

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.51 of 2013

Arising Out of PS.Case No. -55 Year- 2004 Thana -null District- BHOJPUR

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Sri Ram Singh, son of Late Bilat Singh, resident of Village-Tar, P.S.- Piro, District-
Bhojpur. Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant : Mr. Madanjeet Kumar, Advocate.

Mr. Anil Kumar, Advocate.

For the Respondent : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 19-09-2018

Heard learned counsel for the appellant as well as
learned APP for the State.

2. This Criminal appeal has been preferred against
the judgment and order of conviction dated 19.12.2012 and
order of sentence dated 20.12.2012 passed by the Additional
District and Sessions Judge 1st, Ara in Sessions Trial No. 346 of
2005, arising out of Agiaw Bazar P.S. Case No. 55 of 2004,
whereby the learned trial Court convicted the accused Sri Ram
Singh for the offence punishable under Section 307, 447 and 326
of the Indian Penal Code and sentenced him to undergo R.I. for
10 years each under Section 307 and 326 of the IPC and slapped
him with a fine of Rs.5000/- each and in default of payment of
fine further undergo R.I. for 2 years each in the aforesaid section
and R.I. for 3 months under Section 447 IPC. All the sentences



were directed to run concurrently.

3. The factual matrix of the case is that Agiaw Bazar P.S. Case No. 55 of 2004 was instituted under Section 458/324/326/307 IPC against the accused Sri Ram Singh on the basis of fardbeyan of Awadh Singh, son of Dhenukhdhari Singh recorded by A.S.I., K.P. Singh of P.S. Piro on 28.09.2004 at 8:00 AM at Primary Health Centre, Piro with the allegation in succinct that in the night of 27/28.09.2004 while he was sleeping beside his son, at around 12:00/1:00 o'clock at night, accused Sri Ram Singh arrived there armed with Kata and with intention to do away with life of his son assaulted on the head and palm of the both hands, behind the left shoulder, little finger of the right hand and right chick of his son and made him seriously injured. When he and his son made alarm the accused managed to escape and his cousin, namely Satyendra Singh and uncle Santosh Kumar Singh and nephew Santosh Singh and Ashok Singh rushed there and witnessed the occurrence and he rushed his son to the Piro Hospital with the help of the aforesaid persons. The bone of contention is said to be that the accused had flung brick bat on his house preceding to occurrence and informant had forbidden him and a case was also fought between him and the accused Sri Ram Singh which was compromised.



4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Sri Ram Singh.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused and committed the case to the Court of Sessions and on transfer finally the case came in seisin of the Additional District and Sessions Judge 1st, Ara for trial.

6. Charge against accused Sri Ram Singh was framed under Section 307, 458 and 326 of the Indian Penal Code. Charge was read over and explained to the accused by the court to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Satyendra Singh as PW-1, Awadh Singh (Informant) as PW-2, Ramji Singh, son of the informant, as PW-3, Mina Devi as PW-4, Bhagmati Devi as PW-5, Dr. Dilip Kumar Pandey, who has examined the injured, as PW-6 and I.O. Shiv Sharan Sah as PW-7. In documentary evidence, the prosecution has filed and proved certain documents.

8. The statement of the accused was recorded



under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming the alibi that he was present at Dariyapur on the date of occurrence. Accused also filed several documents in buttress of his 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 convict has 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 charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by the learned counsel for the appellant that all the witnesses examined by the prosecution do not happen to be eye-witness of the occurrence as they had arrived at the place of occurrence after culmination of the occurrence. The informant has also not identified the accused in the occurrence. Admittedly, there is animosity between the parties and due to the aforesaid animosity the informant has



falsely implicated the appellant in this case. It is further submitted that the I.O. has not found any blood on the place of occurrence and on mosquito net which also creates serious doubt about the prosecution case. It is further submitted that the occurrence is of midnight and there was no source of identification at the place of occurrence, hence it is not possible for the informant to identify the appellant in the occurrence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and complicity of the appellant in the occurrence 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 is liable to be set aside and the appellant is liable 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 has fully supported the prosecution case and the appellant being next door neighbour of the victim was familiar to him and has been identified by the victim in the night being his next door neighbour. There was sufficient opportunity for the victim to identify the appellant in the occurrence. It is further submitted



