

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.664 of 2015

Arising Out of PS.Case No. -185 Year- 2011 Thana -RIGA District- SITAMARHI

=====

1. Kiran Kumar

2. Sanjay Kumar Both Sons of Late Raghaw Prasad, Resident of Purani Bazar,
Narkatiaganj, P.S.- Shikarpur, District- West Champaran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. N. K. Agrawal, Sr. Advocate
Mr. Dhananjay Nath Tiwary, Advocate
Mr. Diwakar Upadhayaya, Advocate
Miss Preety Kunwar, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 21-08-2018

Appellants, Kiran Kumar and Sanjay Kumar have been found guilty for an offence punishable under Section 341/34 IPC and sentenced to undergo SI for 1 month, under Section 323/34 IPC and sentenced to undergo SI for 6 months, under Section 324/34 IPC and sentenced to undergo RI for 2 years, under Section 504/34 IPC and sentenced to undergo SI for 6 months with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 29.09.2015 passed by 3rd Additional District & Sessions Judge, Sitamarhi relating to Sessions Trial No. 180/2014/106/2014.

2. On 12.12.2011 at about 9.45 AM while informant Niranjan Kumar (PW 5) was admitted at Sadar Hospital, Sitamarhi gave his Fard-e-beyan in presence of his father-in-law, Mithila Bihari



Prasad (PW 2) alleging *inter alia* that on 11.12.2011 at about 7:00 PM while he along with his brother-in-law (Sala) Mukesh Kumar and one Shiv Narayan were in a way to his Sasural, Kishunpur after screening cinema at R.D. Palace and as soon as reached at village-Sirauli at the bank of river, found two motorcycles parked since before. He had also seen four persons standing out of whom, he identified two of them, namely, Kiran Kumar and Sanjay Kumar, sons of late Raghaw Prasad. Other two were not identified by him who were armed with pistol. Kiran Kumar took out knife and gave a blow causing injury over his right hand, Sanjay Kumar gave rod blow as a result of which he sustained injury over his head and fell down. Then thereafter, Kiran Kumar gave another knife blow over his chest causing injury thereon. The other two who were armed with pipe gun (Nalkatta) were threatening others. On hue and cry, local people rushed, seeing whom, all of them escaped by saying that now he is dead. It has also been disclosed that aforesaid occurrence has been committed by the accused persons as he demand Rs. 4 Lakhs which he had handed over to the accused persons.

3. After registration of Riga PS Case No. 185/2011, investigation commenced and after concluding the same, charge-sheet was submitted which happens to be the basis of trial, meeting with the ultimate result, subject matter of the instant appeal.

4. Defence case as is evident from the mode of



cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that on account of dispute relating to partition of land as informant, their brother was not inclined to vacate the building which was allotted to the accused persons during course of oral Panchayati, this false case has been instituted. To substantiate the same, apart from examination of two DWs, documents have also been exhibited.

5. In order to substantiate its case, prosecution had examined altogether 7 PWs who are PW-1, Shiv Narayan, PW-2, Mithila Bihari Prasad, PW-3 Shankar Sah, PW-4, Mukesh Kumar, PW-5, Niranjan Kumar @ Babloo, PW-6, Amrendra Kumar and PW-7, Dr. Shiv Shankar Mahto as well as had also exhibited Ext-1 Series, signatures of FIR attesting witnesses as well as informant himself over the Fard-e-beyan, Ext-2, Fard-e-beyan, Ext-2/1, endorsement over Fard-e-beyan, Ext-3, Formal FIR and Ext-4, Injury report.

6. On the other hand, two DWs have also been examined, DW-1, Raman Prasad, and DW-2, Santosh Kumar. Apart from this, defence had also exhibited protest petition filed on behalf of informant as Ext-A, power as Ext-B and Punchnama as Ext-C.

