

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.432 of 2015**

Arising Out of PS.Case No. -112 Year- 2008 Thana -HARIZAN District- BEGUSARAI

=====

1. Kaushlendra Prasad Singh**2. Lakshman Prasad Singh**, both sons of Late Prabhakar Prasad Singh, resident of Village - Bandehra, Police Station - Pasraha, District - Khagaria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. S. K. Lal-Advocate
 Mr. Birendra Kumar Singh-Advocate
 For the Informant : Mr. S. S. Thakur-Advocate
 For the Respondent/s : Mr. Abha Singh-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 19-06-2018**

Appellants Kaushlendra Prasad Singh and Lakshman Prasad Singh have been found guilty for an offence punishable under Sections 143, 323, 420 of the I.P.C. as well as Sections 3(i)(iii), 3(x) ought to have been 3(1)(x), 3(1)(xi), 3(1)(viii) of the S.C./S.T. (Prevention of Atrocities) Act and have been directed to undergo R.I. for three years six months, for an offence punishable under Section 420 of the I.P.C., sentenced to undergo S.I. for six months for an offence punishable under Section 323 of the I.P.C., sentenced to undergo S.I. for three months, for an offence punishable under Section 143 of the I.P.C., sentenced to undergo R.I. for three years, for the offences punishable under Section 3(i)(iii), 3(i)(x), 3(1)(xi), 3(1)(viii) of the S.C./ S.T. (Prevention of Atrocities) Act and also fined of



Rs.25,000/- each and in default thereof, to undergo S.I. for three months, additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 26.06.2015 and order of sentence dated 27.06.2015 passed by the 1st Additional Sessions Judge-cum-Special Judge, S.C./ S.T. Act, Khagaria in Sessions Trial No.477 of 2010 while acquitting the remaining accused.

2. PW-1, Kusheshwar Paswan filed written report before Officer-in-Charge, S.C./ S.T. Police Station Begusarai on 27.05.2008 disclosing the fact that he happens to be a Teacher. He had procured personal loan of Rs.2,00,000/- to facilitate marriage of his daughter, but could not search out the matching bride-groom, whereupon he requested Kaushlendra Prasad Singh to help in getting the marriage of his daughter settled in the background of long standing acquaintance. It has further been disclosed that he (Kaushlendra Prasad Singh) got information regarding borrowing of loan from the department by him. Then, it has been disclosed that on 26.01.2007, Kaushlendra Prasad Singh, Lakshman Prasad Singh, Munna Prasad Singh sons of Prabhakar Prasad Singh, resident of village-Bandehra, P.S. Pasraha, District-Khagaria came at his house at about 1.00 p.m. out of whom, Kaushlendra Prasad Singh had disclosed that he is under urgent need of Rs.2,00,000/- and further, as he knew regarding his establishment a medicine shop, fertilizer shop, STD Booth running in name of Arun Prabha. Furthermore, he assured that as soon as marriage of his



daughter is being fixed, he will repay the amount in one instalment. Even in case of non-settlement of the marriage, he will return back the amount by August, 2007. Furthermore, Laxman Prasad Singh, Munna Prasad Singh assured that his brother would not misappropriate the aforesaid amount. As soon as marriage of his daughter is settled, he will return the whole amount. Because of the fact that he was carrying good repo with the parents of Kaushlendra Prasad Singh as well as Kaushlendra Prasad Singh himself on account thereof, considering the urgent need of money as well as putting belief upon his assurance, he had handed over Rs.2,00,000/- to Kaushlendra Prasad Singh, which was handed to Lakshman Prasad Singh by Kaushlendra Prasad Singh. At that very time, his wife Chandra Devi was also present. All the three brothers left the place after saying that tomorrow on 27.01.2007, he should come with the stamp paper, so that they would execute an agreement in presence of respectable persons including Mukhiya and Sarpanch and will hand over the same. (enclosed herewith)

In the 1st week of September, 2007, he had gone to the house of Kaushlendra Prasad Singh and reminded him that the time within which he had assured to return back the amount has expired, over which he had stated that for the present, they are facing some sort of unfavourable situation, whereupon he could not be able to refund the money, but anyhow he will return back the amount by 15th October, 2007. When the aforesaid time also failed, then he along



with his wife Chandra Devi gone to demand, but did not get and in the aforesaid background, they made repeated demand, but Kaushlendra Prasad Singh had adopted dilly delaying tactics and delayed the payment.

