

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.183 of 2003

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

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1. Sanjiv Kumar, son of Ramdev Prasad
 2. Rajiv Kumar, son of Ramdev Prasad, both residents of Mohalla Khusropur, P.S. Khusropur, District Patna

.... Appellants

Versus

1. The State of Bihar
2. Rajendra Prasad, son of Deep Narayan Ram, resident of Mohalla Khusropur, P.S. Khusropur, District Patna

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Advocate (amicus curiae)
For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-02-2018

Both the appellants stand convicted under Sections 323, 379 and 341 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year under Section 323 IPC and they were sentenced to undergo rigorous imprisonment for one year and a fine of Rs.5000/- each with default clause under Section 379 IPC and they had also been convicted under Section 341 IPC but no separate sentence had been passed. However, the sentences were directed to run concurrently and the amount of fine was directed to be paid to the informant Rajendra Prasad vide judgment and order dated 5.3.2003 passed by Sri Satya Prakash Narayan Singh, Additional Sessions Judge, Patna, Additional Court No.5 (FTC-5), Patna in Sessions Trial No. 189 of 1993.

2. Prosecution case as per written report of informant Rajendra Prasad (P.W.1) lodged before the Officer-in-charge of



Khusrupur Police Station on 13.10.1992 at 11.30 P.M. is that while informant was coming after closing his shop situated at Murcha Road, Patna City to his house situated at Khusrupur, the appellants came running towards him and appellant Sanjiv Kumar assaulted on his face with butt of pistol and appellant Rajiv Kumar started assaulting him with belt, thereupon the informant raised alarm and thereafter fell down near the house of one Rajani Kumar and became unconscious. It is also alleged that accused persons snatched Rs.2805/- and some papers from his pocket and he was taken to hospital.

3. On the basis of the said written report Khusrupur P.S. Case No.84 of 1992 was registered. Police after investigation submitted charge sheet and cognizance has been taken and thereafter the case has been committed to the court of sessions, which ultimately came to the file of Sri Satya Prakash Narayan Singh, the then Additional Sessions Judge, Patna, Additional Court No.5 (FTC-5), Patna for trial and disposal.

4. Charges were framed against the appellants under Sections 307/34, 379 and 341 of the IPC.

5. During trial altogether four witness have been examined on behalf of prosecution, they are P.W.1 Rajendra Prasad, informant-injured, P.W.2 Jitu Sah, claims to be eye-witness to the occurrence, P.W.3 Umesh Prasad, claims to be eye-witness to the occurrence and P.W.4 Dr. Binod Kumar, who has treated the injured informant.

6. On behalf of prosecution the written report has been marked as Ext.1 and the injury report as Ext.2.



7. On behalf of defence three witnesses have been examined, they are D.W.1 Dasrath Prasad, D.W.2 Jogi Ram and D.W.3 Ramjee Pandit, in order to show that they were present at the meeting held at Durgastan and D.W.1 and 2 claimed that they had not seen the injured person and D.W.2 and 3 have stated that they saw the informant in drunken condition and fell down and there was injury on his person. On behalf of defence, certified photo copy of FIR in connection with Khusrupur P.S.Case No. 82 of 1992, certified photo copy of FIR relating to Khusrupur P.S.Case No. 5 of 1992 and certified photo copy of order sheet relating to Khusrupur P.S.Case No.3 of 1992 have been brought on record as Exts. A, B & C respectively in order to show that there was case and counter case between the parties.

8. Learned trial court on consideration of the evidence has convicted the appellants and sentenced them, as stated above.

9. Mr. Ranbir Singh, Advocate has been appointed as amicus curiae to assist this Court as none has appeared on behalf of appellants and the case is of the year 2003. Contention of learned amicus curiae is that there is case and counter case between the parties from before with respect to the occurrence of 9.10.1992 and further the evidence of P.Ws. 2 and 3 shows that a suggestion has also been made that informant was absconding in the counter case filed by appellants' side and there was hulla 'chor chor' and informant was fleeing and appellants were chasing him and due to chase he fell down and received injuries on the person of informant and Doctor has stated that injuries were caused due to fall on hard substance and further



submission is that after snatching Rs.2805/- and some documents from the pocket of informant the accused appellants were present at the place of occurrence, which appears to be unnatural and improbable. But learned trial court has not considered this aspect of the matter and convicted both the appellants and hence the conviction and sentence are not sustainable in the eye of law.

10. On the other hand, learned counsel for the State has defended the judgment on the ground that P.W.1 is informant and injured, who has stated about the manner of assault and assault sustained by him as per description given by P.W.1. Further submission is that P.Ws. 2 and 3 have also supported the prosecution case on the point of assault is concerned. Hence there is nothing available on record to show any infirmity in the impugned judgment and the same is sustainable in the eye of law.

11. In the background of submissions advanced on behalf of both sides this Court is going to examine the evidence available on record. It appears from evidence of P.W.1, the informant in this case, that he has supported the prosecution case as described in the written report and stated that while he was coming from his shop and reached near Durgastan accused appellants came and assaulted him by butt portion of pistol and belt, due to which he fell down near the house of Rajani Kumar, who sprinkled water on him and he regained consciousness. His evidence further shows that after regaining his consciousness he saw the appellants present at the place of occurrence after snatching Rs.2805/- and some documents from his pocket, which



is quite unnatural and unbelievable. So far other witnesses Jitu Sah (P.W.2) and Umesh Prasad(P.W.3) are concerned, they have supported the prosecution case and stated that there was hulla 'chor chor' and thereafter he saw the informant running and he was chased by the appellants and thereafter the appellants assaulted him. The defence has brought the FIRs of the case and counter case with respect to the occurrence of 9.10.1992 which has been admitted by the informant. Their evidence further disclosed that after regaining consciousness the appellants were present and he was admitted in the hospital and after his discharge from hospital he was arrested by police in connection with earlier case and he was granted bail on 22.10.1992. The aforesaid evidence creates doubt about the prosecution case as it does not look probable that after assault and snatching of money, the appellants shall remain present there, secondly Rajani Kumar has not been examined and thirdly there was hulla of "chor chor" and they saw informant being chased by appellants, which demolishes the prosecution story and it seems that manner of occurrence is in different way and not as per prosecution version. However, learned trial court has not considered the aforesaid aspects of the matter and convicted the appellants under Sections 323, 379 and 341 IPC. Further informant was arrested from hospital after his discharge and thereafter he was released on bail on 22.10.1992 and hence possibility of false implication of the appellants cannot be ruled out.

12. Learned trial court has not considered the aforesaid



aspects of the matter and convicted the appellants, as stated above, as such it appears that prosecution has failed to establish its case beyond all shadow of reasonable doubts and as such the appellants should be given the benefit of doubt in their favour.

13. Accordingly, this appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. As appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.2.2018
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