

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.110 of 2009

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Chandeshwar Singh, son of late Sukhdeo Singh, resident of village-Chhokiya,
Police Station-Ganga Bridge Hajipur, District-Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pratik Mishra, Amicus Curiae

For the State : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 05-11-2018

As the learned counsel for the appellant failed to appear on account thereof, Mr. Pratik Mishra, learned advocate has been requested to assist the court as an Amicus Curiae .

2. Appellant, Chandeshwar Singh 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.3000/- in default thereof to undergo S.I. for three months, additionally vide judgment of conviction dated 20.12.2008 and order of sentence dated 22.12.2008 passed by Additional Sessions Judge, Fast Track Court No.III, Vaishali at Hajipur in Sessions Trial No.427/2000.

3. Ram Sewak Singh (PW.2) gave his fardbeyan on 25.11.2000 while he was admitted at Sadar Hospital, Hajipur disclosing therein that on 24.11.2000 at about 09:30 PM while he was sitting at his Ausara (Varandah), his pattidar, Chandeshwar Singh, son of Late Sukhdeo Singh armed with sickle came and



began to abuse. He also questioned why you are not withdrawing a case pending since before whereupon, he resisted as a result of which, Chandeshwar Singh inflicted sickle blow with an intention to kill. He tried to prevent the same on account thereof, he sustained injury over fingers of both hands. He again inflicted sickle blow over his neck which, he anyhow escaped as a result of which, he sustained injury over his forehead as well as left side of temporal region. Then he fell down. Thereafter, he again inflicted the blow causing injury over his left intercostal region. He raised hue and cry attracting his father Radhe Singh and brother Ram Bali Patel who tried to intervene. Chandeshwar Singh attacked upon them too whereupon they both ran away in order to save themselves. Chandeshwar Singh took out Rs.5275/- from cash box of his shop. On hue and cry so many persons came who lifted him to hospital. Because of the fact that there was profuse bleeding on account thereof, he became unconscious. He has regained sense today and then, recorded his fardbeyan.

4. The aforesaid fardbeyan was transmitted to Officer-in-charge of Ganga Bridge P.S. on the basis of which Hajipur Sadar P.S. Case No.427/2000 was registered following with an investigation as well as submission of charge sheet facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. 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 in the background of persisting land dispute and further, the



appellant is being prosecuted falsely at the instance of the prosecution party who, after taking police, the doctor in his collusion got this case filed with false and frivolous allegation. Though, no ocular evidence has been examined, the certified copy of judgment of earlier instituted case at the instance of father of the informant has been made an exhibit.

6. In order to substantiate its case, prosecution has examined altogether four PWs who are PW.1-Ram Kali Devi, mother, PW.2-Ram Sewak Singh, informant/injured himself, PW.3-Gopal Singh, Investigating Officer and PW.4-Dr. Syed Golam Mohiuddin Asarfi who had examined the informant. Side by side has also exhibited, Ext.1-Signature of informant over fardbeyan, Ext.1/1-Signature of Radhe Singh over fardbeyan, Ext.1/2-Signature of Subhash Chandra Singh over fardbeyan, Ext.2-Formal FIR and Ext.3-Injury Report. As stated above, defence had exhibited Ext.A-certificate copy of judgment of 23.09.2009 relating to Complaint Case No.404/96.

7. The learned Amicus Curiae while assailing the judgment impugned has submitted that on account of suffering from inherent defect, the same is fit to be set aside. In order to justify the same, it has been submitted that what to talk about an independent witness, the brother of the victim who came in rescue along with his father (since deceased) has not been examined without any explanation at the end of the prosecution. Whoever been examined are, PW.1 the mother and PW.2 the informant himself. After parallel scrutiny of their evidences it is evident that at least, family members should have been examined whose



presence was very much natural. Their non-examination more particularly in the background of strain relation persisting amongst them, is indicative of the fact that they, on account of one pretext or other were not at all inclined to support the case of the prosecution.

