

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.711 of 2015

Arising Out of PS.Case No. -35 Year- 2008 Thana -BUXAR MUFFSIL District- BUXAR

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1. Ghurul Rai
2. Ram Pujan Rai
3. Kesheo Rai @ Kesho Rai All Sons of Late Raghunath rai Resident of Village-
Ismilepur, P.s Buxar(m) district Buxar Appellant/s

Versus

1. The State of Bihar Respondent/s
with

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Criminal Appeal (SJ) No. 743 of 2015

Arising Out of PS.Case No. -35 Year- 2008 Thana -BUXAR MUFFSIL District- BUXAR

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1. Rabindra Kumar @ Rabindra Kumhar Son of Late Gauri Shankar Kumhar
resident of village - Gajadhar Ganj, P.S. Buxar (T), District - Buxar

..... Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

(In CR. APP (SJ) No.711 of 2015)

For the Appellant/s : Mr. Md. Manzar Karim- Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh- APP

(In CR. APP (SJ) No.743 of 2015)

For the Appellant/s : Mr. Bachan Jee Ojha- Adv.

For the Respondent/s : Mr. Sujit Kumar Singh- APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 26-07-2018

Cr. Appeal No. 711/2015 is non represented,
whereupon Sri Md. Manzar Karim has been requested to assist the
court as an Amicus Curiae.

2. Appellant, Ghurul Rai, Ram Pujan Rai, Kesheo Rai
@ Kesho Rai (appellants of Cr. Appeal No. 711/2015) and Rabindra
Kumar @ Rabindra Kumhar (appellant of Cr. Appeal No. 743/2015)
have been found guilty for an offence punishable under Section 307 of
the IPC and each one has been sentenced to undergo R.I for ten years,
under Section 341 of the IPC, each one has been sentenced to undergo
S.I for six months. There also happens to be description of imposition
of fine against each of the appellant to the tune of Rs. 10,000/-



however, not specified under what Section, with a further direction that in case of payment, the same be handed over to the victim with a default clause to undergo S.I for one year, with a further direction to run the sentences concurrently by the judgment of conviction dated 07.10.2015 and order of sentence dated 10.10.2015 by the Additional Sessions Judge, IVth, Buxar in Sessions Trial No. 361/2008.

3. Rinku Miyan, (PW-5) while was admitted at Singh Medical Research Centre, Varanasi gave his fard-beyan on 15.03.2008 at about 1.00 P.M before the police official of Buxar Muffasil, P.S. namely Rajdeo Rai, divulging the fact that on 11.03.2008 at about 7.20 P.M, while he was returning from Buxar market to his house through Itarhi crossing, he met with his brother Dullah Mian as well as his *Mausera* bhai, Md. Nesar Ahmad over a culvert near the Itarhi *gumti* whereupon, he inquired as to where they were going over which they disclosed that as his *bhabho* is not feeling well, on account thereof, they were going to purchase medicine. Then thereafter, he proceeded there from. When he reached near the temple of Santoshi Maa lying at railway colony ahead of culvert, Ghurul Rai, Ram Pujan Rai, Kesho Rai, Anjali Devi, Rabinder Kumar along with two unknown persons armed with sharp cutting weapon (*fasuli*) came out from a bush lying by the side of the road and then, threw him on the ground and all of them began to assault with the *fasuli* causing injury over his neck, both hands, both palms. During midst thereof, Ram Pujan Rai gave *fasuli* blow over right side of the stomach whereupon, his intestine came out. On his alarm, the persons of the



locality tried to come whereupon the accused persons threatened that if, they intervene, they will be given same treatment. During midst thereof, his brother Dullah Mian and Nesar Ahmad came, seeing whom, the accused persons began to flee. He had identified them in a flash light of a motorcycle. The accused persons were also uttering during course of fleeing that they have inflicted *fasuli* blow. Further, Ram Pujan Rai said that he had inflicted *fasuli* blow over his stomach and so he will certainly die. Anjali Devi was saying that let he be put over railway track. She had also stated that in case he survives, then in that circumstance, it will be a Herculean task to them to confront. Then thereafter, he was lifted to Sadar hospital where, after giving first aid, he has been referred to specialized hospital for proper treatment. It has further been disclosed that on account of dispute relating to *Gair Majarua* land with a lady which was being supported by him, the accused persons have committed the occurrence. Md. Dullah Miah and Md. Nehsar Ahmad stood as FIR attesting witnesses.

