

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.357 of 2015

Arising Out of PS.Case No. -75 Year- 2002 Thana -BODHGAYA District- GAYA

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1. Shaukhin Chaudhary Son of Late Muneshwar Chaudhary, resident of village -
Suryapura, P.S. - Bodhga, District - Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prithivi Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-05-2018

Sole appellant, Shaukhin Chaudhary has been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for 7 years as well as to pay fine of Rs. 5,000/- in default thereof, to undergo SI for six months, with a further direction to set of the period which the appellant had undergone during course of trial in accordance with Section 428 CrPC vide judgment of conviction dated 08.06.2015 and order of sentence dated 09.06.2015 passed by 6th Additional District and Sessions Judge, Gaya in Sessions Trial No. 249/2014 /254/2003.

2. PW-3, Indradeo Raut gave his Fard-e-beyan on 23.06.2002 while he was admitted at Magadh Medical College Hospital, Gaya disclosing therein that on the eve of marriage in his Pattidari, he after finishing his job proceeded from Gaya to his house on three wheeler. At about 2.30 PM, he reached at Suryapura where



he got down from the auto-rickshaw in a way to proceed to his village and during midst thereof, he met with Prahlad Raut and Chandeshwari Chaudhary with whom they had gone to take toddy at the shop of Shaukhin Chaudhary. He demanded toddy which was refused by the Shaukhin Chaudhary followed with verbal duel and then converted under hot altercation as well as brawl. Then thereafter, Shaukhin Chaudhary began to chase him with Fasuli and covering considerable distance, he gave two Fasuli blows causing injury over his both hands. Blood oozed out. Then on being scolded by Prahlad and Chandeshwari, Shaukhin Chaudhary escaped therefrom. Anyhow, he reached over Bodh Gaya road where he met with his co-villager, Bhondu Raut with whom he had gone to Bodh Gaya Hospital where he was treated and then, has been taken to Bodh Gaya Medical College Hospital as he became unconscious.

3. Aforesaid Fard-e-beyan was recorded in presence of his brother, Sunil Raut (PW 1) who stood as an attesting witness investigation of the case was taken up after registration of Bodh Gaya PS Case No. 75/2002 and after completing the same, charge-sheet was submitted whereupon, trial commenced and concluded in a manner 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. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 8 PWs out of whom PW-1, Sunil Raut, PW-2, Sunita Devi, PW-3 Indradeo Raut, PW-4, Gariban Chaudhary, PW-5, Sudhir Prasad, PW-6, Basudeo Prasad, PW-7, Chandeshwari Choudhary and PW-8, Dr. Ravi Shankar Sharan Singh, as well as had also exhibited Ext-1 series, Injury report. As stated above, nothing has been adduced in defence.

6. From the lower court record, it is evident that PWs-4, 5, 6, and 7 have not supported the case of the prosecution, on account thereof, were declared hostile. PW-8 is the doctor who had examined victim/injured, PW-3. PW-1 is the brother, PW-2 is the wife and PW-3 is injured/informant himself. Investigating Officer has not been examined. Non examination of Investigating Officer is not to be found as dent in the prosecution case unless and until prejudice has been caused to the accused.

7. *In Lahu Kamlakar Patil v. State of Maharashtra* as reported in (2013) 6 SCC 417 under para-18, it has been held by the Hon'ble Apex Court that non examination of the Investigating Officer is to be perceived in the background of nature of the case as well as evidence having adduced during course of trial in order to infer



whether it has caused prejudice to the interest of the accused or not.

For better appreciation the same is quoted hereinbelow:-

18. Keeping in view the aforesaid position of law, the testimony of PW 1 has to be appreciated. He has admitted his signature in the F.I.R. but has given the excuse that it was taken on a blank paper. The same could have been clarified by the Investigating Officer, but for some reason, the Investigating Officer has not been examined by the prosecution. It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar* [(1996)2 SCC 317], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik v. State of Bihar* [(2000) 9 SCC 153], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in *Arvind Singh v. State of Bihar* [(2001)6 SCC 407], *Rattanlal v. State of Jammu and Kashmir* [(2007)13 SCC 18] and *Ravishwar Manjhi and others v. State of Jharkhand* [(2008)16 SCC 561], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.