Lastly, when he gone on 25.05.2008 at about 1.00 p.m. to the place of Kaushlendra Prasad Singh along with his wife Chandra Devi and Lalan Paswan son of Banarsi Paswan, at that very time, Kaushlendra Prasad Singh and his brother Laxman Prasad Singh, Munna Prasad Singh, wife Punam Devi, cousin brother Subodh Singh, Janardan Prasad Singh, Indra Bhushan Singh were sitting at his darwaza. He had complained to Kaushalendra Prasad Singh to have committed breach of trust. He had paid Rs.2,00,000/- to him which up-till-now, is not being repaid even after persistent demand. Kaushalendra Prasad Singh became enraged and said *“Sala Dusadh harijan hokar tum hamse muh lagata hai, tum aur tumhara baap, dada jutha khakar pala hai. Abhi aisa sabak sikhate hai ki rupya mangna hi bhul jaiga”*. Then thereafter, all the accused persons named above considering him to be harijan as well as coming from lower strata of the society, began to humiliate him, dragged him to road, assaulted by fists and slaps and then, Kaushalendra Prasad Singh lifted excreta from the side of the road and then, put over his mouth. His wife begged and said that why you people are indulged in such kind of nefarious activity with her husband, in spite of the fact that



you people had taken Rs.2,00,000/- from him over which Laxman Prasad Singh abused his wife Chandra Devi and said that “*Haramzadi tumhare satne se meri haddi chhua jata hai*” and then, caught hold her hair, dragged her to road and assaulted. During midst thereof, his wife was also assaulted by Punam Devi with broom, who also spate over her mouth. On hue and cry raised by him as well as his wife, Jagdish Paswan, son of Banarsi Paswan, Bharat Paswan, son of Prakash Paswan, Pramod Paswan, son of Mahabir Paswan along with others came, who were present there as having been employed by Kaushalendra Prasad Singh. Then Kaushalendra Prasad Singh disclosed that you people are knowing his status and so, had directed the others to get him understood that in case of demand, he will have to face the dire consequence. He had also said that it looks that he is not reading the newspaper. A beetle shopkeeper was shot at when he had demanded money. He had further instructed to get them boarded in a bus, so that they would not be able to go to police station.

3. After registration of Begusarai S.C./ S.T. P.S. Case No.112 of 2008, investigation commenced and after concluding the same, chargesheet was submitted, whereupon trial commenced and concluded in a manner, whereunder others were acquitted while appellants have been convicted and the same happens to be the subject matter of challenge.



4. 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. However, during course of suggestion contrary plea has also been taken up. At first instance, it has been suggested that on the pretext of providing service, the informant deceived Rs.50,000/- and for that, when repeated demand was made, he became annoyed as a result of which, complain petition was filed and in order to counter-meet the same, instant case has been filed with false and frivolous allegation. Another kind of plea has also been advanced that in the locality, Gunda bank was running wherein the informant had deposited Rs.2,00,000/-. On account of closure of Gunda Bank, accused persons have been implicated as deposit was at their instance. However, though no documentary evidence has been adduced, but two DWs have been examined in defence.

