

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2 of 2013

Arising Out of PS. Case No.-80 Year-1999 Thana- LAHERIASARAI District- Darbhanga

Sandeep Kumar Sharma S/o Amarnath Sharma Resident of Village Kilaghat
Bajitpur, P.S- Laheriasarai, District- Dharbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Md. Shahnawaz Ali, Advocate

For the Respondent/s : Mr. Ashok Kumar, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 19-01-2018

The present appeal was preferred against the judgment of conviction dated 19.09.2012 and sentence dated 21.09.2012 passed in Sessions Trial No. 361 of 1999 by the learned Court of Adhoc Additional Sessions Judge-IV, Darbhanga, arising out of Laheriasarai P.S. Case No. 80 of 1999. By the said judgment appellant herein was convicted for the offence under Sections 324, 326 and 307 of the Indian Penal Code and has been sentenced to undergo R.I. for two years for offence under section 324 IPC as well as to pay a fine of a sum of Rs. 1000/- and in default of payment of fine it has been directed that the appellant would undergo S.I. for one month. The appellant herein has been further sentenced to undergo R.I. for five years under Section 326 of the Indian Penal Code and to pay a fine of Rs. 4,000/- and in default of payment of fine it has been directed that the appellant would undergo S.I. for five months. The appellant has also been sentenced to undergo seven years R.I. under Section 307 of the Indian Penal Code and has been



imposed a fine of Rs. 5,000/- and in default of payment of fine, he has been directed to undergo simple imprisonment for six months. All the sentences have been directed to run concurrently.

2. The short facts of the case are that on the basis of the fardbeyan of Suresh Kumar Sharma dated 01.03.1999, Laheriasarai P.S. Case No. 80 of 1999 was registered on 01.03.1999 against the appellant herein and one another for offence punishable under Sections 307/34 of the Indian Penal Code. It has been alleged by the informant that on the previous night i.e. 28.02.1999 at about 9:00 P.M. the appellant herein had called his brother Naresh Kumar Sharma and when his brother had gone outside in the lane, the appellant herein had stabbed the brother of the informant by a dagger in his abdomen whereafter he had raised alarm upon which the informant had come out of the house and saw that his brother was lying in an injured condition and the appellant was fleeing away, holding a dagger in his hand. The further case according to the informant is that his brother Naresh told him that the appellant had stabbed upon being told to do so by his father namely Amarnath Sharma. Thereafter, some persons namely Hira Sharma, Bhupesh Sharma, Prabhat Sharma and the family members of the



informant arrived at the place of occurrence and the injured Naresh was taken to the D.M.C.H., Laheriasarai where he was treated and was also operated upon.

3. The case was investigated and charge sheet was submitted on 14.05.1999 against the appellant herein and his father. After completion of supply of Police papers, the case was committed to the court of sessions on 28.08.1999 whereafter the charges were framed against the appellant and one another namely Amarnath Sharma for offence under sections 307/34, 324/34 and 326/34 of the Indian Penal Code.

4. During the course of trial the prosecution has examined altogether 13 witnesses. P.W. 1 is Ganga Narian Yadav and he is said to be a hearsay witness. P.W. 2 i.e. Bhushan Sharma, who is said to be an eye witness and is the cousin brother of the informant. P.W. 3 i.e. Shiv Kant Thakur, who is said to have arrived at the place of occurrence upon an alarm being raised by the injured. P.W. 5 is Suresh Kumar Sharma who is brother of the injured and informant of the present case. P.W. 6 i.e. Mahesh Kumar Sharma is also the own brother of the informant and is also the brother of the victim / injured of the present case. P.W. 7 is Naresh Kumar Sharma who is the victim / injured in the present case. P.W. 8 is Manoj



Kumar Sahni and he is said to be an eye witness. P.W. 9, Baidhyanath Sharma, P.W. 10 Praveen Sharma and P.W. 11 Tetri Devi are said to be the hearsay witnesses. P.W. 12 i.e Dr. Ganesh Chandra Karn is the doctor who had examined the injured Naresh Kumar Sharma and P.W. 13 Satya Narain Kunwar is a formal witness.

