

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.245 of 2015

Arising Out of PS. Case No. -52 Year- 2004 Thana -PARSAUNI District- SITAMARHI

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1. Dharmendra Bhandari Son of Yogendra Bhandari
2. Ram Adhar Bhandari Son of Yogenda Bhandari
Both R/o village - Parsurampur, P.S. Parsauni, District - Sitamarhi
..... Appellants/s

Versus

The State of Bihar Respondent/s

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Appearance:

For the Appellants/s : Mr. Ashok Kumar Jha, Adv.
For the State : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 12-02-2018

Vide judgment of conviction dated 09.04.2015 order of sentence dated 17.04.2015 passed by First Addl. Sessions Judge, Sitamarhi in Sessions Trial No.220 of 2006 /215 of 2013 whereby and whereunder appellants (1) Dharmendra Bhandari has been found guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- and in default thereof, to undergo R.I. for two months additionally, (2) Ram Adhar Bhandari has been found guilty for an offence punishable under Section 307/34 of the IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5000/- and in default thereof, to undergo R.I. for two months, additionally, happens to be the subject matter of instant appeal.

2. PW.13, Kanhaiya Thakur filed written report on 05.11.2004 at about 10:00 PM alleging inter alia that on the same day at about 08:00 PM while his father Rameshwar Thakur had gone to wash his hands after taking meal on a hand pipe, Yogendra



Bhandari, Ramadhar Bhandari, Dharmendra Bhandari surrounded him and then, Dharmendra Bhandari gave Bhala blow over back of his head causing injury thereupon. His father fell down. His brother gone in rescue who was assaulted by Ramadhar with knife causing injury over his nose. The motive for the occurrence has been shown as in the preceding night Yogendra Bhandari was seen sitting back of his house by the wife of Rampukar who disclosed the same and for that, they have gone to inquire from the family members of Yogendra Bhandari and for that, they became aggrieved.

3. After registration of Parsauni P.S. Case No.52/2004, investigation was taken up and after completing the same, charge sheet was submitted which happens to be basis of conduction of instant trial meeting with ultimate result, subject matter of instant appeal.

4. 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 on account of dispute since before, they have been implicated in this case and for that, particular set of witnesses who were accused in a case instituted which prior to the instant case by them conspired with the informant and got this false case instituted. Furthermore, Ext.A, Ext.B, Ext.B/1 C.C. of complaint petition of Complaint Case No.803/2002, certified copy of order dated 21.05.2000 passed in connection with a proceeding under Section 145 Cr.P.C. (335/1996), order dated 03.06.1997 passed in Appeal No.17/1996 under Section 10(6) of the Consolidation Act have been made an exhibit.

5. In order to substantiate its case, prosecution had



examined altogether fourteen PWs, PW.1-Ram Ekbal Thakur, PW.2-Harishchanda Das, PW.3-Santosh Kumar, PW.4-Ram Pukar Paswan, PW.5-Raghubir Sah, PW.6-Kalpi Devi, PW.7-Ram Krishan Sharma, PW.8-Anil Thakur, PW.9-Jitu Paswan, PW.10-Kalki Devi, PW.11-Rameshwar Thakur, PW.12-Dr. Shushil Kumar Gupta, PW.13-Kanahiya Thakur, PW.14-Rajendra Paswan. On the other hand, also exhibited Ext.1-Injury report relating to Rameshwar Thakur, Ext.1/1-Injury report relating to Anil Thakur, Ext.2-Written report. As stated above, defence had not adduced ocular evidence but had adduced the documentary evidence and are Ext.A to B/1.

6. The learned counsel for the appellants while challenging the judgment of conviction and sentence has submitted that not even a single independent witness has been examined in this case. To substantiate the same it has been submitted that PW.10 is the wife of PW.2, PW.3 is the son of PW.5 and the rest witnesses are hostile to the appellants in the background of litigation pending since before.