7. While assailing the judgment impugned, it has been submitted at the end of learned counsel for the appellants that from the evidence available on the record, it is crystal clear that both the parties are own brothers and they were on strained relationship on



account of partition. As the informant was not willing to vacate the building allotted to the share of appellants, on account thereof, shifting to his Sasural and with the help of his father-in-law, brother-in-law, managed things and then, instituted this false case and that happens to be the reason behind that this case suffers from inherent defect. In order to justify the same, it has been submitted that from the evidences it has come that there was no direct link from the place of informant to the place which happens to be the alleged place of occurrence which happens to be more 100 Kms. Furthermore, informant had not disclosed that on which date he had come from his house to his Sasural. Informant had not disclosed that he had seen matinee show or the morning show which was necessary in the background of the fact that the date of occurrence happens to be chilly winter season. Although, there happens to be no cross-examination but, being adjacent to Nepal the area must have been under dense fog as well as suffering from biting cold but, the informant had disclosed that, at that very moment, he was wearing half sweater. In likewise manner, it has also been submitted that there was no source of identification and so, presence of two motorcycles having been parked since before, presence of four persons out of whom two were his brothers who had not tried to conceal their face while covering such a long distance in order to commit an offence, more particularly, when there happens to be no information at the end of the prosecution that



the appellants were knowing since before that his brother had gone to see cinema and was reducing through the said road.

8. Apart from this, it has also been submitted that nature of injury suggests that it happens to be a superficial injury and on account thereof, its sanctity could not be stressed upon. Considering the evidence in its totality along with the fact that there happens to be material development in the evidence which the I.O. PW-6 had categorically corroborated did not inspire confidence over reliability of the witnesses. It has also been submitted that improbability of the case is itself evident from the fact that two strangers who were armed with pipe gun never used the same during course of occurrence, on the other hand, the appellants have been alleged to have inflicted Chhura as well as rod blow in order to kill, is nothing but an absurd story which *prima facie* suggests falsity of the prosecution.

9. Learned APP while supporting the finding recorded by the learned lower court has submitted that the learned lower court had already taken note of the nature of injury and that happens to be the reason behind that the appellants have been convicted for lesser offence than that of Section 307/34 IPC whereunder they were prosecuted. Furthermore, it has also been submitted that from the evidence of PW-2 coupled with Ext-C, it is evident that they were on strained relationship and so motive was subsisting for commission of the occurrence and so, the judgment impugned is fit to be confirmed.



10. Doctor (PW-7) had examined the informant PW-5 on 11.12.2011 at 8:20 PM and found the following:-

1. Incised wound over left chest size $1/3''$ x $1/4''$ x subcutaneous deep.
2. Incised wound over right fore-arm size $1/2''$ x $1/4''$ x subcutaneous deep.
3. Lacerated wound over right parietal region of scalp size $1/3''$ x $1/4''$ x subcutaneous deep. Injuries to be within six hours, simple in nature. Injury no.1 and 2 caused by sharp cutting weapon and injury no.3 by hard and blunt substance.

11. During cross-examination, he had stated that subcutaneous deep means deep up to skin. That means to say, more or less, superficial injury and can be easily manufactured. Be that as it may, the nature of injury suggests that there was no justification/compulsion/requirement/urgency to stay at the hospital nor PW-7, the doctor opined like so. Further, the doctor also remained mum whether patient was admitted as an indoor patient or nature of injury required due observation and for that, he was directed to remain at Sadar Hospital. However, from the evidences of PW-5 along with PW-1 and 2 coupled with PW-6 it is evident that PW-5 remained at Hospital and his Fardbeyan was recorded while he was at Sadar Hospital. Neither PW-7 had disclosed that he had sent OD slip to the



concerned PS nor the ASI, S.K. Paswan who had recorded the Fardbeyan came to justify the same.

12. Be that as it may, the materials available on the record suggests that PW-5 while was admitted at Sadar Hospital, Sitamarhi gave his Fardbeyan, irrespective of the nature of the injury. It is also an admitted fact that both the appellants are full brothers of PW-5, informant and as per evidence of PW-5, himself he was carrying grudge. In the aforesaid background, now it has to be seen the case of the prosecution as flashed happens to be reliable or not and for that, first of all, the evidence of informant is taken note of.