8. Apart from this, it has also been submitted that Dr. PW.4 had completely ruled out the allegation in a manner as flashed at the end of the prosecution. It has been submitted that there happens to be categorical statement of PW.1 as well as PW.2 that appellant had hurled sickle blow repeatedly from its sharp edge on account thereof, there would have been presence of sharp cut injury contrary to it, the doctor had found injury caused by hard and blunt substance and that being so, completely changed the manner of occurrence. Because of the fact that prosecution had not explained how the injured/PW.2 had sustained injuries by hard and blunt substance in stead thereof, reiterated their initial version having been armed with sharp edged sickle made repeated blow, and the inconsistency in the aforesaid background as well as prevailing animosity amongst the parties not only belied the case of the prosecution rather also inspire false implication. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

9. It has further been submitted that when the evidence of PW.2 is properly gone through, it is evident that he was assaulted while he was sitting at a place full of darkness. Having no access of light and so was not at all conclusive over allegation so attributed and that happens to be reason behind,



that during course of trial he became abstained of himself whereupon filed compromise petition which, the learned lower court had considered, accepted in part. But, so far concluding and sentencing relating to Section 307 of the IPC, rejected the same. In its continuity it has also been submitted that in the background of inconsistency or, even considering for a moment that there was assault at the end of the appellant by means of hard and blunt substance, the nature of injury did not speak with regard to intention having at the end of the appellant in order to commit murder nor hurled the blow with a knowledge that ultimately such blow would cost the life of the injured. That being so, it happens to be in worst case, attracting the ingredients of Section 323 of the IPC which happens to be compoundable and in the aforesaid background the same be accepted consequent thereupon, appellant be exonerated from the offence whereunder he has been found guilty and sentenced for.

10. On the other hand, it has been submitted by the learned Additional Public Prosecutor that in terms of section 134 of the Evidence Act, it happens to be the quality not the quantity which requires to substantiate the fact in issue. It has further been submitted that enmity is a double edged sword. It may be a reason of false implication simultaneously it also happens to be a motive for commission of the occurrence. That being so, whenever an occurrence alleged to have taken place in the background of prevailing animosity then, the evidences are to be minutely gone through in order to trace out whether there happens to be fragrance of false implication or, the occurrence so alleged has



properly been substantiated by the prosecution in the background of aforesaid motive. It has further been submitted that there happens to be consistent view of the Apex Court that when there happens to be inconsistency in between the medical evidence as well as ocular evidence, the ocular evidence will prevail. So far, this particular case is concerned, the informant had specifically located the part of the body where he had sustained injury inflicted by the appellant and at those places only injuries have been found by the PW.4 doctor. The only controversy happens to be with regard to nature of the injury having at the end of the PW.4 to be caused by the hard and blunt substance which, after going through the evidence to PW.2 in consonance with the evidence of PW.1 is found duly substantiated having additional support by the Investigating Officer, PW.3 and that being so, the finding recorded by the learned lower court is fit to be confirmed.

11. So far propriety of compromise petition is concerned, it has been submitted, that learned lower court had already dealt with the situation. Apart from the fact that Section 307 IPC is non-compoundable and that being so, rightly been rejected which, at the present moment also goes out of consideration. That being so, the appeal is fit to be dismissed.

12. PW.4 is the doctor. He had examined the victim on 25.11.2000 and found the following:-

- (i) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{6}$ " x $\frac{1}{6}$ " upper part of left ear.
- (ii) Lacerated wound $\frac{1}{2}$ " x $\frac{1}{6}$ " x $\frac{1}{6}$ " over middle of left ear.



- (iii) Lacerated wound 1"x1/6"x1/6" over left forearm.
- (iv) Lacerated wound 1" x 1/6" x 1/6" over right forearm.
- (v) Lacerated wound 1/4" x 1/6" x 1/6" over finger of left hand.
- (vi) Lacerated wound 1' x 1/6" x 1/6" over let side of chest.

All injuries were caused by hard blunt substance and simple in nature.

Age of injury within six hours.

During cross-examination he had stated that those injuries could not be caused by sickle.