8. Therefore, after proper scrutiny of the materials



available on the record, it would be a subject of consideration whether on account of non examination of the Investigating Officer, the interest of the appellant/accused is found jeopardized. In order to begin with, first of all, the evidence of doctor is to be taken note of.

9. PW-8 had examined the injured/informant (PW 3) on 22.06.2002 and found following injuries:-

1. Incised wound on right hand near palm 4" x 1" x skin deep.
2. Lacerated wound over left hand near elbow joint 1" x 1/4" x Skin deep.

Injury No.2 has been caused by hard and blunt substance, simple in nature, while after procuring of X-ray report regarding Injury No.1 opined it to be caused by sharp cut weapon, simple in nature. Furthermore, the doctor opined that the injury was within 6 hours but, he had not mentioned the time of examination of the injured. PW-8 had examined PW-3 while he was Medical Officer posted at PHC, Bodh Gaya. No supportive injury report issued by the A.N.M.C.H, if any, has been brought upon record.

10. From perusal of the cross-examination, it is evident that nothing substantial has been suggested therefor, nor he was examined on the nature of injury. However, it is apparent therefrom



that one of the injuries has been inflicted by sharp cut weapon while other by hard and blunt substance.

11. PW-1 is the brother of the informant. While informant was giving his Fard-e-beyan, he was present and that happens to be fortified on account of his of LTI over Fard-e-beyan. As per Fard-e-beyan, it is evident that there happens to be complete absence of PW-1 as well as PW-2. That has got relevancy in the background of the fact that his absence is duly acknowledged and accepted by him as, he was present while PW-3 was giving Fard-e-beyan. In the aforesaid background, now the evidence is to be seen.

12. During his examination-in-chief, he had stated that while he was present in Suryapura, he had seen Shaukhin chasing his brother, Indradeo carrying Fasuli. When they reached at Suryapura Mor, he gave Fasuli blows causing injury over his right hand as well as near elbow of left hand. He had further stated that he along with others carried Indradeo to Bodh Gaya hospital and therefrom, to Magadh Medical College Hospital. During cross-examination, it is evident that he happens to be a rickshaw puller. He used to go from his village at 5.00 AM to Gaya and usually returns back in the evening. At para-4, he had stated that while he was near Neem Tree, he had seen his brother coming from a distance of ten bamboos being chased by the accused. He had seen only chasing of his brother. His



brother was shouting '*Bachao-Bachao*'. He rushed whereupon, the accused/appellant after inflicting blows, ran away. His brother was assaulted from behind. His brother fell down over the ground. Blood came out from the injuries. In para-5, he had stated that he signalled one Tempo to stop whereupon, he took his brother to Bodh Gaya Hospital. First of all, his statement was recorded and then statement of his brother was recorded (not brought up on record). Then at para-6, there happens to be contradiction on that very score.

13. PW-2 is the wife. Her presence is also shown in the Fard-e-beyan. She had deposed that on the alleged date and time of occurrence, she had gone to Suryapura for grinding wheat. After grinding, when she was coming to her house, she had seen the appellant chasing her husband armed with Fasuli. Appellant inflicted Fasuli blow causing injury over hand of her husband. He repeated the blow. Her husband became unconscious after sustaining the injury. He was taken to Bodh Gaya police station wherefrom was taken to Magadh Medical College Hospital. She had made statement before the police. During cross-examination at para-4, she had stated that she had gone at the flour mill of Shankar Mahto. She had gone at about 4.00 PM. In para-5, she had disclosed that when she came out from flour mill of Shankar Mahto, had seen her husband running away at a distance of three bamboos. In para-6, she had stated that appellant was



chasing her husband. Appellant chased up to three bamboos. She had seen the occurrence. At that very time, she was alone. In para-7, she had stated that when she reached near her husband, he was lying over the road. None was present. She signalled a tempo to stop and then, had taken away to police station. In para-8, she had stated that first of all, she had gone to police station, her husband was sent to the Medical College where her husband was admitted for 15 days. She had further stated that one Fasuli blow was given over right hand near thumb while another blow over left hand near elbow.