13. PW-5 had stated that he happens to be informant of this case. The occurrence is of dated 11.12.2011 at about 7:00 PM. At that very time, he was going to Sasural after screening the cinema at Sitamarhi along with brother-in-law (Sala), Mukesh (PW 6) and one Shiv Narayan (PW 1). When they reached at village-Sirauli, Shankar Sah (PW 3) met with them. When they reached near crossing of a river lying north to the village- Sirauli, they found two motorcycles parked since before and four persons were standing. Out of whom, he had identified Kiran and Sanjay. The other two, who were unknown were armed with fire arm. They all cordoned him. At that very moment, his father-in-law (PW-2), Mithila Bihari Prasad, also arrived. Sanjay ordered to kill whereupon Kiran inflicted knife blow causing injury over his right hand near elbow. Then Sanjay gave rod blow



over his head as a result of which, he sustained injury. He fell down and then Kiran Kumar repeated blow over his chest causing injury thereupon. Then Kiran Kumar said that now, he is no more, how he will come to receive money and then all the four left the scene over motorcycle. Mukesh, Shiv Narayan and others have witnessed the occurrence. Then thereafter, he was taken to Sitamarhi Hospital for treatment. On the following day, at about 9-10 AM. Police came and recorded his Fard-e-beyan over which he had put his signature. The motive for occurrence has been shown as accused Kiran Kumar had borrowed Rs. 4 Lakhs from him and on demand, he had adopted dilly-delaying tactics in order to misappropriate the same and for that, with an intention to kill indulged in such kind of criminal activity. Identified the accused.

14. During cross-examination at para-5, he had admitted that both the accused persons are his full brothers. He had also admitted that the houses of the brothers are contiguous to each other. He had further stated that both the parties are residing in the same house continuously. As they are engaged in business on account thereof, they have got frequent ingress and egress and during course thereof, frequently meet with each other. In para-6, he had stated that accused persons never attempted or assaulted him. He had further admitted that place of occurrence is more than 100 KMs away from his native place. In para-10, he had stated that he has got proof with



regard to handing over Rs. 4 Lakhs to the appellant but he will not file the aforesaid document. Then thereafter, at para-11, 12 and 15 there happens to be cross-examination over intermediary event, partition, death of mother etc. In para-13, he had stated that he had not handed over the ticket of cinema hall to the police. In para-16, he had stated that on the alleged date of occurrence, it was winter season. There was biting cold. He had further stated that during course of altercation, there was no grappling. In para-17, he had disclosed that at the time of occurrence he had one vest, full shirt and half sweater and a muffler on his head. He had not handed over the clothe to the Investigating Officer. In para-18, he had stated that he had not gone to the police station before going to hospital. In para-19, he had stated that knife was pierced. At the place of occurrence, two persons were armed with pistol but they have not used. Then had denied the suggestion that on account of prevailing dispute with the accused persons, this false case has been instituted managing the affairs.

15. PW-6 is the Investigating Officer. After exhibiting relevant documents, he said that he was entrusted with the investigation after registration of the case on 18.12.2011. He recorded further statement of the informant after calling him at the police station. Then had gone to inspect the place of occurrence along with informant which happens to be the place north to Village-Sirauli, south to village- Hanuman Nagar at the bank of Lakhandedo river. He



had identified the place of occurrence as East-Mannu Yadav, Ramdevta Yadav, West-Lakhandeo River, North & South-Road. Recorded the statement of other witnesses, procured injury report, supervision note. Then thereafter, he had stated that he had gone to Narkatiaganj on 08.10.2012 to record further statement of the informant who had not substantiated the allegation made in the Fard-e-beyan and further disclosed that on account of land dispute, there was grappling amongst the brothers. Then thereafter, he took statement of another witness Ashok and after getting order from the Superintendent of Police, submitted charge-sheet.

16. During cross-examination, he had stated in para-6 that on 18.12.2011, he had gone to place of occurrence at about 6.00 PM and remained there for 2 and a ½ hours. During midst thereof, he recorded statement of informant and others. Then thereafter, there happens to be contradiction with regard to informant, Mithila Bihari Prasad under para-7. Shankar Sah under para-8, Mukesh Kumar under para-9.