5. The learned counsel for the appellant has submitted that the fact is that there are no eye witnesses and the injured Naresh Sharma has himself stated that he had not seen as to who had stabbed him, hence the allegation of the appellant stabbing the injured Naresh Sharma by his dagger has not been proved beyond all reasonable doubts.

6. Shri Ahsok Kumar, learned A.P.P. appearing for the State has submitted that there is ample evidence on record to sustain the conviction of the appellant herein.

5. I have heard the learned counsel for the parties and besides going through the materials on record have also perused the evidence. At this juncture, it would be relevant to discuss the evidence led by the prosecution. Firstly, it would be appropriate to discuss the evidence of the informant namely Suresh Kumar Sharma i.e. P.W. 5. This witness has stated in his evidence that in the night of 28.02.1999 at about 9:00 P.M., the appellant



herein had called his brother Naresh Kumar Sharma and had taken him to a lane near the house and after sometime he heard the noise of shouting of his brother Naresh Sharma whereupon he ran and went there and saw that the appellant herein was running away with a dagger in his hand and his brother Naresh Sharma had fallen down and blood was oozing out. P.W. 5 has identified his fardbeyan and the same has been marked as Exhibit-1. In paragraph no. 7 of his cross-examination, P.W. 5 has stated that at the time of occurrence he was inside his house and at that time his wife, mother, father and brother were also there. It has also been admitted that only after alarm was raised by the injured Naresh, he had gone outside his house into the lane where he found the said injured lying there.

6. P.W. 7 is Naresh Kumar Sharma who is said to be the victim and an injured in the present case. P.W. 7 has stated in his evidence that on 28.02.1999 at about 9:00 P.M. when he was at his house, the appellant herein had called him and thereafter he had gone outside whereupon the appellant herein and others had stabbed him by a dagger from the back side and were also beating him resulting in him falling down and becoming unconscious. P.W. 7 has further stated that upon regaining consciousness he found himself in a hospital and found that he



has been stabbed by a dagger. In paragraph no. 2 of his cross-examination, P.W. 7 has stated that since the night was dark he could not see as to who has stabbed him and after regaining consciousness his brother told him about the incident.

7. P.W. 1 is Ganga Narain Yadav and he has stated that when alarm was raised on the said date of occurrence, he went to the place of occurrence and he was told by the injured Naresh that the appellant herein had stabbed him and had ran away.

8. P.W. 2 is Bhushan Sharma who has stated that on the date of occurrence, upon hearing the noise of shouting by Naresh Sharma he had gone there and saw that the appellant was fleeing away and the appellant had also dashed against him, however, Naresh Sharma, upon being asked, told him that the appellant had stabbed him and had ran away.

9. P.W. 3 is Shiv Kant Thakur who has stated that on 28.02.1999 at about 8-9 P.M. in the night, he was going to his house from the Chowk and on the way he saw that the appellant was standing and had covered himself by a cloth sheet, however, he had gone to his home. After five minutes, alarm was raised that the appellant has stabbed Naresh whereafter, P.W. 3 is said to have gone in the lane where Naresh was lying in an injured condition and while he was taken to D.M.C.H., Naresh was



saying that the appellant herein had stabbed him. P.W. 3 in his cross-examination, in paragraph no. 4, has stated that he has not himself seen the incident.

10. P.W. 4 is Prabhat Ranjan and he has stated that on 28.02.1999 at about 9:00 P.M. he was at his home when he heard noise of shouting of Naresh Sharma and then he ran and went outside and saw that Naresh Sharma was shouting and was holding his stomach. Upon being asked, Naresh disclosed that he has been stabbed by the appellant herein.

11. P.W. 6 is Mahesh Kumar Sharma and he has stated that on 29.02.1999 at about 8-9 in the night, the appellant herein had called his brother whereafter his brother had taken him outside, however, he did not hear as to what was being talked by them amongst themselves. After sometime, this witness is said to have gone outside for brining water and then he saw that the appellant herein had taken a dagger and had stabbed his brother in his stomach whereafter his brother started shouting, however, the appellant fled away. In paragraph no. 9 of his cross-examination, P.W. 6 had failed to disclose as to what extent the dagger had been inserted in the stomach of Naresh. In paragraph no. 10 of his cross-examination, this witness has stated that he had not made any attempt to catch



hold of the appellant.