that as per the statement of P.W. 2 it was moonlit night and there was sufficient light at the place of occurrence at the time of occurrence to identify the appellant in the occurrence. The ocular evidence of the victim also stands corroborated by the medical evidence and the learned lower Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence, and the same 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 the prosecution has examined altogether five material witnesses in the case including the victim Ramji Singh (P.W. 3). Out of them P.W.1 Satyendra Singh does not happen to be eye witness of the occurrence as in para-1 and 2 of his examination-in-chief itself he has stated that he rushed to the house of Ramji Singh responding hulla and found the Ramji Singh injured and stained with blood. Awadh Singh divulged him that Shri Ramji Singh @ Jhunnu had made Ramji Singh injured by assaulting him. The aforesaid statement of the said witness indicates that he had arrived at the place of occurrence after culmination of the occurrence and has not seen the occurrence of assault upon the victim by the appellant. He has also not witnessed the appellant



at the place of occurrence. Though in para-2 of his examination-in-chief he has stated that informant Awadh Singh divulged him that Sri Ram Singh @ Jhunu made Ramji Singh injured by assaulting him but the said Awadh Singh examined as P.W. 2 in the case has not corroborated the factum of divulgence of the aforesaid occurrence to the P.W. 2. Thus, the aforesaid statement of P.W.-2 is not admissible in evidence even as a hearsay witness of the case for want of corroboration P.W.-2. Awadh Singh who happens to be the informant of the case, though appears to have made an abortive bid to support the prosecution case by deposing in his examination in chief in consonance with the prosecution case, but he also does not appears to be eye witness of the occurrence. As in para-7 of his cross-examination he has stated that when he arrived at the place of occurrence, responding hulla made by his son, the accused had made good his escape. The aforesaid statement of the informant goes to indicate that he had not seen the occurrence of assault upon the victim by the appellant rather had arrived at the place of occurrence responding hulla made by the victim after culmination of the occurrence and appellant had made good his escape from the place of occurrence by the time.

15. Mina Devi (P.W.4) also does not appear to



be eye-witness of the occurrence as in para-1 and 2 of her examination-in-chief she has stated that at the time of occurrence she was sleeping at the roof of her house and when she rushed to the place of occurrence responding hulla made by her brother-in-law (victim), she found injury on his person and also witnessed accused Sri Ram Singh escaping in the torch light. The aforesaid statement of P.W.4 indicates that she had not seen the occurrence of assault on the victim at the hand of the appellant rather she had arrived at the place of occurrence responding hulla made by the victim and found him injured and accused escaping. Likewise P.W.5-Bhagmati Devi also does not appears to be eye witness of the occurrence as in her examination-in-chief she has stated that at the time of occurrence she was sleeping at her door and when she stepped out of her house responding hulla made by her Nati Ramji Singh she witnessed the accused Sri Ram Singh escaping towards east assaulting her Nati by means of country made pistol. The said testimony of Bhagmati Devi (P.W.5) indicates that she had not seen the occurrence of assaulting the victim by the appellant as she had arrived at the place of occurrence responding hulla made by the victim and seen the accused escaping from the place of occurrence. Moreover, as per the prosecution case, the appellant



had assaulted the injured by means of Kata, a sharp edged weapon but the said witness has stated about assaulting the victim by means of country made pistol.

16. But, from perusal of the testimony of the victim examined in the case as P.W.3, it appears that in his examination-in-chief he has candidly stated that in the night of 27/28.09.2004 at around 12 PM while he was sleeping at his door and his father was also sleeping besides him, in the meantime Sri Ram Singh (appellant) arrived there armed with Kata and abruptly made attack on him. He sustained injury on his right hand little finger, right chick, head, right palm, fingers of the left hand and on left shoulder. The litter finger of his right hand was severed. He was subjected to cross-examination by the appellant in person but from perusal of the testimony of the said witness I find that nothing convincing and cogent has been elicited in his cross-examination having potential to discard his aforesaid testimony. P.W.- 3 happens to be injured witness. It is settled principle of law that conviction of the accused can be made even on the premise of testimony of solitary eye witness if it is found to be wholly reliable. From perusal of the testimony of P.W.- 3 I find it to be unblemished and wholly reliable.

