

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.181 of 2009

SINGHESHWAR BHAGAT son of Zewar Bhagat, R/O Village-Neuri Sir
Khiriya, PS-Runnisaidpur, Distt-Sitamarhi.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shivendra Kumar Sinha, Adv
For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

10-12-2018

Sole Appellant, Singheshwar Bhagat has been found guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo RI for five years, under Section 324 IPC and sentenced to undergo imprisonment for two years, under Section 341 IPC and sentenced to undergo imprisonment for one month with a further direction to run the sentences concurrently vide judgment of conviction dated 19.02.2009 and order of sentence dated 20.02.2009 passed by Additional Sessions Judge, FTC No.VII, Sitamarhi in Sessions Trial No. 412/2007/172/2009.

2. Ganesh Raut (PW-4) while was admitted at SKMCH, Muzaffarpur gave his Fardbeyan on 23.05.2007 at about 4:45 PM disclosing therein that on



22.05.2007 at about 7:00 PM while he was gossiping at his Darwaza along with co-villagers, Singheshwar Bhagat son of Jewar Bhagat came and participated in gossiping but after staying for 10 minutes, he requested him to accompany to attend nature's call, whereupon, he along with Singheshwar Bhagat proceeded. They reached at a mango orchard where Singheshwar Bhagat began to pluck mangoes while he sat and was engaged in preparing tobacco (Khaini). While he was concentrating in preparing tobacco, Singheshwar Bhagat gave knife blow from the backside over front side of neck, on account thereof, there was cut by the side of wind pipe. He tried to apprehend him whereupon, he repeated the blow as a result of which, all the five fingers of his left hand also sustained cut injury. Even then, he tried to apprehend whereupon, he escaped therefrom. He, in an injured condition ran towards his house raising alarm, till then his wife Kaushalya Devi along with five children were taken away by Singheshwar Bhagat and his family members. He has been taken to Muzaffarpur for treatment.



3. After registration of Runnisaipur PS Case No. 81/2007, followed with an investigation, during course thereof, also procured injury report and after concluding the same, submitted charge-sheet, facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

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. It has further been pleaded that there was promiscuous relationship in between wife of informant and the appellant/accused which was not liked by the prosecution party and in the aforesaid background, this case has purposely been filed putting false and frivolous allegation after manufacturing injuries. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution has examined altogether 8 PWs out of whom PW-1, Bauajee Bhagat, PW-2, Kaushalya Devi, PW-3, Luxami Kumari, PW-4, Ganesh Raut, PW-5, Krishna Nandan Bhagat, PW-6, Lalpari Devi, PW-7, Madhusudan Singh and PW-8, Dr. Rajesh Kumar as



well as had also exhibited Ext-1 series, signature of witnesses over Fard-beyan, attesting witness, Ext-2, Formal FIR, Ext-3 Fard-beyan, Ext-4, Injury report. As stated above, nothing has been adduced in defence.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence has submitted that right from inception of the case, the inter se relationship in between PW-2, Kaushalya Devi with the appellant was very much suspected at the end of the prosecution party which, PW-4, husband of the PW-2 had admitted by saying that Kaushalya Devi, his wife happens to be a fair complexion lady, appellant happens to be a fair skinned male while he happens to be blackish and in likewise manner, also admitted that he suspected over the conduct of his wife as well as that of appellant. In the aforesaid background, the prosecution party was very much aggrieved and was eager to take revenge and that happens to be the reason behind that after manufacturing the story got this case filed.

7. Apart from this, it has also been submitted that improbability of the prosecution case is



visualizing from the narration of the victim itself i.e, (a) when victim was sitting engaged in preparing tobacco having nothing to defend, had there been intention at the end of the appellant to kill, would have pierced the knife from the backside in between ribs causing instantaneous death, more particularly, in the background of the fact that PW-4 had said length and edge of the knife to be one Bitta, (b) would have pierced or cut the neck from the backside which would have equally fatal, more particularly, cutting the jugular vein, spinal cord, (c) could not have allowed the prosecution to say that from backside he inflicted knife blow over front side of neck, and thus happens to be unacceptable, indigestible story having at the end of prosecution.

8. Furthermore, it has also been submitted that when the evidence of PW-4, injured is taken together with the evidence of PW-8, the doctor, it is evident that doctor had not corroborated the narration of the injured. Consequent thereupon, the prosecution story did not find to be believable one whereupon, is fit to be rejected. Even in worst case, accepting the



prosecution version, it only attracts application of Section 324 IPC and for that, appellant already remained under custody for more than two years.