13. PW.2 is the injured/informant. During his examination-in-chief he had stated that on the alleged date and time of occurrence he was sitting at his Osara (Varandah) and was screening T.V. His mother, his brother Ram Bali Patel and his father were along with him. At that very time Chandeshwar Singh came armed with sickle. Just after coming, he began to abuse. He was directing to withdraw the case which was filed against him since before. He resisted whereupon, with an intention to commit murder Chandeshwar Singh hurled sickle. He tried to prevent and during course thereof, he sustained injuries over finger of both the hands. He repeated the blow over his head. He tried to escape himself and during course thereof, sustained injury over his temporal region. He again gave third blow over his neck. He became severely injured and fell down. Thereafter, he again made forth attempt over his stomach causing injury over his left intercostal region. He began to shout in pain. His parents,



brother, came in rescue and tried to save him. During midst thereof, Chandeshwar Singh took away rupees 5070/- from his cash box kept in the shop. Neighbours came lifted him to hospital where he was treated. He became unconscious. On following day, he regained sense and then, before the town police station he gave his fardbeyan. Exhibited the same. In his presence, his father Radhe Singh had sign over the same who is now dead. Identified the accused. During cross-examination he had stated that accused happens to be his uncle. They are separate but the partition has not been effected through court. He is unaware over fact with regard to preparation of any document relating to partition. In para-3 he had stated that he is not knowing in whose name Khatiyani stands. He is not knowing how much area has been allotted to the share of each of the co-sharers. He is unable to say which plot has been allotted in whose favour. His house as well as house of accused lie over same plot. His father happens to be two brother. His grand father had seven brothers. Siblings of all the seven brothers of his grand father reside contiguously. None of them have seen the occurrence. During course of occurrence, none had come. In para-4 he had stated that house of Munarik Rai, Munni Ram, Ramprati Ram, Gullar Ram, Mahendra Ram, Santosh Sah and Jagdish Sah be in the vicinity of his house. They have not come at the time of occurrence at the place of occurrence but, ten minutes thereafter, they came. They were shown the injuries by his parents. They were not produced before the Investigating Officer on their behalf. The earlier case was instituted by his father so he is unable to say the ultimate result thereof. In para-6 he had stated that he is unable to say how



much time took place during course of occurrence. He became unconscious. He regained sense on the following day. After assault, he became unconscious. So, what activity Chandra Shekhar had followed thereafter, he is unable to say. In para-7 he had stated that Chandeshwar had assaulted at Osara. His parents, brother, tried to save him. When Chandeshwar attacked upon them, some of them run inside the house. Some outside the house. In para-8 he had stated that at the time of occurrence, it was night. Darkness had fallen down. Perceiving him alone Chandeshwar Singh attacked upon him by means of sickle which was sharp edged. In para-9 he had stated that at that very time he was wearing shirt. There was one cut mark over the same and the same was shown to the police, whether police had taken away or not he is unable to say. Blood fallen in an area of one had Blood had not spattered over the wall. In para-10 he had stated that there was dispute with Chandeshwar since before the occurrence with regard to ancestral property but he is unable to disclose the exact survey plot. In para-11 he had stated that accused had cut away sisam tree pertaining to him whereupon, dispute arose. The dispute was coming for the last ten years. Then had denied the suggestion that it is false to say Chandeshwar Singh had not assaulted him rather taking the police as well as doctor in his collusion, got this case filed after preparing false and frivolous medical report.

14. PW.1 is the mother. During her examination-in-chief she had stated that on the alleged date and time of occurrence they were screening T.V. at the Osara (Varandah). At that very



time, Chandeshwar Singh came armed with sickle. He directed her son to withdraw the case and then began to abuse which was resisted by her son whereupon, Chandeshwar Singh began to assault over his head, intercostal region with an intention to kill. They raised alarm whereupon Chandeshwar Singh taking out money from cash box ran away. Identified the accused. During cross-examination she had admitted inter-se relationship accused being her dever. She had shown ignorance with regard to number of cases being fought amongst them since before the occurrence. Shown ignorance regarding acquittal of the accused from a case instituted by her husband. She had further shown ignorance whether the case instituted at the end of the accused against her was going on or not. She had also shown ignorance with regard to pendency of any case regarding partition of the ancestral property. She had also shown ignorance over jointness. At para-3 she had stated that during course of her statement she had stated that Chandeshwar Singh had assaulted her son over head intercostal region, back with sickle. From the evidence of PW.3, Investigating Officer, it is evident that attention of the Investigating Officer has not been drawn up towards the same. In para-4 she had stated that occurrence took for an hour. House of others lie 20-25 *laggi* from her house. At the time of occurrence, none of them came at her place. It was dark night. In para-5 she had stated that she is unable to disclose which side of her house occurrence took place. Then had stated that the occurrence took one *laggi* away at outer Sahan of her house. Blood had fallen over the ground. Police was shown Blood. In para-6 she had stated that there was blood stain over the sickle. It has sharp edge. At the time of occurrence she



