

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.49 of 2013

Arising Out of PS. Case No.-57 Year-2010 Thana- KUMARGHAND District- Madhepura

1. Laddu Singh @ Laddu Prasad Singh S/o Late Nago Pd. Singh
Resident of Village- Israyan Kala, Police Station- Kumar Khand,
District- Madhepura.
2. Chhotu Singh S/o Laddu Singh Resident of Village- Israyan
Kala, Police Station- Kumar Khand, District- Madhepura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Kumar Sinha

For the Respondent/s : Mr. Binod Bihari Singh (App)

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 13-09-2018

Heard learned counsel for the appellants and
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 20.12.2012 passed by learned Adhoc Additional
Sessions Judge-III, Madhepura in Sessions Trial no. 165 of
2010 arising out of Kumarkhand P.S. Case No. 57 of 2010
whereby the learned trial court convicted the accused namely,
Chhotu Singh for the offence punishable under Sections 325,
504 and 341 of the Indian Penal Code and sentenced him to



undergo R.I. for three years under Section 325 of the Indian Penal Code, R.I. for one year under Section 504 of the Indian Penal Code and R.I. for one month under Section 341 of the Indian Penal Code and also slapped him with a fine of Rs. 5000/- and in default of payment of fine to further undergo R.I. for two months under Section 325 of the Indian Penal Code. All the sentences of accused Chottu Singh were directed to run concurrently and convicted the accused Laddu Singh for the offence punishable under Sections 325/34, 504 and 341 of the Indian Penal Code and sentenced him to undergo R.I for one year under Section 325/34 of I.P.C. and R.I. for one year and one month under Sections 504 and 341 of the Indian Penal Code respectively, and also slapped him with a fine of Rs. 5000/- under Section 325/34 of the Indian Penal Code and in default of payment of fine to further undergo R.I. for one month under the aforesaid Section.

3. The factual matrix of the case is that Kumarkhand P.S. Case No. 57 of 2010 was instituted under Sections 341, 323, 325, 379 and 504/34 of the Indian Penal Code against accused Laddu Singh and Chhotu Singh on the basis of written report of Shankar Singh S/o Baiju Prasad Singh with the allegation, in succinct that in the night of



05.05.2010 at around 10:00 PM while he was sitting at his door, Laddu Singh and Chhotu Singh both armed with rod descended there and rapping expletives complained about hiking of the labour charge and on forbidding by him, Laddu Singh gave order to Chhotu Singh to assault. Responding the same, Chhotu Singh assaulted on the head of his brother Pintu Singh by means of rod, who was sitting beside him inflicting head injury to him, sustaining the injury he fell senseless. He also snatched golden chain and cash of Rs. 2200/- from pocket of his brother. Mohan Singh, Radhey Singh, Mahmood and others witnessed the occurrence.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons.

5. On receiving the charge-sheet 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 *seisin* of the learned Adhoc Additional Sessions Judge-III, Madhepura for trial.

6. Charge against accused Chhotu Singh and Laddu Singh was framed under Sections 504, 379, 341, 323,



325 and 307 of the Indian Penal Code. Charge was read over and explained to the accused persons 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 nine prosecution witnesses namely, Mohan Singh as PW-1, Radhey Singh as PW-2, Barun Kumar Singh as PW-3, informant Shankar Singh as PW-4, victim Pintu Singh as PW-5, I.O. Jyoti Kumar as PW-6, Dr. Rizwan Ahmad of PHC, Kumarkhand as PW-7, Dr. N.K. Singh of Ishwar Dayal Hospital Kankarbagh Patna as PW-8 and Dr. Avnish Kumar Karn as PW-9. In documentary evidence, the prosecution has filed and proved some documents in the case.

8. The 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 caliming themselves to be innocent. The accused persons have also examined two witnesses, namely, Ram Dev Paswan as DW-1 and Md. Mahmood Ansari as DW-2 in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned 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 have preferred the present 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 the occurrence is said to be of the night of 05.05.2010 at around 10:00 PM, but PW-7 doctor Rizwan Ahmad of PHC Kumarkhand has deposed that he had examined the victim on 05.05.2010 at 10:00 AM, the injury report of the victim also indicates that the victim was examined by the said doctor on 05.05.2010 at 10:00 AM. Thus, the victim appears to have been examined 12 hours earlier to the occurrence regarding the injury sustained by him in the alleged occurrence which creates serious doubt about the prosecution case. It is further submitted that as per the witnesses account, blood was fallen at the place of occurrence at the time of occurrence, but I.O. has not found any blood



