

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.18 of 2013

Arising Out of PS. Case No.-213 Year-2006 Thana- SAUR BAZAR District- Saharsa

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1. Ram Pukar Sharma @ Musaharu Sharma, Son of late Kishan Sharma, resident of village – Laxminiya, P.S.-Sour Bazar, District – Saharsa.
 2. Sanjay Sharma, Son of Ram Pukar Sharma, resident of village – Laxminiya, P.S.-Sour Bazar, District – Saharsa.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amarnath Jha, Advocate.

For the Respondent/s : Mr. Binod Bihari Singh, APP.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 19-09-2018

Heard learned counsel for the appellants as well as learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the Judgment and Order of conviction and sentence dated 10.12.2012 passed by Sessions Judge, Saharsa in Sessions Trial No. 139 of 2007 arising out of Sour Bazar P.S. Case No. 213 of 2006, whereby the learned trial court acquitted Kamla Devi and Mangiya Devi from all the charges levelled against them and convicted the accused namely, Ram Pukar Sharma and Sanjay Sharma for the offence punishable under Section 307/ 34 of the Indian Penal Code and sentenced them to undergo R.I. for ten years each and also slapped them with the fine of Rs. 10000/- each and in case of default of payment of fine, to further



undergo R.I. for one year under the aforesaid section.

3. Factual matrix of the case is that Sour Bazar P.S. Case No. 213 of 2006 was instituted under Sections 341, 323, 307, 504 and 506/34 of the Indian Penal Code against the accused persons, namely, Ram Pukar Sharma, Sanjay Sharma, Kamla Devi and Mangia Devi on the basis of the fardbeyan of Raj Kishore Sah, Son of Ram Awatar Sah recorded by S.I. Bhola Prasad Singh of Baijnathpur O.P. at Sour Bazar hospital on 19.09.2006 at 05:30 PM with the allegation in succinct that on 19.09.2006 at 11:00 AM, informant was ploughing his field located in the village Laximiniya which he had purchased from Satto Sah one year back. In the meantime Ram Pukar Sharma and his son Sanjay Sharma who had also purchased land adjacent to the land of the informant from aforesaid Satto Sah objected ploughing the aforesaid field by the informant. On making protest by the informant, both of them started assaulting him by means of lathi and rod on his head inflicting head injury to him. When his wife Lalita Devi rushed in his rescue, they also made her injured by assaulting her. Thereafter Kamla Devi and Mangiya Devi arrived there and assaulted him and his wife by means of lathi. They also slated them and extended threatening of ousting from the village in case of lodging case.

4. Aforesaid case was investigated by the police



and on conclusion of the investigation, I.O. submitted chargesheet against the accused persons namely Ram Pukar Sharma, Sanjay Sharma, Kamla Devi and Mangia Devi under Sections 341, 323, 307 and 504 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in the seisin of Sessions Judge, Saharsa for trial.

6. Charge against the accused persons namely Ram Pukar Sharma, Sanjay Sharma, Kamla Devi and Mangia Devi was framed under Section 307/34 of the Indian Penal Code. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case in ocular evidence, the prosecution has examined altogether seven witnesses namely, Ram Awatar Sah as PW-1, informant Raj Kishore Sah as PW-2, Lalita Devi as PW-3, Pramod Rai as PW-4, Gyan Prakash Gupta who has proved the X-ray report as PW-5, I.O. Bhola Prasad Singh as PW-6 and Dr. Samrendra Jha who has examined the victim as PW-7. Out of the aforesaid witnesses, PW-4 turned hostile. The prosecution has also filed and proved several documents by way of documentary evidence.



8. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. Accused persons have also examined two witnesses namely Chandeshwari Ram as DW-1 and Lalit Sharma as DW-2 in ocular evidence. In documentary evidence accused persons have filed two documents in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts namely Ram Pukar Sharma and Sanjay Sharma have preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that as per the prosecution case as adverted in the F.I.R., only the informant and his wife Lalita Devi were the injured but in quite contradiction to the aforesaid prosecution



case, PW-3 Lalita Devi has stated that the accused persons assaulted her, her husband and her father-in-law. It is further submitted that PW-1 does not happen to be the eye witness of the occurrence as he had arrived at the place of occurrence after culmination of the occurrence. PW-2 and PW-3 happen to be alleged injured of the case, but there is vital contradiction between the prosecution case and their testimonies and between their testimonies *inter se* regarding the manner of occurrence, injured, assailant, etc. It is further submitted that the aforesaid inconsistent ocular evidence of PW-2 and PW-3 also does not stand corroborated by the medical evidence. It is also submitted that no independent witness barring PW-4 has been examined by the prosecution and PW-4 has turned hostile. Thus, the evidence of the highly interested witnesses of the case does not stand corroborated by any independent witness of the occurrence. It is also submitted that there is animosity between the parties as the accused persons had filed criminal case against the prosecution party prior to the case under hand in the year 2005. It is further submitted that the F.I.R. was lodged on 19.09.2006 at 06:30 PM but the same was sent to the court of CJM, Saharsa on 21.09.2006 and no plausible and convincing explanation has been assigned by the prosecution to explain the aforesaid delay which creates serious doubt about the



prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy and reliable evidence. Hence the aforesaid judgment and order of conviction and sentence passed against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence has submitted that the injured of the case and PW-1 who happens to be the eye witness of the occurrence have fully supported the prosecution case and ocular evidence also stands corroborated by the medical evidence and learned trial court correctly appreciating the facts of the case and evidence available on record has rightly passed the aforesaid judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the record, it appears that to substantiate its case, the prosecution has examined altogether four material witnesses in the case. Out of them PW-4, namely, Pramod Rai has turned hostile. PW-1 Ram Awatar Shah who happens to be father of the informant though has made an abortive bid to support the prosecution case by giving statement



in consonance to the prosecution case in his examination-in-chief but he does not appear to be the eye witness of the occurrence as as per the prosecution case, only informant and his wife were present at the place of occurrence. But in quite contradiction to the aforesaid prosecution case, PW-1 has stated that he was also present at the place of occurrence.

15. As per the prosecution case, Ram Pukar Sharma and Sanjay Sharma assaulted the informant by means of lathi and rod and when his wife Lalita Devi rushed in his rescue, they made her injured by assaulting. Thereafter, Kamla Devi and Mangia Devi assaulted both of them by means of lathi. But in quite contradiction to the aforesaid prosecution case, informant (PW-2) has stated that on the order of Ram Pukar Sharma, Sanjay Sharma gave two rod blows on his head and Ram Pukar Sharma assaulted him by means of lathi. They gave 10-20 lathi blows to him. When his father and wife forbade them, Ram Pukar Sharma also assaulted his wife. The informant (PW-2) has not stated about assaulting him by Kamla Devi and Mangia Devi. He has also not stated about assaulting his wife by Sanjay Sharma, Kamala Devi and Mangia Devi. Thus the aforesaid statement of the informant happens to be in quite contradiction to the prosecution case and there appears to be vital contradiction between the prosecution case and the statement of



the informant regarding manner of occurrence, assailant and injured. From perusal of the testimony of PW-1 Ram Awatar Sah, it appears that as per his account Sanjay Sharma and Ram Pukar Sharma assaulted his son Raj Kishore Sah by means of lathi and rod and only Kamla Devi assaulted his daughter-in-law Lalita Devi on her head. PW-3 Lalita Devi has stated in her examination-in-chief that on the order of Ram Pukar Sharma, Sanjay Sharma assaulted her husband by means of rod inflicting head injury to him and when she rushed in his rescue he also assaulted him. Kamla Devi, Mangia Devi, Sanjay Sharma and Ram Pukar Sharma assaulted her. In her cross-examination she has further stated that all the accused persons assaulted her, her husband and father-in-law by means of weapons in their hands. The aforesaid testimony of the said witness goes to indicate that there is vital contradiction between the testimonies of the said witnesses regarding the assailant, injured, manner of occurrence. The aforesaid witnesses being the informant, father of the informant and wife of the informant are highly interested witnesses of the case. Though PW-2 and PW-3 happen to be alleged injured of the case but their testimonies are full of contradiction between the prosecution case and their testimonies and their testimonies *inter se* regarding the manner of occurrence, injured and assailant and does not appear to be



reliable and worth credence and do not inspire my confidence to hold conviction of the appellants relying upon the same.

