

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.219 of 2009

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MAHENDRA MANDAL son of Late Dhoorvi Mandal, resident of village-
Kisanpur, PS-Mahalgaon (Jokihar), Distt- Araria.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Dr. Amrendra Kumar,
Mr. Mukesh Kumar Rana, Advocates.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

19-12-2018

Appellants, Mahendra Mandal has been found guilty for an offence punishable under Section 307 IPC and has been sentenced to undergo RI for five years, under Section 324 IPC and sentenced to undergo RI for 2 years with a further direction to run the sentences concurrently, with a further direction to set off the period of custody having been spent during course of trial, vide judgment of conviction as well as order of sentence dated 04.03.2009 passed by 1st Additional Sessions Judge-Araria in Sessions Trial No. 358/1993/737/1995.

2. Sheo Charan Biswas (PW 4) gave his Fardbeyan on 27.11.1986 disclosing therein that in the background of dispute having occurred in between his brother, Ram Sharan Biswas with Mahendra Mandal today at about 8:00 AM, while his brother Ram Sharan Biswas was at the shop of Biranchhi Mistri in order to have



his plough repaired, at that very time, Mahendra Mandal and Chhuthar Mandal came out of whom, Mahendra Mandal repeatedly gave Katta/Dabia blows over neck, forehead of his brother with an intention to kill causing severe injuries. Chhuthar Mandal took out Rs. 500/- which he has given him to purchase the bullock. His brother raised alarm attracting, Ganga Pandit, Upendra Biswas and others who have witnessed the occurrence.

3. After registration of Jokihat PS Case No. 114/1986, investigation commenced and concluded by way of submission of charge-sheet, facilitating the trial, meeting with ultimate result, the subject matter of instant appeal. It is worth mentioning that on account of absence of Chhuthar Mandal vide order dated 30.05.2007, his trial was separated.

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. Further, it has been pleaded that injury whatsoever been sustained by the victim happens to be accidental but, in the background of animosity, getting a golden chance got the appellant/accused involved after weaving a false and frivolous story. However, nothing has been adduced in defence.

5. The prosecution, in order to substantiate its case, has examined altogether eleven PWs who are PW-1, Surendra Pandit,



PW-2, Biranchhi Mistri, PW-3, Upendra Biswas, PW-4, Sheo Charan Biswas, PW-5, Mahadeo Manda, PW-6, Ganga Pandit, PW-7, Kishan Lal Mandal, PW-8, Ram Sharan Biswas, PW-9, Bindeshwari Prasad Yadav, PW-10, Narayan Lal Das and PW-11, Gajanand Das, as well as has also exhibited Ext-1, signature of informant over Fard-e-beyan, Ext-2, Formal FIR, Ext-3, endorsement over Fardbeyan, Ext-4, Charge-sheet, Ext-5, Injury report. As stated above, nothing has been adduced on behalf of defence.

6. While assailing the judgment of conviction and sentence, it has been submitted at the end of learned counsel for the appellant that the same happens to be based upon uncorroborative testimony of the injured which, in the facts and circumstances of the case, could not be relied as it suggests the accidental event than whatever been alleged for which appellant was not at all responsible. In order to substantiate the same, it has been submitted that there happens to be consistent story at the end of the prosecution that PW-8, injured, was assaulted by the appellant while he was at the shop of Biranchhi Mistri (PW 2). According to evidence of PW-2, while there was presence of the injured, he was also along with Jantlal Biswas. The aforesaid Jantlal Biswas has not been examined. Furthermore, the manner



whereunder Biranchhi Mistri had spoken regarding the occurrence that when he came out from his house after hearing hue and cry as he had gone inside to bring some tools, he had seen the wound over temporal region of Ram Sharan and there he came to know that Mahendra was the author. He had not spoken that injured had disclosed that Mahendra had assaulted nor he shown presence of appellant since before. Had there been in terms of Section 8 of the Evidence Act would have been admissible piece of evidence. So, virtually, none had stated that they came to know from the mouth of PW-8, injured, that Mahendra to be author of his injury.

7. It has also been submitted that recording of finding against the appellant for an offence punishable under Section 307 IPC as well as 324 IPC are not at all permissible in the background of the fact that I.O. has not been examined. Considering the nature of the evidence adduced on behalf of prosecution, non examination of the I.O. has caused prejudice to the appellant and on that very score alone, the judgment impugned would not survive.

8. Apart from this, it has also been submitted that doctor has not been examined. The injury report has been brought up on record through PW-11. He had not stated that doctor is dead nor he had stated that his appearance could not be procured unless and until sufficient time is spent in locating his whereabouts, he had



not stated that doctor was outside, that is to say, in foreign country. In the aforesaid background, the evidence was not at all admissible as, it did not fulfill ingredients of Section 32 of the Evidence Act. When injury report became inadmissible then, in that circumstance, neither Section 307 nor Section 324 IPC could be attracted as ultimate resultant found unknown. That means to say whether injury so caused was inflicted with an intention or knowledge that the aforesaid injury would be sufficient in ordinary course of nature to cause death. Furthermore, the injured, PW-8 had himself not disclosed the activity of the appellant detrimental to his life whereupon, the conviction so recorded either under Section 307 IPC or under Section 324 IPC, is not at all found legally sustainable as such, the same is fit to be set aside.

