. 68 of 2005, whereby the learned trial court convicted the accused Gabbar @ Badre Alam, Md. Amanullah and Md. Quamre Alam under Section 448 and 313/34 Indian Penal Code (in short IPC) and further convicted Md. Quamre Alam and Md. Amanullah under Section 379 of the IPC and sentenced Md. Gabbar @ Badre Alam, Md. Amanullah and Md. Quamre Alam to undergo S.I. for one year each and also slapped them with a fine of Rs. 1,000/- each and in default of payment of fine to further undergo S.I. for one month each under Section 448 IPC and further sentenced the aforesaid three accused persons to undergo R.I. for ten years each and also slapped them with a fine of Rs. 5,000/- each and in default of payment of fine to undergo S.I. for six months each under Section 313 IPC and further sentenced convicts Md. Amanullah and Quamre Alam to undergo S.I. for a period of three years each and also slapped them with a fine of Rs. 1,000/- each and in default of payment of fine to undergo S.I. for two months each under Section 379



IPC. All the sentences were directed to run concurrently. .

4. Factual matrix of the case is that Keoti P.S. Case No. 68 of 2005 was instituted under Sections 448, 323, 384, 379, 354 and 307/34 of the Indian Penal Code against the accused Md. Quamre Alam, Gabbar @ Badre Alam and Md. Amanullah on the basis of written report dated 04.06.2005 filed by Mumtaj Farhat wife of Md. Imran with the allegation in succinct that on 04.06.2005 at 10 AM while she was sitting in her house located at Khirma Pathra Chowk abruptly Md. Quamre Alam, Gabbar, Amanullah and five unknown miscreants armed with weapons intruded into her room and Md. Quamre Alam pointed revolver on her temple while Md. Amanullah and others badly assaulted her and made her half-dead. When her husband rushed to her rescue they also badly assaulted him and made him half-dead. Both the victims sustaining injury fell senseless, on the ground of the room. Her nose was bleeding. In the mean time, Amanullah snatched ear ring, necklaces, golden earring and ring from her possession while Md. Quamre Alam took away bag containing Rs. 1,20,000/-. Responding hulla Chalitra Yadav, Md. Zuniad, her sister-in-law Talat and several other persons arrived there and rushed them to Primary Health Center Khirma Pathra to accord



them treatment.

5. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons under Sections 147, 149, 448, 323, 325, 307, 313, 354, 379 and 504 of the Indian Penal Code.

6. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of Sessions and after commitment and on transfer finally the case came in the seisin of Ad hoc Additional District and Sessions Judge-IV, Darbhanga for trial.

7. Charge against the accused persons, namely, Md. Quamre Alam and Amanullah was framed under Section 379 IPC while charge against accused Md. Quamre Alam, Gabbar and Md. Amanullah was framed under Sections 307/34, 448 and 313 IPC. Charges were read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether ten prosecution witnesses namely, Md. Zunaid as PW-1, Chalitar Yadav as PW-2, Talat Parveen as PW-3, Imran Ahmad as PW-4, Informant Mumtaz



Farhat as PW-5, Dr. Krishna Kumar Mishra as PW-6, Dr. Sangeeta Singh as PW-7, I.O. Dinesh prasad as PW-8, Dr. Alka Mishra as PW-9 and Mohan Mishra as PW-10. Out of the aforesaid witnesses, PW-10 happens to be formal witness who has proved the initial of Dr. K. Durani on the ultrasound report marked as Ext. 7. Prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. 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 and falsely implicated in the case. Accused persons have also examined one witness, namely, Dr. Sangeeta Singh as DW-1 and filed and proved some documents by way of documentary evidence in buttress of their case.

10. After hearing the parties and perusing the record, the learned trial court passed the aforesaid judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, convict Md. Amanullah has preferred Criminal Appeal (SJ) No. 214 of 2013 and convicts Md. Quamre Alam and Gabbar @ Badre Alam have preferred Criminal Appeal (SJ) No. 216 of 2013.



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

13. It is submitted by learned counsel for the appellants that no witnesses examined by the prosecution has stated about pregnancy of the informant and her miscarriage during the course of occurrence. The doctor, who has examined the victim, has also not found any sign of miscarriage. Thus, the offence under Section 313 IPC does not stand established by the prosecution. It is further submitted that there is vital contradiction between the testimony of the witnesses regarding the manner of the occurrence, falling the victim senseless during the course of occurrence and assault etc. It is further submitted that as per the witnesses' account occurrence took place for half an hour and as per prosecution case both the victims were badly assaulted by the appellants making them half-dead and they fell senseless but the doctor examining the informant has found only one abrasion on his head and complain of pain as made by the victim (informant). Barring the aforesaid abrasion no external injury was found by the doctor and moreover the injury report of the husband of the informant has not been brought on record.



