

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.576 of 2015**

Arising Out of PS.Case No. -52 Year- 2003 Thana -MATIHANI District- BEGUSARAI

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1. Mokhtar Singh @ Moktar Singh
 2. Ram Balak Singh
 3. Wakil Singh
 4. Raja Ram Singh, all sons of Late Parmeshwari Singh
 5. Sanjeet Singh, son of Ram Balak Singh, all residents of village-Sihma Tola, Baburbanni, P.S. Matihani, District - Begusarai

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Nawal Kishore Singh-Advocate
Mr. Upendra Mishra-Advocate
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.
For the Informant : Mr. Pramod Kumar-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 18-06-2018

Appellants Mokhtar Singh, Sanjeet Singh, Ram Balak Singh, Wakil Singh and Raja Ram Singh have been found guilty for an offence punishable under Section 341/34 of the I.P.C. and each one has been sentenced to undergo S.I. for one month, under Section 307/34 of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 504/34 of the I.P.C. and sentenced to undergo S.I. for one month, under Section 429/34 of the I.P.C. and sentenced to undergo R.I. for five years, under Section 27 of the Arms Act and sentenced to undergo R.I. for three years while Sanjeet Singh has independently been found guilty



for an offence punishable under Section 379 of the I.P.C. and sentenced to undergo R.I. for one year with a further direction to run the sentences concurrently with the further direction that the period already undergone during course of trial be set off in accordance with Section 428 of the Cr.P.C. vide judgment of conviction dated 22.08.2015 and order of sentence dated 27.08.2015 passed by the Additional Sessions Judge-7th, Begusarai in Sessions Trial No.442 of 2006.

2. Pandit Singh (PW-4) filed written report disclosing therein that on 18.10.2003 at about 8.00 a.m. while he was at his Dera, Mokhtar Singh, Sanjeet Singh, Ram Balak Singh, Wakil Singh and Raja Ram Singh, his co-villagers forming an unlawful assembly came to his house and abused. On his protest, Sanjeet Singh took out pistol and shot at having miraculous escape. Mokhtar Singh and Raja Ram Singh also took out their pistols and threatened him that in case of raising alarm, he will be shot at. Then, Mokhtar Singh ordered to break leg of his mare, which was tied at his dera over which, Ram Balak Singh and Wakil Singh brutally assaulted his mare causing fracture of leg. Then thereafter, Sanjeet Singh lifted radio. The motive for the occurrence has been shown as he frequently declined advancement of the accused persons whereunder they tried to have the service of his mare.



3. On the basis of the aforesaid written report, Matihani P.S. Case No.52 of 2003 was registered followed with an investigation. It is evident that during course of investigation, the mare of informant tied and in the aforesaid background, chargesheet was submitted for an offence under Sections 341, 307, 379, 504, 429/34 of the I.P.C. and Section 27 of the Arms Act whereunder cognizance were also taken and accordingly, appellants/ accused faced trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination, statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that on account of demand of ploughing charge on account of engaging tractor of accused persons, prosecution party got this case filed putting false and frivolous allegation. However, neither oral nor documentary evidence has been adduced at the end of the defence.

5. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1, Kailash Singh, PW-2, Ramesh Singh, PW-3, Sudhir Singh, PW-4, Pandit Singh, PW-5, Kapildeo Ram and PW-6, Dr. Bachneshwar Mishra. Side by side, had also exhibited, Exhibit-1, signature of Officer-in-charge over the formal F.I.R. Exhibit-2, is the injury report. As stated above, nothing



has been adduced in defence.

6. While challenging the judgment of conviction and sentence, it has been submitted at the end of the learned counsel for the appellants that the finding recorded by the learned lower Court happens to be unjust, cryptic as well as suffers from conjecture and surmises in the background of non-appreciation of the materials in its right perspective. In order to justify the same, it has been submitted that there happens to be inordinate delay in launching the case, which has not been explained at the end of the prosecution. Further elaborating the point, it has been submitted that in a criminal case, the delay plays a vital role. The delay in filing case is a circumstance, which could be perceived in the background of the totality of the event. When the evidence in its entirety is gone through, it is apparent that present prosecution happens to be nothing, but a malicious one filed with ulterior motive. Apart from this, it has also been submitted that the case was registered on 19.10.2003 and was received at the office of the Chief Judicial Magistrate on 22.10.2003 that means to say, beyond the period of 24 hours being in contravention of the Section 157 of the Cr.P.C. The cumulative effect suggest that instant prosecution happens to be ante-dated, whereupon would not be relied upon.

7. Furthermore, it has also been submitted that when the



evidence of PW-1 and PW-2 is taken together, who are none else than brother as well as son of the informant, the same speak a lot. From the evidence, it is crystal clear that they have categorically stated with regard to launching of the case on the date of occurrence itself while from the written report, it is apparent that it was filed approximately after 11 days without any explanation. In the aforesaid background, when the evidence of I.O. (PW-5) is gone through, it is apparent that the fault at the end of the prosecution on that very score, is found duly exposed. In its continuity, it has also been submitted that none of the witnesses are reliable in the background of the fact that they have not been named in the written report and so, their presence happens to be patch work. Therefore, the inconsistency as well as improbability persisting in the prosecution case coupled with objective finding of the I.O. relating to the place of occurrence negating the soundness of the prosecution version and the cumulative effect did not justify the finding having been recorded at the end of the learned lower Court.