9. Learned APP while supporting the finding recorded by the learned lower court, has submitted that in terms of Section 134 of the Evidence Act, presence of bulk of witnesses are not at all warranted in order to support the facts in issue. Evidence of single witness being creditworthy would be suffice to attract the conviction. It has also been submitted that evidence of injured has got primacy unless and until there happens to be cogent reason to discard. So far present controversy is concerned, PW-8, injured had arrayed the appellant to be author of the injury caused by



means of Katta/Dabia, though other witnesses have not claimed to be an eyewitness to the occurrence, might be hearsay witness but, they consistently proved the place of occurrence as well as injuries over the person of the victim when they reached at the place of occurrence, shop of PW-2 soon after the occurrence. That being so, by corroborative piece of evidence all the witnesses have supported the case of the prosecution. Whereupon, the judgment impugned is fit to be affirmed.

10. Perused the record. From perusal of the record, it is evident that I.O. has not been examined. It is further evident that doctor has not been examined. Paraphernalia has been completed at the end of prosecution by examining Pws-9, 10 and 11. It is also evident that while examining PW-11, the prosecution failed to fulfill the ingredients as prescribed under Section 32 of the Evidence Act in order to get the injury report admissible in the eye of law. That being so, injury report could not be looked into. In likewise manner, though PWs-9 and 10 formal in nature, simply exhibited the relevant documents but that has not served the purpose. However, non examination thereof, would be considered at an appropriate stage of the judgment.

11. Now coming to the material witnesses, it is evident that PW-5 was declared hostile while PWs- 1, 2, 3, 4, 6, 7 have



corroborated that when they reached at the P.O., that means to say, at the place of Biranchhi Mistri(PW 2), they had seen the injured PW-8 in an injured condition. They came to know that he was assaulted by Mahendra Mandal. During course thereof, some had (PW 1) deposed that there was Maar-peat in which Ram Sharan had sustained injury while PW-2, Biranchhi Mistri has stated that he had seen injury over his temporal region while PWs-3, 4 have stated that they had seen injury over neck as well as temporal region. PW-6 has stated that he has seen neck having been cut. Now remains the evidence of PW-8, the injured.

12. PW-8 has stated that on 27.11.1986 at about 7:00 PM, he had gone to the shop of Biranchhi Mistri for getting his plough repaired and during course thereof, Mahendra Mandal came from behind with Katta/Dabia and assaulted over his neck, waist, ear. He has shown scar mark over left ear. On hue and cry, villagers came and rescued him. They also apprehended the accused. He was taken to Purnia Hospital where he was admitted for a month. Identified the accused. During cross-examination at para-3, he has stated that this case has been instituted by his elder brother. He has further stated that while Mahendra Mandal was engaged in assaulting him, at that very time, Chhuthar Mandal was provoking him. In para-4, he has stated that his statement was



recorded before the police. Then there happens to be contradiction relating to his previous statement. Then at para-6, there happens to be motive and at para-7, he denied the suggestion that no injury was sustained by him and this case has falsely been instituted.

13. From the evidence of the victim, it is evident that there happens to be specific disclosure with regard to apprehension of accused/appellant at the spot which, none of the witnesses had stated. This has got relevance in the background of the fact that had there been apprehension of the appellant by the villagers soon after the occurrence at the spot, then in that event, appellant would have been apprehended along with the weapon by which he indulged in commission of the occurrence and for that at least production-cum-seizure list would have been prepared. In absence of discloser having been at the end of the witnesses and further, due to non examination of the I.O., the reliability of the assertion made by PW-8 could not be tested.

14. Though for applicability of Section 307 of the IPC which is bifurcated in two parts, only for the purpose of sentencing, did not specify presence of injury, nor nature of injury which might be guiding factor in some cases, only prescribes action which could properly be depicted by the prosecution with an intention or knowledge, and further in some cases may expose hurt



as defined under Section 319 of the IPC. Because of the fact that witnesses including the injured having been capable to suggest the allegation that the activities having at the end of appellant was with an intention to commit murder or with knowledge that the injuries being caused could ultimately result into death, coupled with the fact that due not non-examination of I.O, the corroborative piece of evidence is found missing coupled with improbability in the prosecution case, along with non-examination of I.O. put the prosecution case disorderly.

15. The cumulative effect, did not justify the finding recorded by the learned lower court, consequent thereupon, the judgment impugned is set aside. Appeal is allowed.

16. Since appellant is on bail, he is discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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