14. PW-3 is the injured/informant he had sated that on the alleged date at about 3.30 PM, he after finishing his work, proceeded from Gaya to his home as there was marriage in his Gotia. Then had said that he had gone to his house and during course thereof, he got down from the tempo over road in front of village, Surayapura. He met with Pahlad Raut who desired to take toddy. Then thereafter, he along with Pahlad and Chandeshwar gone near palm tree of appellant where he demanded toddy. Appellant declined whereupon, they both indulged in an altercation followed with scuffle. Then appellant gave a Fasuli blow over his neck with an intention to kill while he was fleeing being chased by appellant. In order to ward off the blow, he lifted his hand, as a result of which, he sustained injury over his right hand near thumb, left hand near elbow. Blood



oozen out. He became unconscious and fell down. His brother Sunil and wife Sumitra lifted him to Bodh Gaya PS along with Bhondu Raut wherefrom, he was sent to Magadh Medical College Hospital where he was treated. Police came and recorded his Fard-e-beyan.

15. During cross-examination at para-12, he had stated that toddy shop of appellant lies at village, Suryapura. He along with Pahlad had gone to the shop of appellant. At that very time, appellant was getting down from a palm tree. In para-13, he had stated that he indulged in an altercation with appellant, Shaukhin. Pahlad had not indulged. Then had stated that he had not demanded toddy rather Pahlad had demanded toddy. Accused had not given toddy to Pahlad. At para-14, he had stated that he is unable to disclose as to how Pahlad died. In para-15, he had stated that he had no animosity with Shaukhin Chaudhary since before. In para-16, he had stated that they indulged in altercation for two minutes and then, indulged in scuffle. Chandeshwar, his co-villager was taking toddy at that very time. In para-17, he had stated that the road is 20 steps away from toddy shop. Accused took out Fasuli from toddy pot (*Labhni*). Seeing him taking out Fasuli, he ran being chased by Shaukhin. He had further stated that he inflicted blow aiming his neck and during course thereof, he sustained injury over his hand. In para-19, he had stated that blow was not repeated after his falling but again said that he repeated blow



causing injury over his left hand near elbow. He had fallen over *Pakki Sarak*. In para-20, he had stated that he remained unconscious for three days. On 4th day, he had made his Fard-e-beyan. Then had denied the suggestion that he as well as Pahlad happen to be veteran criminal and during course thereof, they might have sustained injury in different manner at different place.

16. From the evidence available on the record, it is evident that PWs-1 and 2 could not be able to prove their status to be eyewitness to occurrence in the background of the fact that in spite of their absence during initial version, they have not shown presence of each other although, PW-3, informant later on tried to introduce their presence. Therefore, putting reliance upon their evidence as an eyewitness to the occurrence appears to be a suspicious one.

17. PW-3 is admittedly an injured. Evidence of injured inspires confidence with regard to his presence at the place of occurrence as well as falling victim during occurrence unless and until there happens to be cogent reason to disbelieve the same.

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.”

18. When the evidence of PW-3 has been minutely gone through, it is evident that during his examination-in-chief, he had claimed to have received both the blows by Fasuli, a sharp cutting weapon while he was being chased but, during course of cross-examination at para-19, he had stated that after sustaining first blow, he fell down and then thereafter, second blow was given. However, from the evidence of PW-8, doctor, it is apparent that the injury having over left hand near elbow is found caused by hard and blunt substance. That means to say, Fasuli blow is found substantiated with regard to injury no.1. It is also apparent from the evidence of PW-3, para-15, that both the parties have got no grievance against each other. It is further evident that first of all they indulged in abuse then scuffle with each other and then, the present episode at third stage.

19. Furthermore, when the evidence of PW-3 para-19, is properly analyzed, there happens to be no intervening circumstance even then no repetition of blow on the vital part of body. The injury



whatever been on the person of PW-3, injury no.1 happens to be skin deep that too on non vital part and so, giving anxious consideration to the facts and circumstances of the case, the finding of the learned lower court obligating the appellant for an offence punishable under Section 307 IPC is found not at all substantiated whereupon is set aside. However, considering the nature of the injury, appellant is also found guilty for an offence punishable under Section 324 IPC and considering the nature of the evidence inconsonance with the litigation which the appellant faced since 2002, his sentence is directed to be period having been undergone.

20. Since appellant is on bail he is directed to be discharged from the liability of bail bond. Appeal is, accordingly, partly allowed.

(Aditya Kumar Trivedi, J)

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