4. After registration of Buxar Muffasil P.S. Case No. 35/2008, investigation proceeded and after concluding the same, charge sheet has been submitted whereupon, the trial commenced and concluded in a manner, subject matter of these appeals.

5. 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. It has further been pleaded that there happens to be strained relationship persisting amongst the parties since before and, in the aforesaid background both the parties are on



litigating terms whereupon, after taking the police official in connivance got this case filed. However, nothing has been adduced in defence.

6. Prosecution in order to support its case, had examined altogether 9 PWs, who are PW-1, Abdul @ Dullah Miya, PW-2, Nesar Ahmad, PW-3, Ashok Kumar, PW-4, Ram Pravesh Chaudhory, PW-5, Rinku Miya, PW-6, Nargis, PW-7, Raj Deo Ram, PW-8, Dr. Ajay Kumar Pandey and PW-9, Sripat Mishra. Side by side had also exhibited, Ext.1, signature of PW-2 over the fard-beyan, Ext.2 fard-beyan, Ext.3, Formal FIR, Ext.4, endorsement over fard-beyan, Ext.5 series- injury report. As stated above, nothing has been adduced on behalf of defence.

7. While assailing the judgment of conviction and sentence, the learned Amicus Curiae as well as learned counsel for the appellants have submitted that the victim PW-5 might have sustained injury at different place, in different manner, by different persons but, in the background of strained relationship amongst the parties, cases being fought since before, getting a golden opportunity conspired, connived the plank and executed by taking the police in their collusion and that happens to be the reason behind, recording of FIR after four days, in spite of the fact that there happens to be consistent version at the end of the prosecution witnesses including the injured PW-5 himself that just after the occurrence, they met with police official PW-7, divulged the occurrence but, the reason best known to the police official FIR was not registered. Being cognizable offence, it



was incumbent upon officials to register FIR. If the police official was not ready to record the statement of the victim, considering his condition even in that event, as the police officials himself acknowledged with regard to commission of cognizable offence could have recorded his own statement. That being so, FIR happens to be collusive document hence could not be accepted at least with regard to its authenticity, genuineness, reliability. Furthermore, it has also been submitted that happens to be reason behind presence of so many infirmities right from initial prosecution version to the evidence having deposed during course of trial by the witnesses. The learned Lower Court completely overlooked the same but, if taken into consideration, would play an important role whereupon, the prosecution case is bound to fail. Exploring the same, it has been submitted that for the purpose of introduction of proper identification at an initial stage, the informant had stated that the assailants had disclosed regarding their activity while they were fleeing, at least an abnormal event and simultaneously, also pleaded that he had identified the accused in flash light of a motorcycle after arrival of Abdul as well as Nesar. Being co-villagers, those things were not at all warranted as, even in pitch dark night there would not be an occasion of mistaken identification and on that score there happens to be the consistent judicial pronouncement, so, even without having the aforesaid disclosure, the accused /appellants being a co-villager, in case were assailants, would have been properly identified. When the evidence of the witnesses are being taken on that very score, what



they deposed during course of trial, it is evident that PW-5 had given up the aforesaid theme considering to be hazardous to the prosecution while PW-1 as well as PW-2 have stated that during course of fleeing, accused Ghurul Rai was uttering that he had cut neck while Ram Pujan was saying that he had cut the stomach. Anjali was saying to keep him over the railway track. During examination-in-chief neither PW-1 nor PW-2 and PW-5 was consistent over manner of identification and in likewise manner, during cross-examination they contradicted each other.

8. Now coming to conduct of I.O, it has been submitted that PW-7 is the person who was gained over and that happens to be reason behind that without taking permission from the superior police officials he rushed to Varanasi after four days without having any kind of information with regard to physical condition of the informant PW-5, got the fard-beyan recorded, become investigating authority, conducted investigation scribed Para-1 to Para-111 of the case diary on the same day and then, procuring the injury report submitted charge sheet. However, as is evident the investigation, on all level did not find favour to the prosecution as, neither source of identification was there nor he had found the bush where the injured had alleged concealment of appellants since before. In likewise manner the bloodstain at place of occurrence neither was found nor seized. Not only this, he could not be able to examine the house owner in front of whose house the so alleged occurrence has been alleged to have taken place.