5. In order to prove its case, prosecution had examined altogether six PWs, who are PW-1, Kusheshwar Paswan, PW-2, Bharat Paswan, PW-3, Pramod Paswan, PW-4, Chandra Devi, PW-5, Jagdish Paswan and PW-6, Bijay Kumar Singh. Side by side, had also exhibited signature of the informant over written report as Exhibit-1, Ekrarnama (original) Exhibit-2, Paragraphs-1 to 24 of the case diary as Exhibit-3. As stated above, no documentary evidence has been adduced. Moreover, DW-1, Nand Kishore Singh and DW-2, Chandra



Kishore Singh have been examined in defence.

6. Learned counsel for the appellants while challenging the finding recorded by the learned lower Court has submitted that during course of scrutiny of the materials available on the record, the learned lower Court acted in mechanical manner, whereupon the finding so recorded by the learned lower Court is not at all found justifiable. In order to substantiate such plea, it has been submitted that learned lower Court should have considered that informant could not be able to show that at any point of time he was possessing Rs.2,00,000/-. At one occasion, he had stated that he had obtained loan from the department, then in that circumstance, it would have been deposited in the bank. So, would have been substantiated by producing passbook showing the date of withdrawal of Rs.2,00,000/- and having it handed over to the appellants. Now-a-days, keeping Rs.2,00,000/- in the house without any rhyme and reason or urgency is a circumstance, which is not at all found appreciable. When the source has not been shown, then in that event, having in possession of Rs.2,00,000/- and have been handed over to the appellant Kaushalendra Prasad Singh , appears to be suspicious one.

7. Furthermore, it has been submitted that although in the written report which happens to be typed one inspiring that same has been prepared after taking legal opinion did speak with regard to deed



of undertaking allegedly executed by appellant Kaushalendra Prasad Singh, but the same was not at all furnished to the I.O. during course of investigation and that happens to be reason behind that genuineness, authenticity of the document could not be ascertained by way of having the document examined by the handwriting expert at least relating to signature of appellant Kaushlendra Prasad Singh. Apart from this, it has also been submitted that forgery having been committed by the informant is itself apparent from perusal of the document in question as none of the witness standing thereupon, has been summoned to depose rather same has been exhibited by PW-5, whose presence does not happen to be over the same. Apart from this, it has also been pleaded that when the relevant column of the document is gone through, it is apparent that it was sold on 11.01.2007 by the stamp vendor in favour of Kusheshwar Paswan that means to say, it was already available with the informant on the alleged date on which, allegedly payment was made and so, the document would have been scribed on the same day having presence of witnesses of the village of informant Kusheshwar Paswan. It has also been submitted that from perusal of the document in question, it is apparent that the recitals whatever been incorporated therein is in the pen of different person while the signature happens to be of different person. That has got relevancy in the background of the fact that during course of evidence, it has been stated that same has been



prepared by the appellant Kaushalendra Prasad Singh in his own pen and handwriting.

8. It has also been submitted that after going through recital of Exhibit-2, it is apparent that there happens to be no disclosure of date of receipt of the money rather simply notified with regard to receipt of the money and further, the same will be returned back by the month of August, 2007. Mere non-refunding of the amount within the aforesaid stipulated period would not attract an offence punishable under Section 420 of the I.P.C. in the background of the fact that for that purpose, the prosecution was under obligation to satisfy that negotiation commenced under the influence of fraudulent intention. In likewise manner, the other offences whereunder appellants have been found guilty on account of inconsistency prevailing amongst the witnesses on that very score, did not justify. Consequent thereupon, appeal is fit to be allowed.

9. On the other hand, learned Additional Public Prosecutor as well as learned counsel for the informant have submitted that prosecution has duly substantiated its case beyond all reasonable doubt and on account thereof, the finding recorded by the learned lower Court did not attract interference. In order to justify such plea, it has been submitted that all the witnesses are consistent over the genesis of occurrence as well as manner of occurrence,



whereupon the learned lower Court had rightly recorded finding of guilt. Accordingly, instant appeal happens to be meritless and is fit for dismissal.