17. Now coming to the remaining witnesses, it is evident that PWs-1, 2, 3 and 4, they all during course of examination-in-chief, have made parrot-like statement, substantiated the allegation. Furthermore, PW-1 and 2 stood as FIR attesting witnesses. During cross-examination PW-1 at para-4 had admitted that Mithila Bihari Prasad, father-in-law of informant happens to be his co-villager. He



also admitted that place of occurrence is at the distance of 100-120 KMs away from Narkatiaganj. He had further admitted that he has got no intimacy with the residents of Narkatiaganj. In para-5, he had also admitted that town Thana lies adjacent to Sadar Hospital. In para-6, he had further admitted that they have not informed the police. At para-7, he had stated that informant had raised alarm during course of occurrence which attracted the local people. 10-12 persons assembled there whom he identified as Mithila Bihari Prasad, Mukesh Kumar, Shankar Sah, he himself and others. In para-8, there happens to be contradiction but the same has not been confronted to the Investigating Officer, PW-6.

18. PW-2 had admitted *inter se* relationship amongst the informant as well as accused persons. In para-5, he had further admitted that none is the witness of the P.O. village. He had further admitted that the house of the accused persons lies more than 100 KMs from the place of occurrence. In para-6, he had admitted that he had not informed the police. Then there happens to be contradiction at para-10, 11 which appears to be material one, properly exposed by the PWs.

19. PW-3 during cross-examination at para-3 had admitted that he happens to be an Advocate clerk. In para-4, he had admitted that Shiv Narayan and Mithila Bihari Prasad happen to be his co-villagers. In para-5, he had admitted that he happens to be a



shrewd litigant and in likewise manner, in para-9, he had also admitted that Mithila Bihari Prasad is also contesting civil as well as criminal cases and so, he frequently used to visit civil courts. At para-10, there happens to be contradiction and found duly corroborated by the Investigating Officer, PW-6.

20. PW-4 happens to be brother-in-law of informant and had admitted at para-3 of his cross-examination regarding *inter se* relationship. At para-5, he had stated that he is not remembering whether he was conversant with the accused persons since before the occurrence. In para-6, he had further stated that after occurrence save and except, his father, none other known person came at the place of occurrence. He had not accompanied his brother-in-law to Sitamarhi. He had gone to his house. In para-7, he had stated that he is unable to file any proof with regard to screening of cinema. In para-8, he had stated that on the alleged date of occurrence, he had informed the police. Again corrected himself, after 7-8 days. Then there happens to be contradiction at para-9. Then had admitted that none of the residents of P.O. village is witness in this case. In para-13, he had stated that his brother-in-law remained at Sitamarhi for four days along with his father. About 10-20 persons of the nearby locality assembled there but none is witness in this case.

21. From the evidences available on the record, more particularly, that of PW-5, informant, it is evident that he had shown



activity of both the accused to be adamant to kill. Surprisingly, two other unknown persons who were armed with pistol had not taken recourse thereof. Whatsoever activity happens to be only at the end of appellants. From the evidence of Mukesh Kumar, it is apparent that he along with informant was going on the same bicycle. Others were also on bicycle. There happens to be no disclosure that bicycle was caught hold by any of the accused or forced to stop, dragged, pulled and then assaulted. According to evidence of PW-2, blood was there. His clothe also soaked with blood while PW-4, controverted the same. Moreover, though there happens to be some sort of negligence at the part of the accused while cross-examining the witnesses, in likewise manner, prosecution also failed to disclose how many days prior to the date of occurrence or on the same that on the alleged date and time of occurrence informant had come to his Sasural which was within knowledge of the accused persons who covering such distance came to the place and got knowledge with regard to the screening of cinema and then, waiting for arrival of the prosecution party at the place as disclosed by the prosecution party though, after covering such a long distance from Sitamarhi. Furthermore, how the accused persons came to know that the person coming over bicycle is his brother, and in likewise manner, informant knew without having source of identification. This aspect itself makes the allegation improbable and if the same is taken together with the nature of the injury found over



the person of informant as recorded by the PW-7, it suggests otherwise. That being so, judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

22. Since appellants are on bail, they are discharged from the liability of their bail bonds.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27/08/2018
Transmission Date	27/08/2018