9. Furthermore, it has also been submitted that presence of Nargis, PW-6, wife of PW-5 is of great importance which comes against the prosecution as, none had claimed to have informed just after the occurrence rather the story goes as injured was lifted on a car of PW-3 and then taken to Sadar hospital. Interestedness of the witnesses are further found from the fact that PW-3 had not claimed that both the parties happens to be his co-villager then, how he could be able to identify the appellants in dock is a circumstance while PW-4 had not claimed identification of any of the accused. In sum and substance considering the evidences, circumstances, did not justify the finding recorded by the learned lower court whereupon, the judgment of conviction and sentence appears to be fit for annulment.

10. On the other hand, counter meeting with the submissions made on behalf of appellants, it has been submitted by the learned APP that in each and every case, there would be some sort of laches either at the end of the witnesses or investigating authority that did not mean that prosecution case should be stamped as hypocritical. The overall situation is taken into account. Circumstances visualizing therefrom are to be perceived. So far present case is concerned, it is true that some sort of laches have been at the end of the I.O, PW-7 but, due to slackness at the end of the I.O, the prosecution case would not be defrost. It has further been submitted that as per Rule 56 of the Bihar Police Manual, it was incumbent upon the police official PW-7 to have some sort of permission in going outside the jurisdiction for recording fard-beyan



but, non-compliance thereof would not render the prosecution version unreliable in the background of the fact that even during trial, victim PW-5 had corroborated the same and during cross-examination, the defence could not be able to shake his testimony. It has also been submitted that victim was taken to Sadar hospital and was examined by PW-8, who had found 5 injuries, then taken to Varanasi for proper treatment and for that, appellants have properly been identified to be the assailants. Accordingly, the judgment of conviction and sentence recorded by the learned lower court is fit to be confined.

11. Injuries over the person of PW-5, Rinku, informant is found properly surfaced by way of examination of PW-8. He had examined the victim on 11.03.2008 at about 8.20 P.M and found the following injuries.

i. Incised wound on right side of neck 2"x ½" x muscle deep with bleeding.

ii. Incised wound over back of neck measuring ½" x ½"x muscle deep with bleeding.

iii. Multiple incised wound over both hands measuring 1x ½"x ½" x muscle deep with bleeding.

iv. Incised wound over left side of abdomen 1.5" x 1" cavity deep with loops of intestine protruding with rupture of part of intestine.

v. Incised wound on the back of right leg 1"x ¼"x muscle deep with bleeding.

12. During course of cross-examination, it is evident



that nothing substantial has been procured. So, the authenticity of the Ext.5, injury report is found out of controversy. The most crucial part which is evident from evidence of PW-8 is that, in spite of having been referred to higher centre for proper treatment, doctor had not recorded the patient to be unconscious. Furthermore, as is evident, during course of examination-in-chief, the prosecution had not tried to procure from him that at the time of examination of injured, was unconscious. This has got a bearing which, is to be taken into consideration while discussing the evidence on other points.

13. From the evidence of the witnesses, PW-1 and PW-2 who had claimed to be an eye-witness to occurrence, who also had claimed to have lifted the PW-5 to the hospital have not disclosed that at the place of occurrence or during midst of way, they have met with police official whom the injured had disclosed regarding the occurrence but, PW-3 during course of his examination-in-chief at Para-2 had stated that they met with police patrolling party who have interrogated the Rinku and during course thereof, Rinku had disclosed in detail with regard to commission of occurrence. In Para-9 of his cross-examination, he had reiterated the same. PW-5 at Para-2 of his examination-in-chief had stated that police party met, interrogated, whom, he had divulged regarding the occurrence names of assailants but the police party said to rush to the hospital while PW-7 at Para-10 of the cross-examination had stated that he met with Rinku near Itarhi crossing east to Buxar station. He had further stated that at very moment, Rinku had disclosed the occurrence in detail but, he had not



recorded his fard-beyan as, his condition was not well. He had not recorded statement of family member of the Rinku as, condition of Rinku was bad. At the present moment, the evidence of PW-5 at Para-20 is to be taken into consideration wherein he had disclosed that he was conscious after sustaining injury but, as soon as he reached the hospital became unconscious. As has been pointed out, there happens to be no disclosure at the end of the doctor, PW-8, that patient was unconscious or became unconscious in his presence.