12. P.W. 8 is Manoj Kumar Sahni who has stated that after alarm and noise of shouting on the date of occurrence, he had gone near Naresh Sharma and saw that the appellant had stabbed Naresh Sharma in his stomach resulting in blood oozing out and Naresh Sharma had fallen down. P.W. 8 further stated that the appellant was running away while holding the blood capped dagger. In paragraph no. 3 of his cross-examination, P.W. 8 has stated that he had not seen the occurrence with his own eyes.

13. P.W. 9 is Baidhnath Sharma and he has stated that he had not seen the occurrence himself. Similarly P.W. 10, i.e Praveen Sharma, though has been declared hostile, has stated that the injured namely Naresh Sharma was not taking the name of the person who had stabbed him.

14. P.W. 11 i.e. Tetari Devi who is the mother of the injured Naresh Sharma and she has stated in paragraph no. 3 of her cross-examination that she had not seen with her own eyes, the incident of his son being stabbed.

15. P.W. 12 is doctor Ganesh Chandra Karn who had examined the injured Naresh Sharma and had found the following injuries on his body:-



“(i) Bandaged wound on abdomen, on removal of bandage incised wound transverse 2” in left length with protruding omentum and small guts. On perusal of Bed Head ticket it was found that patient needed operation laparotomy. There was huge amount of blood in peritorial cavity. On search, there was three perforation of small intestine and three injuries in mesentery - one at the root of mesentery. Blood was coming out from these injures.”

It has been stated by PW 12 that the aforesaid injuries can be caused by chhura blow. P.W. 12 has identified the injury report which has been marked as Exhibit-2.

17. P.W. 13 is a formal witness namely Satya Narain Kunwar who is an advocate clerk and who has proved the formal FIR and the same has been marked as Exhibit-3. He has also proved the endorsement on the fardbeyan of the informant which has been marked as Exhibit-1/1.

18. After completion of the prosecution evidence, the appellant herein was examined under Section 313 of the Code of Criminal Procedure and he has denied to have committed the alleged occurrence.

21. I have examined the materials on record and I find that as far as P.W. 3, P.W. 8, P.W. 9, P.W. 10 and P.W. 11 are



concerned, these witnesses have stated that they had not seen as to who had stabbed the injured Naresh Sharma, hence the evidence of the said witnesses are of no evidentiary value in the present case. As far as P.W. 1, P.W. 2, P.W. 4, P.W. 5 and P.W. 6 are concerned, all of the said witnesses have stated that upon hearing the noise of shouting of the injured Naresh Sharma, they had come at the place of occurrence and had seen Naresh Sharma lying there holding his abdomen and shouting that he had been stabbed, hence the said witnesses cannot be said to be the eye witnesses to the occurrence. Now, coming to P.W. 7 i.e. Naresh Kumar Sharma who is the injured of the present case, his deposition is very relevant inasmuch as he himself has denied seeing any particular person or identifying the person who had stabbed him. Thus, it is clear that the only eye witness to the alleged occurrence is the injured himself i.e. Naresh Kumar Sharma and he has not identified the person who had stabbed him, hence in view of the facts and circumstances of the present case as also the evidence of the witnesses, more particularly that of P.W.7, it cannot be said beyond all reasonable doubts that the appellant had stabbed the injured Naresh Kumar Sharma. Besides the aforesaid, the Investigating Officer of the present case has not been examined, causing great



prejudice to the appellant herein and more over the formal FIR etc. have also been proved by an advocate clerk, a formal witness, which on facts also lead to the conclusion that the appellant has to be given the benefit of doubt and the prosecution has faltered in proving their case. After going through the materials on record and the evidences, I am of the opinion that the prosecution has not proved the case beyond all reasonable doubt and as such the appellant of the present Criminal Appeal deserves to be given the benefit of doubt.

22. Accordingly, the judgment of conviction dated 19.02.2012 and sentence dated 21.09.2012 passed in Sessions Trial No. 361 of 1999 by the learned Court of Adhoc Additional Sessions Judge-IV, Darbhanga, is hereby set aside. The appellant herein was granted bail by this Court by an order dated 05.02.2013. Considering the fact that the appellant has been acquitted, he is hereby discharged from the liability of bail bonds.

23. The appeal stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

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