10. From the evidence available on the record, it is evident that occurrence as alleged happens to be committed at two different stages. The first one regarding handing over of Rs.2,00,000/- by the informant to the accused on 26.01.2007 followed with execution of document (Exhibit-2) on 27.01.2007, dilly delaying tactics as alleged in refunding of the amount and the second one, dated 25.05.2008, on which date, while informant and his wife had gone to the place of accused, they were abused, assaulted and further, excreta was put over mouth of the informant, during course of which, prosecution party were duly acknowledged as Harijan. From perusal of the record, it is evident that charges whatever been framed against the appellants relate with the incident having committed on 25.05.2008 encapsulating the earlier events so alleged dated 26.01.2007, on which date, cash appertaining to Rs.2,00,000/- was handed over to the appellant. When the statement recorded under Section 313 of the Cr.P.C. has been gone through, mistakes in likewise manner, is found duly exposed as the first questionnaire relates with the incident dated 25.05.2008 while the second questionnaire relates with 27.01.2007, on which date, as per prosecution evidence itself, payment was not made rather document



was scribed allegedly by the appellant Kaushalendra Prasad Singh.

11. Be that as it may, with regard to handing over of Rs.2,00,000/- is concerned, only ocular evidence has been adduced and Exhibit-2, the document has been brought up on record as an ancillary evidence. It is true that none of the witnesses having their presence over the so alleged document has been examined nor the aforesaid document has been exhibited by the informant (PW-1) nay the I.O. (PW-6) had deposed on that very score, rather it has been exhibited through PW-5, whose presence admittedly is not over the document. Apart from this, the document was not produced before the Investigating Officer nor its genuineness was tested during course of investigation. Contrary to it, when the document has been minutely gone through, it is apparent that the signature of Kaushalendra Prasad Singh having at the fag end of the paper at right side appears to be different than the writing of the recital of the document. Moreover, when the format of the stamp paper has been properly scrutinized, it is apparent that it bore the serial no.3904 sold on 11.01.2007 in favour of Kusheshwar Paswan son of Late Mahabir Paswan that means to say, the document was already in possession of informant since before the alleged date of payment dated 26.01.2007. In spite of absence of relevant disclosure in the written report regarding the day on which, the loan was paid. Furthermore, the prosecution has kept mum on which date loan was sanctioned and on which date informant had



received the amount. Whether it was deposited in his account or was handed over in cash, had also not been divulged. Prosecution had not shown any cause of urgency to keep the amount at his house. PW-1, the informant and PW-4, his wife, who are the only witness on that very score have also failed to divulge whether they were carrying Rs.2,00,000/- in their house since before, more particularly in the background of the fact that they have disclosed that accused persons came to know about the sanction of the loan by the department.

12. The next improbability as visualizes that when stamp paper was already available with the prosecution party, then in that circumstance, why not it got executed on 26.01.2007 itself, than introducing the story that accused after taking money had directed him to come along with the stamp paper at his place where he had gone on 27.01.2007 and there the document got scribed. The aforesaid eventuality is to be perceived in the background of the fact that at an initial stage, no such offer was made and further, amount was paid in the background of the fact that both the parties were acquainted since before. Then what was any kind of desirability for executing the document, moreover, after taking of money by the accused.

13. Now, coming to the second incident, PW-1 at Para-8 (examination-in-chief) had said that on 25.05.2008, he along with his wife, Lalan Paswan had gone to the place of Kaushalendra Prasad



Singh at about 1.00 p.m. At that very time, all the accused, so named, were present where he demanded the money. Consequent thereupon, Kaushalendra Prasad Singh abused by calling his caste name and at Para-9 (examination-in-chief) had narrated that they assaulted, dragged to road and then after lifting, excreta by the side of the road, put it over his mouth. When his wife protested, she was assaulted by Laxman Prasad Singh, abused and then, said that she happens to be untouchable, during course thereof, Punam Devi assaulted with broom and on hue and cry, people came. Then thereafter, came back to his house on 27.05.2008, instituted the case.