14. Now coming to another aspect relating to delay in recording of the fard-beyan. From the evidence of PW-1, PW-2, PW-3, it is evident that they have not disclosed that PW 5 became unconscious and further, is found not at all corroborated by the doctor, PW-8 as well as I.O., PW-7, on account thereof, the version of the informant / injured that he became unconscious when he reached at the hospital is found suspicious. Even for a moment expecting that first of all, life have to be saved and for that, the injured is to be taken to hospital but, the surrounding circumstances in the background of admitted enmity amongst the parties are also to be properly seen. None of the witnesses including the informant himself had stated that on which date he regained sense and at which place. How the PW-7 was informed regarding regaining sense of the informant PW-5 and the conduct of the PW-7, I.O is found duly exposed from his evidence alone as in Para-1 had stated that he received an information on 15.03.2008 to come to Varanasi and to record the statement. He proceeded from Buxar at 6.00 A.M and recorded the fard-beyan at



about 22 hours. At which time, he returned back there from had not recorded and the most surprising feature is that he had recorded the diary right from Para-1 to 111 on 15.03.2008 itself. How this has happened is another circumstance which one has to see more particularly in the background of the fact that at 10.00 P.M on 15.03.2008 fard-beyan was recorded. Then, case was to be registered. Then, investigation was to be entrusted and then investigation was to be carried out. The distance in between Buxar and Varanasi is also to be taken into consideration. Further, only two hours was left to come to 24 hours. So, within two hours the case was registered and diary up to 1 to 111 Paragraph written down. In the aforesaid background, now the evidences of the witnesses are to be seen. During course of appreciation of the evidence, it is evident that there happens to be slackness at the end of the accused also, as certain facts emerging from previous statement had not been confronted but, there happens to be inconsistency amongst the PWs itself and the same, it properly considered, creates doubt over their presence at the place of occurrence, during course of occurrence. PW-1, during course of his examination-in-chief had substantiated the prosecution case identifying the appellants including others to be the assailants of the victim PW-5 and further, divulging that while the accused persons were fleeing Ram Pujan had said that he had given a stroke over the stomach and so, would not survive while Anjali had said that he be thrown over railway line. Then, Rinku was lifted over cot towards his house and then, to Sadar hospital. During cross-examination at Para-8,



he had stated that he had seen the occurrence at the distance of 30-35 steps, Rinku was by the side of the road, he had seen all the accused persons indulged in assaulting him but, he is unable to say whether Rinku was standing or thrown over the ground. Then at Para-9, he had stated that accused persons assaulted for 1-2 minutes and then, they fled towards southern direction. When he reached at the place of occurrence, at that very moment, the accused persons have covered a distance of 20-25 steps. In Para-14, he had stated that after lifting the Rinku over cot they took him near the car of Ashok and from there, he was taken to hospital.

15. PW-2 had stated that when they reached at the place of occurrence, (he along with PW-1) have found all the accused persons assaulting Rinku with *fasuli*. As soon as, they reached accused persons began to flee and during course thereof, Ghurul Rai was saying that he had cut neck while Ram Pujan was saying that he had torn the stomach. Anjali was saying that let he be put over railway line. Then thereafter, they lifted Rinku over a cot and taken towards Ismaelpur during midst thereof, met with the Ashok Rai and took him to hospital on his car. During cross-examination at Para-11, he had stated that it was dark night. In Para-12, he had stated that at the southern flank of the road, accused were assaulting the Rinku. In Para-13, he had stated that after sustaining injury, Rinku fell down but he is unable to say in which side his head was. In Para-14, he had stated that accused persons rushed towards southern side, they had not tried to apprehend. In Para-16, he had stated that he had seen the



Rinku lying on the ground in an injured condition.

16. PW-5 is the injured himself. During course his examination-in-chief, had reiterated his earlier version save and except, withdrawing the mode of identification. Then had stated that he was taken to hospital and during midst thereof, met with the police officials who interrogated and then, instructed him to go to hospital. Then had exhibited his fard-beyan which was recorded by the police at the Varanasi where, he was undergoing treatment. During cross-examination at Para-6, he had stated that on hue and cry, none of the person of the railway colony came out of fear of accused persons. In Para-7, he had stated that as soon as the accused persons began to assault, he raised alarm. Till the time of arrival of his brothers, he had already lied over the ground. In Para-8, he had stated that at very moment, there was light. Bulb was over the electric pole and was lightning. When his brothers came, accused persons began to flee. He had narrated the event to his brothers. Then at Para-11, he had stated that he reached at the hospital in unconscious stage. He regained sense after four days at Banaras. Then in Para-20, he had stated that just after arrival at hospital he became unconscious. At Para-22, he had stated that police had not accompanied him but, had followed. PW-3, PW-4 and PW-6 are hearsay witness.