9. Learned APP while supporting the findings recorded by the learned lower court has submitted that intention of an accused is to be gathered from his conduct. Nature of injury is not a condition precedent for attracting Section 307 IPC. Appellant came, sat, offered the informant to accompany while going to meet nature's call when darkness had fallen, gone to the mango orchard instead of going to bank of a pond, began to pluck mangoes in order to deviate attention of the informant and being dead sure, inflicted injury from backside in order to ward off any kind of exigency as he was knowing since before that informant was a BSF personnel knowing full well some sort of strategy in defending himself. That happens to be the reason that stroke was given over informant from the backside. With regard to other points having been raised, it has been submitted that it was for want of proper knowledge otherwise, appellant might have taken proper recourse in eliminating the



informant. Therefore, conviction and sentence recorded by the learned lower court is fit to be affirmed.

10. From the nature of evidence having been adduced on behalf of prosecution, it is evident that two kinds of witnesses have been adduced. The first one PW-4, the victim himself while the remaining i.e. Pws- 1, 2, 3, 5 and 6 are corroborative in nature. PW-7 is the I.O. and PW-8 is the doctor. So, it happens to be the evidence of PW-4 which has got primacy.

11. Over reliability of evidence of an injured witness, times without number, it has been held that being an injured, presence of witness at the spot is found admitted and that being so, whatever has been deposed at his end is to be accepted unless and until there happens to be cogent reason to discard his testimony.

12. In ***Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)***, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is



*well settled and precedents abound, reference may usefully be made to **Brahm Swaroop v. State of U.P., (2011) 6 SCC 288** observing as follows: “28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”*

13. PW-8 who happens to be the doctor posted at SKMCH had examined PW-4 on 23.05.2007 at 8.:40 AM and found the following:-

1. Sharp cut 12” x 1 CM on neck anteriorly,
2. Lacerated wound 3 CM x ½ CM on left sub-mandibular region.
3. Cut wound on left ring finger 1 CM x ½ CM, Age of injury within 12 hours, caused by sharp cut weapon, may be knife, simple in nature.

During cross-examination the doctor had rejected the suggestion of the accused that injury no.1 could be manufactured, but also divulged that it could be, if one takes risk of his life. He had also stated that none of the injuries independently or conjointly could be dangerous to life.



14. PW-4 had stated that on the alleged date and time of occurrence, he was sitting at the Darwaza of Bauaji. At that very time, appellant directed him to accompany as was going to nature's call whereupon, he accompanied. He along with appellant had gone to mango orchard lying west to his house where he was directed halt while Singheshwar began to pluck mangoes. He (informant) began to prepare *Khaini* and during course thereof, Singheshwar Bhagat came from backside and gave a knife blow over his neck from front side projecting his hand (shown scar mark). He again inflicted second blow, (again shown scar mark). Then he tried to ward off the third blow by his left hand, as a result of which, his four fingers of left hand sustained injuries, (shown scar mark over two fingers). Then he tried to resist whereupon accused fled away. He had tied the wound with Dhoti and anyhow, reached at his house. He disclosed the event that Singheshwar Bhagat has assaulted him with his knife. Then he became unconscious. He was taken to medical college where he regained sense. Police came, recorded his Fardbeyan, over which he put his signature



(exhibited). During cross-examination at para-2, he had stated that just adjacent south to his Darwaza at a distance of 10 steps, Darwaza of Bauaju lies intervened by the accused as well as Dalan of Pukar Bhagat. In para-3, there happens to be contradiction relating to Fard-beyan whereunder he had disclosed that he was sitting at his Darwaza and not at the Darwaza of Bauaji. Further, his attention was also drawn with regard to directing him to halt at the orchard by Singheshwar Bhagat, giving two blows over his neck by knife and at third occasion stopping by his hand, tying the injury with Dhoti and anyhow, reaching at his house and then disclosing that Singheshwar Bhagat had cut his neck and then became unconscious, taking him to SKMCH was not disclosed to the police. In para-4, he had stated that when he reached at his house, his wife and all the five children were at his house. Then again his attention has been drawn with regard to discloser having in the Fard-beyan, that his wife and all the five children were kidnapped by the accused and his family members. At para-5, he had admitted that his wife resides at his



house. She is a fair looking lady while he happens to be blackish. Accused, Singheshwar Bhagat is also a fair looking. In para-6, he has stated that Singheshwar Bhagat never came to his house, in his presence and to best of his knowledge, in his absence. His wife has not complained that Singheshwar Bhagat had ill eyes over her nor, his daughter has complained like so. In para-7, he has stated that he is not suspecting over her character. He is not on visiting terms with Singheshwar Bhagat. Then at para-9, 10 and 11, there happens to be cross-examination over location of orchard including the place of occurrence. In para-12, he has stated that in defence they are being trained to defend oneself. In para-13, he has stated that he had caught hold of knife. It has got one sided edge. It was one Bitta long, approximately 6 Inches and was pointed at the apex side. Knife was pierced in his neck over which, there was cut. Three times, knife blows were given. At third occasion, he caught hold of knife with his left hand. First and second time, the knife was pierced and then pulled out. At third occasion, it was not pierced as he had caught hold of the same. Then