was screening T.V. Her son along with other family members were present. In para-7 she had stated that she is unable to disclose how many blows were given over her son. Her son became unconscious. She began to weep. People lifted him to hospital. She had also gone along with them. She had seen injuries over head, neck, intercostal region, hand, stomach of her son. At para-8 there happens to be topography with regard to grocery shop. In para-9 she had stated that she had not disclosed the event to any of the villagers. In para-10 she had stated that occurrence took place at the Osara of her grocery shop. She is unable to finish papers regarding the shop. Then had denied the suggestion.

15. PW.3 is the Investigating Officer. He had stated that after registration of the case, investigation was entrusted to him. Accordingly, he came to P.O. village where recorded statement of Radha Mohan Singh, inspected the P.O. The P.O. happens to be house and Dalan of informant Ram Sewak Singh which has got eastern front. It is north to south in length wherein, there happens to be pukka Osara. At the southern flank there is a room having northern face while at the northern there is a room having southern face wherein, there happens to be grocery shop. Then disclosed the boundary of the P.O. East-land of the informant and then parti field, west-residential house of the informant, south-road and then thereafter banana cluster of Suraj, North-the land belonging to Pattidar of the informant recorded statement of witness, procurement injury report, procures the supervision note and then thereafter, after completing investigation, submitted charge sheet. During cross-examination at para-2 he had stated



that as accused presence were absconding on account thereof, their statement were not recorded. In para-3 he had stated that during course of inspection of the P.O. he had found sign of occurrence. He had found blood spot at the place of occurrence but he had not seized the same. None of the independent witnesses came forward out of fear of the accused to make statement. He denied the suggestion that without visiting the P.O. submitted charge sheeted in collusive manner.

16. After going through the evidence so available on the record, it is evident that there happens to be consistent evidence of PW.1 and PW.2 with regard to activity of appellant as an assailant by means of sickle. Furthermore, though PW.1 was cross-examined over the place of occurrence which, being a rustic lady was not in a position to properly explain but, reason best known to the appellant neither the informant PW.2 nor the Investigating Officer PW.3 has been cross-examined on that very score. It is further evident that PW.1 as well as PW.2 have stated that it was dark night, even then, being a gotia the identification could not be challenged nor shrouds under mystery. There happens to be no suggestion that informant had sustained injury at others hand in different manner contrary to it, as suggested, there happens to be complete denial of the occurrence.

17. The lifeline having been used at the present moment is with regard to inconsistency in between the medical evidence as well as the oral evidence. It has been pleaded that when the allegation has been attributed that appellant was armed with sickle having sharp edge then in that circumstance, the injuries



as found by the doctor PW.4 could not have occurred which the doctor PW.4 reiterated but, the fact remains that the location of the injuries are the same as alleged by the informant P.W.2. Furthermore, there happens to be consistency over the issue that whenever there happens to be inconsistency amongst oral as well as medical evidence, the oral evidence will prevail unless and until, medical evidence completely brushed aside the feasibility. While going through the evidence of PW.4, doctor it is apparent that some sort deficiency happens to be at the end of the prosecution in the background of the fact that this witness was not at all suggested at the end of the prosecution whether the sickle having blunt edge would cause such kind of injury however as per medical jurisprudence whereupon having blunt edge could cause such kind of injury. Furthermore, it is evident from the evidence of PW.1 and PW.2 that it was dark night on account thereof, evident of witnesses that sickle had sharp edge, is not at all convincing. So the evidence has to be seen under aforesaid theme.

18. Furthermore, as has been prescribed in accordance with Section 134 of the Evidence Act, it is the quality not the quantity of evidence found sufficient to prove occurrence. That being so, when the evidence of PW.2 informant has minutely been gone through it is apparent that he stood the test.