17. PW-7 is the I.O., he had stated that on 15.03.2008, he had recorded fard-beyan of Rinku Miya after going to Banaras (exhibited) on the basis thereof, formal FIR has been drawn after registration of a case, proceeded with investigation, exhibited the



endorsement recorded further statement of informant, statement of the witnesses, inspected the place of occurrence which happens to be the road leading to Ismaelpur east to Itarhi railway crossing lying east to Buxar railway station. The P.O. happens to be in front of house no. A/908. One electric pole was there. Temple of Santoshi Maa lies 15 yards eastern southern corner there from. Railways quarter no. 113A lies north to the P.O. Then had recorded statement of witnesses, received supervision note and then injury report and after concluding the investigation, submitted charge-sheet. During cross-examination, he had stated that he began to write the CD from 15.03.2008 itself. The cross-examination having under Para-10 and 11 have already been discussed. In Para-13, he had stated that injury report which he had issued and was available in the case diary is presently not available in the case diary. He had not mentioned the Sanaha. He had not mentioned with regard to telephonic information received from Banaras. He had further stated that there happens to be no need of *chalan* in order to go to Banaras. He had further stated that he had not mentioned the name of Chowkidar who had accompanied to Banaras nor he had recorded his statement. He had not mentioned with regard to presence of bloodstain at the P.O. PW-9 is formal in nature who had simply exhibited the subsequent injury report.

18. From the evidence available on the record, it is crystal clear that PW-5 informant had sustained the injuries caused by sharp cutting weapon and is found duly corroborated the evidence of PW-8, the doctor. The only question now remains whether appellants



are author of the injury. In order to ascertain the same, the evidences as discussed hereinabove have minutely been gone through. From the evidence available on the record, it is evident that PW-1 and PW-2 have not disclosed with regard to source of identification much less, they are inconsistent though claimed to arrive at the place of occurrence, conjointly. As, PW-1 had stated that accused persons had already covered 20-25 steps ahead then in that circumstance, the proper identification of the accused is found very much difficult, as it was dark, having no source of light. On the other hand, manner of identification as suggested by PW-2 itself creates doubt over its reliability. Furthermore, the manner whereunder prosecution had introduced the story that the Ghurul Rai had disclosed that he had given a blow over neck, Ram Pujan had disclosed that he had given a blow over stomach and Anjali was saying that he be lifted to railway track, appear to be intentionally introduced in order to affix the identification as prosecution was very much cautious with regard to absence of source of light. Furthermore, the conduct of the I.O., PW-7 happens to be totally against the prosecution as after minute scrutiny of his evidence is apparent that his activities is found duly influenced. In spite of the fact that the witness PW-7 had averred that no *chalan* was required to go to Banaras but Rule 56 of the Police Manual speaks otherwise. For better appreciation, same is quoted hereinbelow:-

56. Power to depute station officer outside jurisdiction:- (a) An inspector may depute a station officer to undertake the duties of, or an investigation in the jurisdiction of another station officer, but he shall use this



power only in an emergency reporting all cases to the Superintendent.

(b) A Sub Divisional Police Officer can only nominate the officer in charge of a police-station to investigate a case within the limits of that officer's police station; but should the Sub Divisional Magistrate intimate his opinion that for particular reasons special police officer should conduct the investigation, the Circle Inspector shall, if possible, comply with his wishes.

19. That means to say, police official was required for a permission from the superior officials in case, he is going to cross his jurisdiction. That has not been obtained. Furthermore, manner whereunder the investigation has been conducted speaks a lot at least collusiveness as at the end of I.O as, the registration of the case might have been at the Buxar Station but, before arrival at Buxar Police Station, further statement of the informant, the statement of the witnesses had already been recorded. If that happens to be true, then how the places of occurrence was inspected on 15.03.2008 itself is another circumstance apart from the fact that P.O. as described by whom did not match with the disclosure made by the informant on account of absence of shrubs as well as no blood stain was found over the P.O. and that is indicative of the fact that victim was not at all been assaulted at the place of occurrence as well as in a manner as disclosed.

20. Consequent thereupon, the judgment impugned is set aside. All these appeals are allowed. Appellants, namely, Ghurul Rai, Kesheo Rai @ Kesho Rai (Cr. Appeal (SJ) No. 711/2015) and Rabindra Kumar @ Rabindra Kumhar (Cr. Appeal (SJ) No. 743/2015)



are on bail, hence are discharged from their liability while appellant, Ram Pujan (Cr. Appeal (SJ) No. 711/2015) is under custody, hence, directed to be released forthwith, if not wanted in any other case.

21. The first and last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Ranjeet/-

AFR/NAFR	AFR
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