stain at the place of occurrence which also creates serious doubt about the prosecution case. It is further submitted that as per the FIR itself and as per the account of PWs-2, 3 and 4, Md. Mahmood Ansari was present at the place of occurrence at the time of occurrence as he happens to be driver of the tractor from which the bricks and cement were being unloaded at the place of occurrence at the time of occurrence and he had also helped in lifting the injured, but the said Md. Mahmood Ansari has not been examined by the prosecution rather by defence as DW-2 and the said Md. Mahmood Ansari in his examination-in-chief, has candidly stated that the victim had sustained injury from the bricks during course of unloading the bricks from the tractor on 04.05.2010 i.e. one day preceding to the occurrence. The aforesaid statement of the said witness also creates serious doubt about the prosecution case. It is further submitted that PW-1 Mohan Singh does not happen to be eye witness of the occurrence. PW-2 Radhey Singh though named in the F.I.R., but informant in his statement and the victim have not divulged the presence of PW-2 at the place of occurrence at the time of occurrence. PW-3 Barun Kumar Singh happens to be brother of the victim and informant, PW-4 Shankar Singh happens to be informant



himself and PW-5 Pintu Singh happens to be victim and they are highly interested witnesses of the case and as per the prosecution case several persons had witnessed the occurrence, besides FIR named witnesses, namely, Mohan Singh, Radhey Singh and Md. Mahmood Ansari, but the said Md. Mahmood Ansari and other independent witnesses have not been examined by the prosecution and no plausible and convincing reason has been assigned for their non-examination which creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial court 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 submitted that the victim, informant and other witnesses who were present at the place of occurrence at the time of occurrence have fully supported the prosecution case and the ocular evidence also stands



corroborated by the medical evidence, and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned 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 record, it appears that all the material witnesses including the informant examined by the prosecution have unanimously stated that occurrence is of 05.05.2010 at around 10:00 PM. In the written report of the informant, the occurrence is also said to be of 05.05.2010 at around 10:00 PM. But from perusal of the testimony of the doctor Rizwan Ahmad PW-7 and injury report of the victim marked as Ext-5, it appears that the aforesaid victim was examined by the said doctor on 05.05.2010 at around 10:00 AM and the doctor has also candidly deposed before the court regarding examination of the victim on 05.05.2010 at around 10:00 AM i.e. 12 hours preceding to the occurrence as claimed by the informant and other witnesses. Moreover, as per the FIR Md. Mahmood Ansari son of Kashim Miyan had also seen the occurrence and said witness is FIR named witness. PW-2 Radhey Singh in paragraph 6 of his cross-examination has stated that the tractor from which the cement was being



unloaded was hailing to Kashim Miyan and son of Kashim Miyan, namely, Md. Mahmood Ansari was present at the place of occurrence along with the tractor. PW-3 Barun Kumar Singh in paragraph 17 of his cross-examination has stated that he and Md. Mahmood both lifted the victim Pintu Singh. Informant PW-4 Shankar Singh has stated in paragraph 9 of his cross-examination that he has named Md. Mahmood as witness in the written report. The aforesaid aspect of the case and testimony of the said witnesses eloquently indicates that Md. Mahmood Ansari son of Kashim Miyan was present at the place of occurrence But said Md Mahmood Ansari has not been examined by the prosecution rather by the defence as DW-2, and no plausible and convincing reason has been assigned by the prosecution for his non examination. Hence, the adverse inference is drawn against the prosecution. Moreover said Md. Mahmood Ansari in paragraph 1 of his examination-in-chief has candidly stated that on 04.05.2010, he had brought bricks on the tractor and tailor at the house of Pintu Singh. Labourer were unloading the bricks from the tractor. He was standing at 20-25 meter away and was indulged in interaction. In the meantime, he listened hulla that Pintu has become injured by means of bricks. He also



witnessed Pintu injured. Thus as per the statement of the aforesaid witness, injured Pintu Singh had sustained injury on 04.05.2010 i.e. a day preceding to the alleged occurrence. Thus, the aforesaid evidence of the prosecution and defence creates serious doubt about date and time of occurrence. As as per prosecution case and witnesses account, the occurrence was of 05.05.2010 at 10:00 PM while as per medical evidence it was of 05.05.2010 at 10:00 AM and as per the aforesaid defence witness, the victim has sustained injury on 04.05.2010 instead of 05.05.2010.

15. From perusal of the testimony of PW-4 Shankar Singh, who happens to be the informant of the case and was allegedly present at the place of occurrence at the time of occurrence, it appears that in paragraph 52 and 53 of his cross-examination, he has stated that assailant and the injured were present face to face at the time of occurrence. The injured was facing east while the assailant west. He was at around 1½ to 2 feet left of the assailant. As per the aforesaid testimony of the informant injured must have received injury on the frontal portion of his head in the assault and there is no case of the prosecution that the injured had sustained injury on any other portion of the head in the course of dodging the



assault. But, from perusal of the testimony of Dr Avnish Kumar Karn PW-9, who had treated the victim at Sadar Hospital, Saharsa, it appears that the said doctor had stated about finding of the bandage wound on the left side of the scalp of the victim. He has also stated that the X-ray plate shows depressed fracture of left parietal region. The aforesaid testimony of the said doctor goes to suggest that the victim had sustained injury not on the frontal portion of the head rather on the left parietal region. Hence, the aforesaid aspect of the case also creates serious doubt about the prosecution case.