7. It has also been submitted that I.O. has not been examined. From the evidence of the respective witnesses, it is apparent that there happens to be material contradiction in their evidence which they deposed before the Court. Furthermore, it has also been submitted that there happens to be fluctuation with regard to proper identification of the place of occurrence and so, the non-examination of the I.O. has caused prejudice to the interest of the appellants and on that very score, the finding so recorded by the learned lower court is fit to be set aside.

8. Then, it has submitted that there happens to be



specific allegation against appellants Dharmendra Bhandari to have pierced Bhala, a sharp pointed weapon but the doctor had not found injury over the person of alleged injured, Rameshwar Thakur (PW.11) to be caused by sharp pointed weapon rather the injury having been perceived happens to be caused by sharp cutting weapon and for that there happens to be no explanation.

9. In likewise manner, it has also been submitted that appellants Ram Adhar Bhandari has been alleged to have given knife blow over neck of Anil (PW.8) but the doctor PW.12 had not found injury caused by sharp cut weapon or sharp pointed weapon and that being so, the medical evidence happens to be inconsistent with the allegation. In the aforesaid background, it has been submitted that if the evidence in its totality is taken into consideration, it is apparent that prosecution has not been able to substantiate its case.

10. The most crucial aspect, as per learned counsel for the appellants is that there happens to be no source of identification and that being so, being dark night, proper identification of accused would not be possible. Furthermore, proper identification of assailant, if not improbable, when, at least ten persons were there out of whom some of the witnesses have stated that they have seen the occurrence from a distance more particularly PW.10 who had stated that she had seen the occurrence from the shop of Raghuvir where she had gone to purchase match box. That being so, the judgment of conviction and sentence impugned lost its viability whereupon, is fit to be set aside.

11. On the other hand, the learned Additional Public



Prosecutor while supporting the finding recorded by the learned lower court has submitted that from the evidence of the PWs, it is evident that there happens to be no litigation or animosity in between the informant as well as accused persons/appellants since before and that being so, there was no occasion for them to falsely implicate nor, to institute a false case. It has also been submitted that when the evidence of the PWs is gone through in its entirety, then in that that circumstance the finding recorded by the learned lower court is found duly substantiated as such, instant appeal is fit to be dismissed.

12. Before come to the evidence of the ocular witnesses, it is needless to say that by the catena of judicial pronouncement it has been settled at rest that the evidence of the injured is to be considered on priority basis and unless and until there happens to be inherent defect persisting therein, the same is to be accepted irrespective of the fact that it has been corroborated by the other evidence. Be that as it may, before coming to the evidence of the injured who are PW.8 as well as PW.11, the evidence of doctor PW.12 is to be seen.

13. PW.12 had examined both the injured namely, Anil Thakur as well as his father Rameshwar Thakur on 05.11.2004 at about 11:45 PM and found the following:-

(a) Rameshwar Thakur

- (i) One incised wound on the posterior part of head right side size 4cm x 1cm x 0.8 cm caused by sharp cutting weapon, time elapsed since examination, within 24 hours,



simple in nature.

(b) Anil Thakur

- (i) One abrasion at the base of nose right side size 0.7cm x 0.2cm.
- (ii) One abrasion on nose .4cm x .2cm.

Simple in nature caused by hard and blunt substance within 24 hours.

14. PW.8 is the son of PW.11 who had deposed that on the alleged date and time of occurrence he was at his Dera. His father, after taking meal came at Dera and then had gone to hand pipe to wash his hand. At that very moment Dharmendra Bhandari gave Bhala blow causing injury over back of his head as a result of which, his father fell down. He rushed in rescue and during course thereof, Ramadhar Bhandari gave Chura blow over his nose causing cut injury. People came however, during midst thereof, Yogendra Bhandari assaulted his father with lathi. People got the quarrel pacified and named them as Ram Pukar Paswan (PW.4), Harishchanda Das (PW.2), Raghubir Sah (PW.5) and Santosh Kumar (PW.3) and others. About 15-20 minutes thereafter, police case. He along with his father were treated at hospital. Then had disclosed motive as 1-2 days prior to the occurrence Yogendra Bhandari had hidden behind his Dera which was seen by wife of Ram Pukar who disclosed it to his brother who had gone to the place of Yogendra Bhandari to complain on account thereof, this occurrence has been committed.