Thus, the ocular evidence does not stand corroborated by the medical evidence. It is further submitted that as per the prosecution case Md. Quamre Alam pointed pistol on the temple of the informant and as per the witnesses' account he assaulted the informant by means of revolver and snatched the bag of the informant containing Rs.1,20,000/- and the said Md. Quamre Alam was apprehended by the police on the spot but I.O. in para-11 of his cross-examination has stated that no revolver or money was recovered from the possession of the Quamre Alam and the looted ornaments has also not been recovered from the possession of the appellants. Thus, the offence under Section 379 IPC also does not stand established by the prosecution. It is further submitted that PW-1 Md. Zunaid does not happen to be eye witness of the occurrence. PW-2 Chalitar Yadav has not supported the occurrence of assault or theft. PW-3 Talat parveen is the sister-in-law of the informant, PW-4 is the husband of the informant and PW-5 Mumtaz Farhat is the informant herself and they happen to be interested witnesses of the case. It is further submitted that as per the prosecution case itself occurrence took place at Khirma Chowk and several persons had witnessed the occurrence but no other independent witness has been examined by the prosecution in corroboration of the prosecution case. It is



also submitted that there is animosity between the parties as partition suit and a proceeding under Section 144 Cr.P.C. are pending between the parties and due to the aforesaid animosity the prosecution party has falsely implicated the appellants in the case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, the aforesaid judgment and order of conviction and sentence passed against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP for the State and learned counsel for the informant advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has corroborated the prosecution case in toto and other witnesses examined by the prosecution have also corroborated the prosecution case by giving consistent testimonies. The ocular evidence also stands corroborated by the medical evidence and the learned trial court correctly appreciating the facts and evidence available on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these



criminal appeals are shorn of merit and are liable to be dismissed.

15. From perusal of the record, it appears that to substantiate its case prosecution has examined altogether five material witnesses in the case i.e. PW-1 Md. Zunaid, PW-2 Chalitar Yadav, PW-3 Talat Parveen, PW-4 Imran Ahmad and PW-5 Mumtaz Farhat (informant). Out of them PW-3 happens to be the sister-in-law and PW-4 brother-in-law of the informant while PW-5 is the informant herself. From perusal of testimony of PW-2, who happens to be independent witness of the occurrence, it appears that in his examination-in-chief itself he has stated that he has not witnessed any person injured in the occurrence. He has also not supported the occurrence of miscarriage and commission of theft by the appellants at the time of occurrence. PW-1 Md. Zunaid who also happens to be independent witness of the occurrence though has made an abortive bid to support the prosecution case in his examination-in-chief regarding the criminal trespass, assault and theft but he has not stated about any pregnancy of the informant and its miscarriage during the course of occurrence or oozing any blood from her private part due to the assault made by the appellants during the course of occurrence. As per the prosecution case,



Md. Quamre Alam pointed revolver on the temple of the informant while other accused persons assaulted her but in quite contradiction to the aforesaid prosecution case PW-1 has stated that Quamre Alam assaulted the informant by means of butt of revolver. Regarding the theft of the ornaments, as per the prosecution case, it is the Amanullah who had snatched away the ornaments of the informant but the said witness has not stated about snatching of the ornaments of the informant by Amanullah rather he has given a vague statement regarding the aforesaid theft as he has stated in his examination-in-chief that ornaments of her hand, leg and neck was stolen during the course of occurrence. He has not taken name of any of the appellants heisting the aforesaid ornaments. The said witness has stated in his cross-examination that when he witnessed for the first time Mumtaz she was not bleeding, when he arrived at the place of occurrence he did not find any blood on the person of the Mumtaz and there was no sign of injury on the person of the Mumtaz while she was senseless. The aforesaid statement of PW-1 indicates that he had not found any injury on the person of the victim though as per the prosecution case the appellants were armed with the weapons and badly assaulted the victim and her husband and as per the account of the witnesses the



occurrence took place for half an hour. Thus, the aforesaid witness does not appear to have supported the prosecution case and has given the statement in quite contradiction to the prosecution case as well as the testimony of the witnesses.