16. Aforesaid ocular evidence also does not stand corroborated by the medical evidence. As as per the account of PW-3, all the four accused persons assaulted the informant, his wife and father by means of rod and lathi and as per account of informant (PW-2) accused persons gave 2 rod and 10-20 lathi blows to him but no injury report of the father of the informant namely Ram Awatar Sah has been brought on record while the informant has sustained only four injuries, two on his head and two on his shoulder, all are simple in nature and Lalita Devi has sustained only one injury on her head which is simple in nature. Thus, the aforesaid ocular evidence of the prosecution also does not stand corroborated by the medical evidence.

17. PW-3 has stated in her cross-examination that Pawan Mahto had rushed all injured to the hospital but said Pawan Mahto has not been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for non examination of the said independent witness of the occurrence. Hence adverse inference is drawn against the prosecution and the ocular evidence of the prosecution remains uncorroborated by the independent witness as well.



18. PW-1 has stated in his cross-examination that blood from the head of his son was fallen on the ground and also on the attire and gamchha. He had shown the gamchha and blood fallen on the place of occurrence to the I.O. PW-2 has stated in his cross-examination that blood was fallen on his attire and on the ground. Blood was also fallen from the injury of his father and wife. But from perusal of the testimony of the I.O. (PW-6), I find that I.O. has not reported about finding of any blood on the place of occurrence and on the attire of the victims and thus the objective evidence has not been brought on record by the prosecution.

19. From perusal of the record, it appears that the F.I.R. was lodged on 19.09.2006 at 06:30 PM, but said F.I.R. was sent to the Court on 21.09.2006 i.e. after delay of two days. Prosecution has not assigned any plausible and convincing reason for the aforesaid delay in sending the F.I.R. to the Court, giving ample time and opportunity to the prosecution to manipulate and concoct the false and frivolous case against the appellants. Hence the aforesaid delay in sending the F.I.R. to the court creates serious doubt about the prosecution case.

20. Informant (PW-2) has stated in his cross-examination that accused Ram Pukar Sharma had lodged a case against him, his father and his son bearing Complaint Case No.



400 of 2005 preceding to the case under hand which is still pending in the Court of Shri S.K. Dixit, Judicial Magistrate, Saharsa. PW-3 Lalita Devi has stated in her cross-examination that accused persons of this case had filed a false case against her husband preceding to the case under hand. The documents filed by the accused persons which are order-sheet and complaint petition of the Complaint Case No. 400 of 2005 marked as Exhibit -A and Exhibit-A/1 respectively indicate that earlier to the case under hand, in the year 2005 the accused Ram Pukar Sharma had filed the aforesaid case against the informant, his father and his sons and others. Thus from perusal of the aforesaid evidence of the prosecution and defence, it appears that there is animosity between the appellants and the prosecution party since before the occurrence. Animosity cuts both the edge. But in view of the aforesaid contradiction between the prosecution case and the testimony of the informant, testimonies of the witnesses inter se, non-corroboration of inconsistent ocular evidence of interested witnesses by independent witness of the occurrence and also medical evidence, not bringing on record objective evidence by the prosecution, delay in sending the F.I.R. to the court, false implication of the appellants due to aforesaid animosity cannot be ruled out.



21. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellants is set aside and the appellants are acquitted from the charges levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J.)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	24.09.2018
Transmission Date	24.09.2018