15. During cross-examination at para-4 he had stated that at the time of occurrence he was at his residential house where he,



his father and all the three accused were. He identified the P.O. as North-House of Yogendra Bhandari, South-Siyaram Thakur, East-house of Kishun Paswan, West-Rajan Thakur. In para-5 he had stated that at the time of occurrence none of the persons of the boundary came. In para-5 he had stated that when he came in rescue of his father, he was assaulted by *Chhura*. In para-6 disclosed the length and width of the *Chhura*. In para-7 he had stated that at the place of occurrence police came after 15-20 minutes and then took statement of his father. In para-10 there happens to be contradiction.

16. PW.11 is the another injured Rameshwar Thakur who happens to be father of PW.8. He had deposed that on the alleged date and time of occurrence, he was at his house. While he was going to wash his hands after taking meal over hand pipe, Yogendra Bhandari began to assault with lathi over his waist. Dharmendra gave Bhala blow over his head. On his hue and cry his son Anil Thakur came in rescue who was assaulted by Ram Adhar over his nose. He informed police who came at his house. They were sent for treatment. Statement of his son was recorded by the police whereupon case has been registered. Motive for the occurrence has been disclosed same as disclosed by PW.8. During course of cross-examination, Para 3 to 6 happens to be details of his family status. There happens to be further disclosure that none of the family members of his brother are witness of this case. In para-12 he had stated that after sustaining lathi blow, he had not escaped. He fell down and then again stood up. Accused have not chased him nor, they prevented him to escape. In para-16 he had stated that



Raghubir, Santosh whose house lies in the eastern boundary of the P.O. have seen the occurrence. Others have not come. In para-17 there happens to be contradiction. Then had disclosed the boundary in para-18 as North-Saryug Thakur, South-Saryug Thakur, East-Bilat Thakur, West-Pukar Paswan.

17. PW.13 is the informant. During his evidence he had exhibited his written report. He had further stated that on the alleged date and time of occurrence he was at his house. There was hue and cry coming from his Dera whereupon he rushed and had seen Dharmendra Bhandari assaulting with Bhala to his father Rameshwar Thakur over his head, back side as a result of which he became injured Anil rushed in rescue who was assaulted by Ramadhar with Chhura over his nose. When Rameshwar and Anil fell down then they were assaulted by Yogendra. Thereafter, he had gone to police station and filed written report. Then had disclosed the motive for the occurrence. During cross-examination at para-2,3,4 there happens to be description with regard to his family status. In para-4 he had further stated that at the time of occurrence there were ten persons present at his Dera including his family members. He had further disclosed the boundary North-Jitendra Thakur, South-Nij, East-Road, West-Rampukar Paswan. In para-8 he had stated Rampukar his wife happens to be witness of this case. In para-6, he had stated that first of all they have gone to police station where filed a written report. In para-10 he had stated that he along with his brother, father Ram Pukar Paswan, Jittu, Harishchandra, Santosh Sah were there whose statement was recorded by the police. In para-18 he had stated that his father



raised alarm after sustaining injury whereupon, they immediately arrived. Jittu Paswan, Raghuvir, Santosh Sah, Ram Pukar Paswan, Harishchandra Das including he himself arrived. Brother and father were present since before. They had lifted his father as well as his brother. In para-22 he had stated that he had not seen the occurrence. In para-31 he had shown the boundary of the P.O. as North-Road, South-Road and then his house, East-Jitendra Thakur, West-Siyaram Thakur.