17. From perusal of the medical evidence i.e. the



evidence of Dr. Dilip Kumar Pandey (P.W.6), it appears that doctor has found altogether nine injuries on various parts of the person of the injured, which are reproduced herein below:

- I. An incised wound on right parietal region of skull of the size of 2" x ½" deep up to bone cutting it partially.
- II. An incised wound on right parietal region of skull lateral to the 1st wound of the size of 4" x ½" x deep up to bone cutting the bone partially.
- III. An incised wound on right side of the face from maxillary region to right post auricular region of the size of 6" x ½" x deep up to bone severing nerve passing through it and causing deformity of face and right eye.
- IV. Amputation of distal part at right little finger.
- V. An incised wound on right palm of the size of 4" x ½" x deep up to bone cutting tendon of flexure bone causing deformity.
- VI. Incised wound on left little finger cutting its two tendon of the size of 1 cm. x ¼ cm x bone deep.
- VII. An incised wound on left middle finger cutting its tendon of the size of 1 cm. x ¼ cm. x deep up to bone.
- VIII. An incised wound on left forearm of the size of 2" x 1" x deep up to bone cutting the



tendon of flexure bone.

- IX. An incised wound on left side of scapular region of the size of 6" x 1" x deep up to bone associated with profuse bleeding.

All the injuries were caused by sharp cutting weapon and all the injuries except injury no. (IX) were grievous in nature while injury No. (IX) was simple in nature.

18. Thus, the aforesaid unblemished ocular evidence of the victim also stands corroborated by the medical evidence.

19. Though the occurrence is of midnight of 27/28.09.2004 but P.W.2 has stated in para-1 of his examination in chief that it was moonlit night on the date of occurrence. Moreover, admittedly the appellant is next door neighbour of the injured so the injured must be familiar with the physique, body language etc. of the appellant and the appellant would have been identified by the injured even in the night without any source of identification and the submission of learned counsel for the appellant that there was no source of identification enabling the victim to identify the appellant in the occurrence so the identification of the appellant by the victim at the time of occurrence becomes doubtful, does not appears to be convincing and appreciable.



20. The submission of learned counsel for the appellant that admittedly there was animosity between the parties, hence the appellant has been falsely implicated in the case due to the aforesaid animosity also does not appear to be convincing and appreciable as admittedly there is animosity between the parties but the animosity cuts both the edges and the appellant has not brought on record any material having potential to create doubt about the sanctity of the testimony and truthfulness of the victim and his credentials.

21. The submission of learned counsel for the appellant that I.O. has not found any blood at the place of occurrence and the mosquito-net torn. As as per the prosecution case, the informant was sleeping in the mosquito-net and the appellant assaulted the informant by means of Kata from outside the mosquito net, so it also must be torn but the I.O. has stated in para-13 of his cross-examination that he had not seized any bloodstained soil or any bloodstained article. He has also not mentioned in the case diary as to whether mosquito-net was torn, hence the aforesaid aspect of the case goes to rule out the prosecution case. But the aforesaid laches and fault on the part of the I.O. in making the investigation of the case, in my considered opinion, has no potential to shatter the prosecution



case in view of the aforesaid consistent testimony of victim and medical evidence.

22. As the appellant has given nine blows to the victim while he was asleep in the night by sharp edged weapon, out of them three are on vital parts i.e. two on the head and one on face and all injuries are grievous in nature barring one on left scapular region, the intention on the part of the appellant to do away with the life of the victim stands established.

23. In the facts and circumstances of the case, I find that the prosecution has succeeded to substantiate the prosecution case against the appellant by adducing consistent, trustworthy and reliable ocular and medical evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial Court does not warrant any interference by this Court and is, accordingly, upheld and this appeal is dismissed.

(Prakash Chandra Jaiswal, J)

Trivedi/-

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