16. From perusal of testimony of PW-3 Talat Parveen, PW-4 Imran Ahmad and PW-5 Mumtaz Farhat (informant), it appears that though they have made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case as adumbrated in the written report but from perusal of testimony of PW-3 Talat Parveen, it appears that she has given statement in quite contradiction to the prosecution case. As as per the prosecution case, Quamre Alam pointed revolver on the temple of informant but in quite contradiction to the aforesaid prosecution case PW-3 in her examination-in-chief has stated that Quamre Alam assaulted her sister-in-law Mumtaz by means of butt of revolver. As per the prosecution case as adumbrated in written report, both the informant and her husband fell senseless at the place of occurrence sustaining injury but in quite contradiction to the aforesaid prosecution case PW-3 has stated in her cross-examination that her sister-in-law (informant) was not completely senseless rather was in sense. PW-3 Talat Parveen



has claimed herself to be present at the place of occurrence at the time of occurrence along with the informant but the informant has not stated about her presence at the place of occurrence at the time of occurrence rather has stated in written report that responding hulla her sister-in-law Talat and others arrived at the place of occurrence and rushed the informant and her husband to hospital. Moreover PW-3 happens to be sister-in-law of the informant and she has stated in her cross-examination that she pays visit to the house of her brother located at Khirma Chowk from much before the occurrence which means that she is acquainted with the topography of the house of the informant but in her cross examination she has vented her inability to disclose the number of rooms in the house. The said statement of the informant and the aspect of the case goes to bely the presence of the said witness at the place of occurrence at the time of occurrence. As per the statement of the informant as given by her in para-1 of her examination-in-chief blood was oozing out from her private parts but in quite contradiction to the aforesaid statement of the informant PW-3 has stated that the blood did not ooze out from the person of the informant and her attire was also not sodden with blood.

17. PW-4 Imran Ahmad, who happens to be husband



of the informant, has also stated in his examination-in-chief in quite contradiction to the prosecution case that Quamre Alam assaulted the informant by means of revolver 2-3 times. In quite contradiction to the aforesaid statement of informant regarding oozing out blood from her private part he has stated in para-8 of his cross-examination, that barring slight bleeding from her nose blood did not ooze out from any part of her person.

18. As per the prosecution case the accused persons were armed with weapons and badly assaulted informant and her husband and made them badly injured and half dead and both fell senseless at the place of occurrence sustaining injury. But in quite contradiction to the aforesaid prosecution case, the informant (PW-5) has stated in para-3 of her cross-examination that there was no injury on her person. In para-5 of her cross-examination she has further stated that she was in sense from the place of occurrence to the Khirma Hospital. In para-9 of her cross-examination, she has also stated that she fell on the ground sustaining assault but did not fell senseless. In para-11 of her cross-examination she has stated that her husband did not fell senseless. As per the prosecution case, and account of witnesses the husband of the informant was also badly assaulted by means of weapons for half an hour and was made half dead



at the hands of the appellants which means that the husband of the informant must have sustained several injuries on his person. But in quite contradiction to the aforesaid prosecution case and witnesses account informant has stated in para-12 of her cross-examination that there was no injury on the person of her husband and injury report of the husband of the informant has also not been brought on record though in para-13 of her cross-examination, she has stated that her husband was treated in Khirma and Keoti hospital.

19. Moreover, the aforesaid three witnesses happen to be interested witness of the case being the informant, her husband and sister-in-law. It is the settled principle of law that the testimony of the interested witnesses should not be discarded outrightly rather it should be scanned and scrutinized cautiously and carefully. On careful and cautious scanning and scrutinizing of the testimony of the aforesaid interested witnesses, I find that there is material contradiction between the prosecution case and testimony of the aforesaid witnesses and their testimonies inter se regarding manner of occurrence, assault, injury and oozing of blood from the private part of the informant. Moreover PW-3 does not appear to be present at the place of occurrence at the time of occurrence as discussed by



me herein above. Thus, the testimony of the aforesaid three witnesses are not worth credence and reliable and does not inspire my confidence to convict the appellants relying on them.

20. So far as the theft of ornaments by Amanullah and Rs.1,20,000/- by Quamre Alam is concerned, no ornaments has been recovered from the possession of Md. Amanullah. Though Quamre Alam was apprehended by the police on the spot but I.O. PW-8 Dinesh Prasad in para-11 of his cross-examination has stated that no money, revolver and ornaments was recovered from possession of Quamre Alam. As per the case of the prosecution Quamre Alam pointed revolver on the temple of informant and as per witnesses account he assaulted informant by means of butt of revolver but the I.O. has not recovered any revolver from the possession of the said accused which creates serious doubt about the prosecution case and the testimony of the witnesses regarding assault made by the Quamre Alam.