19. In *Kuna @ Sanjaya Behera vs. The State of Odisha* reported in **2018 (1) PLJR 5 (SC)**, it has been held:-

“17. That conviction can be based on a testimony of a single eye witness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence



that is important, have been propounded consistently in Anil Phukhan(1993) 3 SCC 282, Ramji Surya (1983) 3 SCC 629, Patnam Anandam (2005) 9 SCC 237 and Gulam Sarbar (2014) 3 SCC 401 with the apparent emphasis that evidence must be weighed and not counted, decisive test being whether it has a ring of truth and it is cogent, credible, trustworthy or otherwise.”

20. In ***Smt. Shamim vs. State (GNCT of Delhi)*** reported in **2018 (4) PLJR 160 (SC)**, it has been held:

“11. PW2 is an injured witness whose throat was slit in the occurrence causing loss of voice requiring hospitalization for two months. The evidence of an injured witness carries great weight as it is presumed that having been a victim of the same occurrence the witness was speaking the truth. She has deposed that the appellant came upstairs after the deceased persons had been shot dead by the other accused. On the exhortation of the appellant accused Naushad, brother of PW4, again assaulted the witness on her throat with the razor. While the accused were leaving the appellant tripped over the witness. The blood stained 'Chunni' of the appellant discovered the next day on her confession, therefore stands explained.”

21. In ***Motiram Padu Joshi and Ors. vs. The State of Maharashtra*** reported in **2018(3) PLJR 349 (SC)**, it has been held:

“12. Likewise, the relationship of PW-2 with the deceased cannot be the reason for doubting the testimony of PW-2. It is fairly well-settled that relationship is not a ground affecting the credibility of a witness. In Mohabbat v. State of M.P., (2009) 13 SCC 630, this Court held as under:-

"11. Learned counsel for the respondent State on the other hand supported the judgment of the High Court.

"12. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the



accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version.

13. '5. ... Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

To the same effect are the decisions in *State of Punjab v. Jagir Singh* (1974) 3 SCC 277, *Lehna v. State of Haryana* (2002) 3 SCC 76 (SCC pp. 81-82, paras 5-9) and *Gangadhar Behera v. State of Orissa* (2002) 8 SCC 381."

The above position was also highlighted in *Babulal Bhagwan Khandare v. State of Maharashtra* (2005) 10 SCC 404, *Salim Sahab v. State of M.P.* (2007) 1 SCC 699 and *Sonelal v. State of M.P.* (2008) 14 SCC 692 (SCC pp. 695-97, paras 12-13)."

As held in various decisions, judicial approach has to be cautious in dealing with such evidence. It is unreasonable to contend that evidence given by related witness should be discarded only on the ground that such witness is related"

22. In *State of U.P. v.s Krishna Gopal & Anr.* reported in (1988) 4 SCC 302), it has been held:

"It is trite that where the eye-witnesses' account is found credible and trustworthy, medical-opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bantham said, are the eyes and ears of justice. Hence the importance and primacy of the orality of the trial-process. Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical-evidence, as the sole touch-stone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts; the 'credit' of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."



23. Furthermore, in order to attract section 307 of the IPC. It is apparent from plain reading of the section that nature of injury is immaterial. For better appreciation section 307 is quoted below:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death”

Section 307 as quoted hereinabove is bifurcated in two parts. The first part speaks about activity of the accused without causing any kind of hurt prescribing punishment up to ten years along with fine or both while, the other part commands where hurt is caused consequence of an activity having at the end of the accused with an intention or knowledge to commit murder then, in that circumstance, punishment goes up to imprisonment for life with fine. It is further evident that hurt is defined under Section 319 of the Cr.P.C. that did not denotes with regard to presence of injuries. So, the presence of injury, the nature of injury even if considering the submission having made on behalf of learned Amicus Curiae, did not play pivotal role in the background of the fact that there happens to be specific disclosure by the PW.2 that appellant had repeatedly hurled blow causing injury over the different portion of body.



24. That being so the judgment of conviction recorded by the learned lower court is hereby affirmed. So far sentence part is concerned, considering the litigation that of year 2000, inter se relationship, compromise having been effected amongst the parties and to some extent, the same has been accepted at the end of the learned lower court as is evident from para-14, 15 of the judgment, the sentence so inflicted by the learned lower court is modified and is directed as, period undergone. As such, appeal is dismissed with modification in sentence. Appellant is on bail, hence is discharged from its liability. First and last page of the judgment be handed over to Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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