

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.457 of 2003

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

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Ramesh Sah son of Late Dalan Ram Sah resident of village Boshna, P.S. Pranpur,
District Katihar

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Rajesh Kumar Sharma, Amicus Curiae

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 29-03-2018

Heard the parties.

2. No one appears on behalf of the appellant on repeated calls, in such circumstances, Sri Rajesh Kumar Sharma, Advocate is appointed as the Amicus Curiae to assist this Court.

3. The sole appellant stand convicted under Section 324 of the IPC and sentenced to undergo R.I. for three years.

4. The prosecution case as per the written report of the informant Dhaknu Singh (P.W.3) in short is that on 2.4.1986 at 09 P.M. the informant was watching Ramlila where Ram Naresh Singh and Dokaudi Swarnkar came and told to go to the cattle house of Ramautar Sarpanch to have a talk with him regarding some work. On this all the four persons came in the cattle house where they saw that they were taking meal and drink. Ramesh Sah was also there and was



in good condition and told that why they came there, on this informant said that there was some work with sarpanch. On which the sarpanch told to come on the next day but while they were returning the sarpanch called him and further prosecution case is that some altercation took place between Ramesh Sah and Lagandev Yadav and when the informant protested Ram Naresh Singh assaulted him by the knife and the informant fell down and the accused persons fled away.

5. The aforesaid written report led to registration of Pranpur P.S.Case No.20 of 1986, the case on the commitment went to the file of Sri Yogendra Prasad, Ist Addl. Sessions Judge, Katihar for trial and disposal, charges were framed under Section 307 of the IPC against the appellant. It further appears from perusal of the record that altogether five witnesses have been examined in this case they are P.W.1 Lagandev Yadav eye witness of the occurrence, P.W.2 Dukodi Swarnkar who has been declared hostile, P.W.3 Dhaknu Singh (informant and injured) P.W.4 Ramoutar Prasad declared hostile and P.W.5 Kishun Prasad Sah Advocate clerk.

6. Apart from that the following documents have been brought on record they are Ext. 1 signature on the written report, Ext.2 entire case diary from para 1 to 28, Ext.3 injury slip, ext. 4 injury report, Ext.5charge-sheet, Ext.6 formal FIR and Ext.7 written report.



It appears that neither the Doctor nor the informant has been examined and the injury report, written report and other documents have been proved by the formal witness, who is Advocate Clerk.

7. It also appears from perusal of the record that out of five witnesses, P.W.1 is formal witness and P.Ws. 2 to 4 according to the prosecution case has also accompanied the informant to the house of the Sarpanch where the occurrence took place has not been supported the prosecution and has been declared hostile.

8. Defence of the accused is of total denial and false implication as the cattle of the informant has entered in the field of the appellant and for that dispute took place and for that he has been falsely implicated in this case.

9. Learned trial court has not found that no case is made out under Section 307 of the IPC, however, the appellant has been convicted under Section 324 of the IPC.

10. Contention of the learned counsel for the appellant is that in this case the evidence shows that several persons were present at the time of occurrence including Sarpanch but prosecution has not examined Sarpanch nor any other person, who were present there and other two witnesses who have said to have accompanied him have not supported the prosecution case and the I.O. has also not been examined in this case and as such the prosecution has failed to



establish the place of occurrence in this case similarly the Doctor has not been examined in this case and the injury report has been brought on the record by a formal witness who has no occasion to work with Doctor as such the injury report is not admissible in the eye of law, however, the learned trial court has failed to consider the aforesaid inconsistencies and contradictions in the prosecution case, while convicting the appellant under Section 324 of the IPC.

11. On the other hand the learned counsel for the State has defended the judgment on the ground that the informant has stated in his evidence that he has been assaulted by the accused persons by knife 2-4 times and the evidence has been corroborated by P.W.1 and no doubt the Doctor has not been examined but the injury report has been brought on record which shows that the informant was carrying six injuries on the back and as such there is no infirmity in the conviction of the appellant.

12. On perusal of the record, it appears that in this case two witnesses who is said to have accompanied the informant at the time of occurrence has been declared hostile and the Sarpanch and other witnesses have not been examined. Further the Doctor has also not been examined in this case and the Advocate Clerk has proved the injury report but his evidence does not show that the same has been prepared in his presence nor he had seen the concerned Doctor nor he



is competent person i.e. technical person, who can be cross examined on the point of nature of injuries and nature of weapon. As such due to non-examination of the Doctor and the I.O. and also other witnesses have been declared hostile, and other independent witnesses, who were present at the place of occurrence have been withheld by prosecution, has caused doubt about prosecution case, as such the appellant is at least entitled for the benefit of doubt in the present case.

13. Accordingly, this appeal is allowed and the impugned judgment and order of sentence are set aside and as the appellant is on bail, he is directed to be discharged from all liabilities of his bail bond.

14. The office is directed to hand over the first and the last page of the judgment to Sri Rajesh Kuamr Sharma, Amicuc Curiae.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.04.2018
Transmission Date	03.04.2018