14. PW-2, Bharat Paswan had disclosed that at that very time, he was at the house of Kaushalendra Prasad Singh where informant and his wife came, demanded money. Then had narrated that they (accused persons) pushed Kusheshwar Paswan and then, Kaushlendra Prasad Singh put excreta over temporal region of Kusheshwar. On protest by the wife of Kusheshwar, Kaushlendra, his wife dragged her outside. In Para-9 of cross-examination, he shown political rivalry with the accused Kaushlendra. At Para-13, he had said that Kusheshwar had come to his place to call him, but he is unable to say the place of residence of Kusheshwar. At Para-14, he had stated that he had gone inside courtyard (angan) of Kaushlendra where occurrence took place.



15. PW-3 had stated that at that very time, he was at the place of Rajendra Singh. After hearing uproar coming from Angan of Kaushlendra, came over road and had seen wife of Kaushlendra pushed by Punam Devi. Laxman had caught hold of her hair. Poonam abused and then, spat. In Para-14, he had failed to disclose the boundary of the P.O.

16. PW-4, wife of informant, one of the victim, narrated the story in different way stating that Kaushlendra had called them to receive money a sum of Rs.2,00,000/-, which was paid to him by her husband. When they arrived, he failed to pay whereupon her husband shown his displeasure over which, Kaushlendra, Munna, Subodh, Janardan, Bhushan abused, assaulted. Her hair was caught hold by Laxman. Poonam Devi assaulted with broom. In Para-18, she had disclosed that her husband had taken loan from a Bank. Loan amount was given to Kaushlendra. Her daughter is already married. His relative also resides at village-Bandehara, namely Banarsi. In Para-25, she had stated that her husband had filed written complain to Mukhia as well as Chaukidar (not produced).

17. PW-5 had stated that while he was coming from field and reached near the house of Kaushlendra, seen all the accused persons abusing Kusheshwar as he had gone to demand money. Then had exhibited the document. During cross-examination apart from



others, at Para-18 had stated that Kusheshwar Paswan had reported the matter to Pasraha Police, but no case was registered.

18. PW-6 is the I.O., who had deposed that after registration of case, he was entrusted with the investigation and after completing the same, submitted chargesheet. However, there is no whisper at his end whether the deed was produced before him and whether its genuineness was tested during investigation. Furthermore, failed to pale out whether informant was in possession of the amount. Also stated that during course of investigation, he came to know that informant had deposited his money in “Goonda Bank” and also got deposit from others whereupon dispute arose.

19. From the evidence, it is evident that PW-5 had not shown presence of PW-4 while PW-4 had stated that on an information conveyed by Kaushlendra, they came to receive money. Furthermore, from the evidence of PW-4 and PW-5, it is apparent that they had completely changed the manner of occurrence as disclosed by PW-1. PW-2 and PW-3 also stood in similar pedestal. Furthermore, whether the authenticity of the deed has been tested nor the prosecution has been able to substantiate the source of money allegedly given to Kaushlendra.

20. *Falsus in uno falsus in omnibus* is not at all applicable so far Indian continent is concerned and that happens to be



reason behind that the Court has been entrusted with a pious duty to minutely, judiciously evaluate the evidence and in spite of having part of the evidence soaked with falsehood, the remaining part, if inspires confidence, has to be accepted. That means to say, the Court has to indulge in separating truthfulness from falsehood like separating grain from chaff. But when the case of the prosecution is found imbued with falsehood in such manner that it happens to be difficult to distinguish, then in that circumstance, even adopting such exercise is not going to give any sort of fresh breath. Furthermore, in the background of aforesaid infirmities, it appears to be difficult to accept it a continuing offence, whereupon it appears to be indiscreet effort of the prosecution.

21. From perusal of the record, it is apparent that learned lower Court had not taken pain to identify the inherent improbability, deficiency persisting on the record as discussed hereinabove while recording the judgment of conviction and sentence. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	25.04.2018
Uploading Date	19.06.2018
Transmission Date	19.06.2018