had stated that three blows were given over his neck. Third blow deflected and caused injury over his chest, nose and forehead. Then at para-14, had stated that except little finger, there was cut over all the remaining fingers. Then had denied the suggestion that he had incorporated in the Fard-beyan that all the fingers sustained cut. In para-15, he had stated that he could not assault the accused. Whole occurrence took place within 10-15 minutes. In para-17, he has stated that all the clothes were shown to the police. In para-18, he had stated that he is not knowing whether he was treated before his treatment at Muzaffarpur. At para-19, he has stated that he remained silent from the place of occurrence to his house. 2-4-6 houses were there in the midst of way, but he had not disclosed them. He had fallen down, during midst of way 2-3 times. He had seen his mother, wife and children at his house. In para-21, he had stated that he had disclosed the event to his family members. The persons present there have also heard. Then had denied the suggestion that no such kind of occurrence has ever taken place. He has admitted that he was suspecting illicit



relationship in between accused and his wife. He has further admitted that he had directed the accused to behave properly. Then had denied the suggestion that after manufacturing the injuries, he got this case filed in the aforesaid background.

15. PWs 1, 2, 3, 5 and 6 have not seen the occurrence. They have deposed whatever been stated by the injured, PW-4. However, PW-2, wife during her examination-in-chief at para-2 has stated that Singheshwar Bhagat used to visit her place and was alluring her to indulge in illicit relationship. He was keeping lecherous eyes over her. Her husband, mother-in-law and she herself scolded him whereupon, he had threatened that one day, he will cut away her husband and will remain along with her. During cross-examination at para-5, she has stated that there was no rumour in the village to the effect that she was carrying illicit relationship with Singheshwar Bhagat. She has further deposed that Singheshwar Bhagat used to visit her place about a year prior to the occurrence. He used to visit even in presence of her mother-in-law. He used to visit in presence of her husband.



Furthermore, she admitted at para-8 that occasionally Singheshwar Bhagat was engaged in as a labourer.

16. PW-3 is the daughter who has during course of examination-in-chief has stated that Singheshwar Bhagat used to visit her house whereupon, her mother, grand-mother used to protest. During cross-examination at para-6, she has stated that Singheshwar Bhagat used to visit her place in their presence.

17. PW-5 had not deposed on that very score. PW-6 has stated at para-4 that Singheshwar Bhagat is her neighbour. He was not on talking terms with her daughter-in-law. There happens to be rumour against him in the villager that he happens to be of lachorous character. She had forbidden him not to visit her house. She had also forbidden her daughter-in-law to talk with him. Singheshwar Bhagat was not inclined to obey her direction, for that no Panchayati was convened but they were aggrieved and were wishing that for that, he be punished but they have not taken any effort. In para-5 and 6 also, she had detailed the same.



18. PW-7 is the I.O. He has detailed the steps having been taken at his end towards investigation of the case after registration of the case and further during course of narrating the objective finding relating to place of occurrence, he has stated that on account of rain, no blood was found over the place of occurrence. On that very score, he was cross-examined at para-7, whereunder he has stated that what kind of sign he would have corroborated regarding rain. He has not mentioned that land was muddy. He has not detailed the same.

19. From the evidences of the witnesses, as detailed hereinabove, it is apparent that there was some sort of sweet relationship persisting amongst PW-2 with the appellant, and for that, the family members of PW-2 was very much aggrieved as is evident from the evidence of PW-6, para-6. In the aforesaid background, though there happens to be companionship but, grievances were persisting. That means to say, enmity was there. Enmity is a double edged sword. It may be a cause for false implication, side by side, it may a cause for commission of the



offence.

20. The occurrence is of the month of May. None other than PW-7, the I.O. has stated that there was rain before inspection of the place of occurrence and on that very score, there happens to be no remark at his end that the land was muddy on account of rain or wet land. It is also evident from the evidence that informant and the accused were alone during course of occurrence. Injury is found duly corroborated by the evidence of PW-8, the doctor but, nature of injury and the manner whereunder it has been inflicted having absence of any kind of hindrance in between during course of commission of the occurrence so alleged is a circumstance, which could be taken into consideration.

21. PW-4 had not stated that there was any intervening circumstance which could have prevented the accused to do away with the life of the informant. That means to say, the force of the weapon was depicting the intention of the accused. That means to say, he was not at all carrying intention to kill the informant because of the fact that had there been, then in that circumstance, there would have been depth in



the injury, causing cut of wind pipe or presence of injury at other delicate part of body allowing instantaneous death and that being so, the conviction and sentence recorded against the appellant for an offence punishable under Section 307 IPC is not at all found sapiential whereupon is set aside retaining the finding relating to Section 324 IPC as well as Section 341 IPC as well as sentence inflicted therefor, respectively directing to run concurrently.

22. In terms thereof, the appeal is partly allowed. Because of the fact that the appellant has already remained under custody for 2 years and 2 months before release on bail by this Court whereupon he is discharged from the liabilities of bail bond.

(Aditya Kumar Trivedi, J)

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