21. So far as the offence under Section 313 IPC is concerned, none of the witnesses examined by the prosecution, barring PW-4 and PW-5 has stated about pregnancy of the informant and its miscarriage during the course of occurrence. They have also not stated that the doctor of D.M.C.H. divulged



them that the pregnancy of three months of the informant has been aborted. Though, PW-4 has stated about oozing out of blood from the uterus of the informant but from perusal of the testimony of Dr. K.K. Mishra (PW- 6) who happens to be the doctor of D.M.C.H., Darbhanga, it appears that the doctor has not reported about the same. From perusal of the injury report furnished by the aforesaid doctor (Ext.3), it appears that the doctor has neither found any blood oozing from the uterus of the informant or miscarriage. He has also not reported about abortion of pregnancy of three months of the informant as stated by PW-4 & PW-5. Doctor has only found one old abrasion on skull, simple in nature caused by hard and blunt substance. From perusal of the testimony of Dr. Sangeeta Singh (PW-7) and the injury report furnished by her, marked as Ext.3/1, it appears that the said doctor has also not found any bleeding from the uterus of the informant and has also not reported about any miscarriage or any abortion of the pregnancy of the informant. She has simply reported about finding swelling and abrasion on the left skull, pain on the chest and in the lower abdomen as claimed by the informant, simple in nature caused by hard blunt substance. Though in para-2 of her examination-in-chief she has stated that on the examination of the victim on



second occasion at around 6:30 PM when the informant approached her again she found product of conception and referred her to D.M.C.H. for further evaluation on 04.06.2005. But from perusal of the injury report marked as Ext.3 and the testimony of Dr. K.K. Mishra, (PW-6) Dr. of D.M.C.H. it appears that the informant had arrived in the said hospital after five days on 09.06.2005 and the doctor of the said hospital has not found any product of conception as reported by Dr. Sangeeta Singh who happens to be Medical Officer of the P.H.C., Keoti. The said Dr. Sangeeta Singh has also stated in para-5 of her cross-examination that she did not find any external injury nos.1 & 3 i.e. pain on the chest and lower abdomen which has been reported by the informant. From perusal of the testimony of Dr. Alka Mishra (PW-9), who happens to be private doctor, it appears that she had examined the informant and has reported that informant had made complain of amenorrhea bleeding for two months and profuse bleeding from her private part for the last three days but in para-2 of her cross-examination she has stated that on examination of the abdomen of Mumtaz Farhat i.e. the informant she did not find any abnormal finding and on examination of her uterus it was found to be of normal size and she did not find any bleeding from her uterus. Therefore, she



had prescribed only general drugs to the informant. The said private doctor has examined the informant on 10.06.2005. She has also not reported about finding any product of conception of the informant. Moreover from perusal of the testimony of the aforesaid doctor it appears that informant was suffering from amenorrhea bleeding for two months while the occurrence is of 04.06.2005 and she was examined by the said doctor on 10.06.2005 which means that she was suffering from the aforesaid bleeding since much before the occurrence. Thus, from perusal of the aforesaid evidence of the doctor, I find that the prosecution has utterly and miserably failed to substantiate any pregnancy of the informant and her miscarriage during the occurrence due to assault made by the appellants. Thus, the prosecution has failed to prove the charge levelled against the appellants under Section 313 IPC beyond all reasonable doubt.

22. From perusal of the record, it appears that as per prosecution case occurrence took place at Khirma Chawk and several persons had witnessed the occurrence but no independent witnesses barring PW-1 and PW-2 have been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for their non-examination. Hence, adverse inference is drawn against the



prosecution.

23. PW-2, Chalitar Yadav has stated in his cross-examination that there is land dispute between both the parties and PW-4 has stated in para-11 of his cross-examination that Md. Khalid has sold out his land to appellant Quamre Alam and there was litigation between him, Md. Khalid and Quamre Alam after purchasing the aforesaid land by Quamre Alam. From perusal of the rejoinder petition filed in the Partition Suit No. 157 of 2004 marked as Ext. D and Ext. D/2 which is the order of this High Court passed in Cr. Revision No. 644 of 2009, it appears that the partition suit is pending between the parties since 2004. Thus, from perusal of the aforesaid ocular evidence of prosecution and documentary evidence of the appellant it appears that the partition suit is pending between the parties since before the date of occurrence. Hence, both the parties are on inimical terms. Enmity cuts both the edges. But, in view of the contradiction regarding manner of the occurrence, assault, injury and oozing out of the blood from the person of the informant between the prosecution case and the statement of the informant and the testimonies of the witnesses *inter se*, non-recovery of any incriminating articles from the possession of the appellants, non-corroboration of the ocular evidence by the



medical evidence, non-examination of independent witnesses of the occurrence false implication of the appellant at the hands of the prosecution party due to aforesaid animosity cannot be ruled out.

24. In the facts and circumstances of the case, 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 evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellants 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, Both these appeals are allowed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
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