8. On the other hand, the learned Additional Public Prosecutor controverting the submission made on behalf of the learned counsel for the appellants has submitted that witnesses are consistent over genesis as well as manner of occurrence. It has further been stated that there happens to be no requirement in the eye of law that there should be presence of names of witnesses in the F.I.R. though it should be. Investigation means to collect the evidence and



for that, I.O. is responsible irrespective of the fact whether witness has been named in the F.I.R. or not. If the submission of the learned counsel for the appellants is accepted, then in that circumstance, there would not be necessity of investigation and further, like a complaint case, police case also has to be at the whims of the informant. So, submitted that the finding recorded by the learned lower Court did not require interference.

9. Before entering into analyzing the evidence of the PWs, conduct of the accused/ appellants has also to be taken note of. From the record, it transpires that PW-2 was partly cross-examined and then thereafter, he was discharged as learned counsel failed to cross-examine the witness. In likewise manner, PW-3 was not at all cross-examined and that happens to be also the status of PW-4, informant as well as PW-6. So, only PW-1, PW-2 and PW-5 to some extent were cross-examined at the end of the appellants/accused.

10. To prove a fact in issue, oral as well as documentary evidence, if any, is required, but for that, number of witnesses are not at all relevant factor and that happens to be duly acknowledged under Section 134 of the Evidence Act. In likewise manner, the evidence includes examination-in-chief, cross-examination and re-examination, if any, as provided under Section 138 of the Evidence Act. Cross-examination is the methodology whereunder veracity of a witness is



tested. It has further been held that in case, the witness have not been cross-examined on a particular point, then in that circumstance, the advisory will not be entitled to raise such plea and further, would not be allowed to argue that on the score of deficiency at the end of witness his testimony be rejected. In ***Gian Chand & others vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.)***, it has been held:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his



evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

11. Now, coming to the evidence on record, it is apparent that informant has not been cross-examined. Therefore, there happens to be no occasion to discredit his testimony, more particularly when by way of non-cross-examination, he could not availed an opportunity to explain those circumstances as pointed out by the appellants during course of submission. So, the evidence of PW-4, informant could not be found duly clouded on the ground whatever been procured at the end of the defence from PW-1 or PW-2. Moreover, it is apparent from the written report that presence of PW-1, PW-2, PW-3 did not find place.



12. It is further evident from the evidence of PW-4 that he had gone to police station along with injured mare, but the police had not registered the case. Then thereafter, after the death of mare, he again approached 8-10 days then after the alleged occurrence and submitted written report, which was accepted post mortem over dead mare was conducted at the police requisition and so, the delay whatever been raised at the end of the appellants in launching of the prosecution is found duly explained. Now, coming to the evidence, it is apparent from the evidence of PW-4 that on the alleged date and time of occurrence, he was at his Dera where accused Mokhtar Singh, Sanjeet Singh, Ram Balak Singh, Wakil Singh and Raja Ram Singh came, out of whom, Raja Ram Singh and Mokhtar Singh were armed with pistol while remaining were armed with lathi. When they came at his Dera, they demanded his mare, on his refusal, they began to abuse and then, on an order of Mokhtar Singh, Sanjeet Singh fired, but he had not sustained injury. Then, it has also been said that Mokhtar Singh again ordered to kill, whereupon Sanjeet Singh had disclosed that he had no cartridge. Then Mokhtar Singh ordered to kill his mare, whereupon Ram Balak Singh and Wakil Singh began to assault his mare by lathi as a result of which, right leg of his mare became fractured. Then, it has also been disclosed that Ram Balak thrust lathi in the anus of the mare as a result of which, mare fell down. Mokhtar Singh, Sanjeet Singh, Raja Ram Singh assaulted with butt of pistol as



a result of which, he became injured. Sanjeet Singh lifted his radio and then thereafter, he took his mare to the Mukhiya and as per his instruction, taken to police station where police had not entertained his allegation. After death of mare, he had filed written report.

13. From the evidence of PW-4, it is apparent that three persons were armed with pistol, but save and except Sanjeet Singh, none had used the same. Had there been an intention at the end of the accused persons to commit murder of the informant, then in that circumstance, they would not have simply kept the pistol and this part indicates that irrespective of presence of pistol as alleged, appears to be deficient one to justify the conviction and sentence recorded under Section 307/ 34 of the I.P.C. as well as Section 27 of the Arms Act. So far conviction under Section 504/34 of the I.P.C. is concerned, there happens to be no disclosure at the end of the prosecution that by such activity, there was any ground or an occasion to provoke breach of peace by enticing the prosecution version. As such, same is not at all found substantiated. Furthermore, manner whereunder Sanjeet Singh has been alleged to have lifted radio is also found suspicious one and to that extent also, the finding recorded by the learned lower Court is not concurred. With regard to remaining offences that means to say, Section 341/ 34 and 429/34 of the I.P.C. are concerned, that is found duly substantiated, more particularly, considering the evidence of PW-4 along with PW-6, the Veterinary doctor, who had examined



the mare and found the injury, fracture of the leg and so, the same is affirmed. Now, coming to sentence, each one of the appellants namely Mokhtar Singh, Sanjeet Singh, Ram Balak Singh, Wakil Singh and Raja Ram Singh are directed to pay Rs.5,00/- (five hundred) each and in default thereof, to undergo S.I. for one month each additionally, under Section 341/34 of the I.P.C. as well as to pay fine of Rs.20,000/- (twenty thousand) each and in default thereof, to undergo S.I. for two years each, under Section 429/34 of the I.P.C., retaining the quantum of Rs.25,000/- (twenty five thousand) granted by the learned lower Court to the informant under Section 357 of the Cr.P.C. as compensation. In terms thereof, this appeal is partly allowed. Aforesaid amount be deposited within four weeks, till then bail bond of appellants are allowed to survive. In case of non-deposit of amount, the learned lower Court will be at liberty to proceed against the appellants in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

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