16. As per the prosecution case, while the informant and victim Pintu Singh were sitting at his door, Chhotu Singh and Laddu Singh descended at his door and started rapping expletives complaining hiking of the charge of labour and on forbidding by the informant, on the order of Laddu Singh, Chottu Singh assaulted on the head of the brother of the informant, namely, Pintu Singh by means of iron rod inflicting injury on his head, but FIR named witness, namely, Md. Mahmood Ansari, not examined by the prosecution rather by the defence as DW-2, has candidly stated in paragraph 1 of his examination-in-chief that he had



not seen Chhotu Singh and Laddu Singh at the place of occurrence. The aforesaid testimony of the said eye witness of the occurrence creates serious doubt about the prosecution case and complicity of the appellants in the occurrence rather rules out the presence of the appellants at the place of occurrence at the time of occurrence and commission of the occurrence. Moreover, the said witness has stated in paragraph 1 of his examination-in-chief itself that the victim had sustained injury by means of bricks in the course of unloading the bricks from his tractor-trolley one day preceding to the alleged date of occurrence i.e. on 04.05.2010.

17. As per the witnesses account, the blood was fallen from the injury on the place of occurrence at the radius of 1 feet and they had shown the blood stained place to I.O. but from perusal of deposition of the IO Jyoti Kumar PW-6, it appears that in paragraph 14 of his cross-examination, he has stated that he had not found any stain of blood at the place of occurrence. The aforesaid aspects of the case also creates serious doubt about the prosecution case.

18. From perusal of the testimony of PW-1 Mohan Singh, who is said to be the independent witness of the occurrence and FIR named witness, it appears that though he



has made an abortive bid to support the prosecution case in his examination-in-chief, but in paragraph 4 of his cross-examination, he has stated that when he arrived at the door of Shankar Singh, he found 5-10 persons there, among them only Pintu Singh was injured. The aforesaid testimony of the PW-1 eloquently indicates that the said witness had arrived at the place of occurrence after culmination of the occurrence as he had seen the victim injured on his arrival there. Thus, the said witness does not happen to be eye witness of the occurrence.

19. As per prosecution case occurrence took place at the door of Shankar Singh. PW-2 Radhey Singh, who is also FIR named witness though he also made an abortive bid to support the prosecution case in his examination in chief but he has stated in paragraph 18 of his cross-examination that the tractor was parked near the door of Shankar Singh and he was getting his cement unloaded there. The aforesaid statement of PW-2 indicates that the said witness was unloading his cement from the tractor at the door of Shankar Singh, but the victim PW-5 Pintu Singh has stated in paragraphs 17 and 18 of his cross-examination that the bricks were being unloaded from the tractor on the rear side of his house. He was not present there rather at his door which is at the distance of 20-25 feet from



there. From the aforesaid testimony of the victim, it appears that the bricks was being unloaded on the rear side of the house of Shankar Singh and Pintu Singh was present on the door of his house which is at a distance of 20-25 feet from the place of unloading on the rear side of the house while PW-2 Radhey Singh was present at the place of unloading cement from the tractor i.e. on rear side of the house of Shankar Singh and he was not present at the place of occurrence. Thus, PW-2 also does not happen to be eye witness of the occurrence.

20. PW-3 Barun Kumar Singh, who happens to be brother of the informant and has also made an abortive bid to support the prosecution case in his examination-in-chief, but he also does not appear to be eye witness of the occurrence as in paragraph 1 of his examination-in-chief, he has stated that at the time of occurrence, he was unloading the cement from the tractor on the south of door of his house while as discussed by me hereinabove, the victim has stated that the bricks was being unloaded from the tractor on the rear side of his house which is at a distance of 20-25 feet from his door and he was present at his door. PWs-1, 2 and 5 have not stated about presence of the PW-3 at the place of occurrence at the



time of occurrence.

21. Though, PWs 4 and 5 happen to be informant and victim respectively, but the aforesaid two witnesses and other material witnesses examined by the prosecution have unanimously stated in their testimony that the occurrence is of 05.05.2010 at around 10:00 PM but as per the injury report and account of the doctor Dr. Rizwan Ahmad P.W. 7, the victim had sustained injury on 05.05.2010 at 10:00 AM i.e. 12 hours preceding to the alleged time of occurrence, and as per account of D.W. 2 who was admittedly present at the place of occurrence the occurrence is of 4.05.2010 instead of 05.05.2010. Thus, the aforesaid two witnesses, namely, Pws-4 and 5 and other witnesses appears to have given wrong date and time of occurrence which is basis of the prosecution case. Hence, the aforesaid witnesses do not appear to be worth credence and reliable and do not inspire my confidence to hold the conviction of the appellants relying upon their testimony.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and



documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellants are acquitted of the charges levelled against them. As the appellants are on bail, they are discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
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