18. Now coming to the remaining witnesses, it is evident that PW.1 is the brother of PW.11, Rameshwar Thakur who along with PW.7 & PW.14 have not supported the case of the prosecution and so, they were declared hostile. So far status of PW.2 is concerned though he had substantiated the case of the prosecution during his examination-in-chief but, he has changed the place of occurrence to be house of the PW.11 and in likewise manner, manner of assault over Anil by way of stating that he was assaulted by 'creach' and not by Chhura which he too divulged during cross-examination under Para-3 as well as Para-5. Furthermore, from para-2, it is evident that appellants have instituted case against his son before the alleged occurrence. From para-8 he had admitted presence of case having launched by the wife of Bablu Bhandari which concluded on account of compromise.

19. PW.10 is his wife who during her examination-in-chief had stated that when he had gone to shop of Raghubir, had seen Rameshwar Thakur washing his hand at the hand pipe and during course thereof, was assaulted by Bhala and Anil with Chhura while gone to rescue him by Ram Pukar. Yogendra assaulted with lathi.



She had also admitted presence of case having been instituted at the end of the appellant since before the occurrence against her son. In para-6 and 7 there happens to be contradiction.

20. PW.3, PW.5 are son and father who during examination-in-chief have supported the case of the prosecution but, they have not pointed out the exact location where the PW.11 was engaged in washing his hand. In para-6 para-7 of PW.3 there happens to be material contradiction. PW.5 during course of his examination-in-chief had identified the place of occurrence to be the hand pipe at the Khalihan of the informant where he gone after hearing hue and cry. He had admitted in para-2 that he along with appellants have contested a litigation relating to Survey Plot No.8487. Mahendra Raut was also on his side and his wife Kalpi (PW.6) has also come to depose against the accused. In para-6 he had further admitted that accused/appellants won the case. PW.4 is the Ramadhar who had claimed that at the time of occurrence he was watchman under Rameshwar (PW.11) and was at his Dera to keep watch over cauliflower and then narrated the occurrence. During cross-examination at para-4, 5 there happens to be material contradiction. PW.6 is the Kalpi who had also admitted in para-2 that there was litigation in between her with the accused persons wherein accused persons got a decree.

21. PW.9 is a chance witness and shown his presence by fluke.

22. Non-examination of the I.O. is not at all found adverse to the prosecution case in routine manner rather its impact has to be seen on the basis of facts of each case. From the evidence



available on the record, it is evident that not only there happens to be material development in the evidence of the PWs rather the place of occurrence has also been shifted by the prosecution witnesses and that being so, the non-examination of the I.O. is found sufficient to dent the prosecution case. When the aforesaid infirmity is taken together with the medical evidence inconsonance with the evidence of the injured. PW.8 as well as PW.11, it is evident that apart from inconsistency over place of occurrence, manner of occurrence, they are also inconsistent with the activities of the accused persons during course of commission of alleged occurrence. Furthermore, there also happens to be absence of source of light and that being so, proper mode of identification of accused is also found doubtful. Apart from this, the steps taken by the prosecution party also became in helm as per PW.11 he had claimed that he informed the police station and after arrival of the police at his place the whole subsequent eventuality materialized while from the evidence of Kanhaiya Thakur, PW.13 it is evident that he along with so many persons including injured have gone to the police station where he had submitted written report. Due to non-examination of I.O., the aforesaid controversy remained unexposed which, was expected to be in the background of the fact that had there been examination of the I.O. then in that circumstance, injury report if any (requisition) for the examination of PW.8 as well as PW.11 would have been surfaced and that would have, at least, a prima facie material to identify the nature of the injury as well as whether the injury was bleeding or not as, PW.12, doctor had not found bleeding injury or blood having clotted though, examined within three hours.



23. The cumulative effect of aforesaid infirmities did not justify the judgment impugned. Consequent thereupon, same is set aside. Appeal is allowed. Appellants are on bail, hence they are discharged from its liabilities.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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