

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.121 of 2013

Arising Out of PS. Case No.-32 Year-1995 Thana- DARBHANGA District- Darbhanga

Binod Khatik S/o Late Sitaram Sah Resident of Mohalla Lalbagh, Under
Town Darbhanga, P.S. Town Darbhanga, District Darbhanga.

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amarendra Narayan, Advocate. Mr. Deepak Kumar, Advocate. Mr. Prince Kumar Mishra, Amicus Curiae.
For the Respondent/s	:	Smt. Abha Singh, APP.

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

ORAL JUDGMENT

Date : 01-11-2018

Heard learned counsel for the appellant, Mr. Prince
Kumar Mishra, learned Amicus Curiae 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
21.01.2013 passed by 1st Additional Sessions Judge cum Special
Judge, Darbhanga in G.R. Case No. 252 of 1995 / T.R. Case No.
16 of 2013 arising out of Darbhanga Town P.S. Case No. 32 of
1995, whereby the learned trial court acquitted the accused Raj
Kumari Devi while convicted the accused Binod Khatik for the
offence punishable under Section 354 of the Indian Penal Code
and Section 3(I)(XI) of the SC/ST Act and sentenced him to
undergo S.I. for six months and slapped him with the fine of Rs.



500/- and in case of default of payment of fine to further undergo S.I. for one month under Section 3(I)(XI) of the SC/ST Act and no separate punishment was awarded under Section 354 of the Indian Penal Code.

3. Factual matrix of the case is that Darbhanga Town P.S. Case No. 32 of 1995 was instituted under Sections 323, 341 and 354 of the Indian Penal Code against the accused Binod Khatik, his wife and son on the basis of the written report dated 13.02.1995 of Uma Devi, wife of Mahendra Sah with the allegation in succinct that on 13.02.1995 at around 05:15 PM, she and her sister Anpi Devi stepped out of the lady hostel of M.R.M. College after discharging their duties in the hostel and boarded on the rickshaw. In the meantime, Binod Khatik caught hold Anpi Devi. On protest made by her, he pulled them down from the rickshaw and assaulted them. In the meantime, responding hulla, his wife and son also arrived there and assaulted them making her injured. Her sister rushed to the hostel and took the night guard namely Moti Singh at the place of occurrence who rescued the informant from the clutches of the accused persons.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet



against the accused persons, namely, Binod Khatik, Raj Kumari Devi and Rakesh under Sections 341, 323 and 354 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 against the aforesaid three accused persons namely Binod Khatik, Raj Kumari Devi and Rakesh and subsequently splitting the record of the accused Rakesh finding him juvenile sent it to the Juvenile Justice Board. Later on the case of rest two accused persons was sent to the Court of Additional District Judge-I cum Special Judge for trial finding it to be a case of SC/ST Act.

6. Charge against the accused persons, namely, Binod Khatik and Raj Kumari Devi was framed under Sections 341 and 323 of the Indian Penal Code and Section 3(I)(XI) of the SC/ST Act and further charge against the accused Binod Khatik was framed under Section 354 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 three prosecution witnesses namely, Anpi Devi as PW-1, informant Uma Devi as PW-2 and



Mahesh Mahto as PW-3. Out of the aforesaid witnesses, PW-3 happens to be formal witness who has proved the formal F.I.R., endorsement on the written report and the case diary.

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 and falsely implicated in the case. Accused persons have neither adduced any ocular nor documentary evidence 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, convict Binod Khatik has 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 charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant and learned Amicus Curiae that there is no independent witness of the occurrence. There is vital contradiction between the



testimony of PW-1 and PW-2 regarding the injury allegedly inflicted to them by the appellant. It is further submitted that as per the prosecution case, night guard of the lady hostel namely Moti Singh was taken at the place of occurrence by PW-1 Anpi Devi who intervened the occurrence and rescued the informant from the clutches of the accused persons, but the said night guard has not been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for his non-examination. Hence, adverse inference shall be drawn against it. It is further submitted that there is vital contradiction between the statement of PW-1 and PW-2 regarding giving information to the P.S. as as per PW-1, informant gave written report regarding the occurrence to the District Welfare Officer who forwarded the matter to the P.S. while as per the informant (PW-2) after the occurrence she rushed to the P.S. and gave statement to the S.H.O. who recorded her statement. Aforesaid contradiction between the testimony of aforesaid witnesses regarding the aforesaid material aspect of the case creates serious doubt about the prosecution case. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and bring home the charges levelled against the appellant beyond all



reasonable doubts by adducing consistent, trustworthy, reliable and worth credence evidence. Hence, aforesaid judgment and order of conviction and sentence passed against the appellant is liable to be set aside and the appellant is 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 informant has supported the prosecution case *in toto* and PW-1 who happens to be companion of the informant and was also present at the place of occurrence at the time of occurrence and victim of the case has also corroborated the aforesaid prosecution case and the learned trial court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this criminal 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 only two material witnesses in the case. Out of them, PW-2 Uma Devi happens to be informant of the case and PW-1 Anpi Devi happens to be her sister who is said to be present with the informant at the time of occurrence and is also the victim of the



case. Though from perusal of the testimonies of the aforesaid witnesses, it appears that the said witnesses have made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case to the effect that when they stepped out of the lady hostel of M.R.M. College after discharging their duties in the said hostel and boarded on the rickshaw, accused Binod Khatik put his hand on the breast of PW-1 Anpi Devi. On protest made by them, he pulled them down from the rickshaw and assaulted both of them. Wife and son of the accused Binod Khatik also arrived there and assaulted them. The night guard of the hostel namely Moti Singh arrived there and saved them. But from perusal of the testimony of PW-1 as stated by her in para-7 of her cross-examination it appears that the appellant Binod Khatik assaulted her by means of leather slipper inflicting abrasion injury on her right elbow. Barring the aforesaid injury she had neither sustained any assault nor any injury. But in quite contradiction to the aforesaid statement, in the said para she has further stated that she had also sustained assault on her back by means of fist and slap. She had received 4-5 sleeper assault and 4-5 assault by means of slap on her back. Though in para-7 of her cross-examination, she has stated that she had sustained



abrasion injury on her right elbow during the assault. But in quite contradiction to the aforesaid statement, she has stated in Para-8 of her cross-examination that she had not sustained any injury on her right elbow rather her sister PW-2 Uma Devi has sustained injury on her right elbow by means of sleeper. She has further stated that she had not sustained any injury in the assault. While PW-2 Uma Devi has stated in para-1 of her examination-in-chief that Binod Khatik assaulted Anpi Devi (PW-1) indiscriminately by means of hand by pulling her down from the rickshaw. She has not stated about assaulting her by Binod Khatik by means of leather sleeper inflicting abrasion injury on her right elbow as stated by PW-1 Anpi Devi. Thus there appears to be vital contradiction between the statement of the aforesaid two witnesses regarding manner of occurrence, assault and injury sustained by the victims in the occurrence at the hand of the appellant.

15. As per the prosecution case and account of the witnesses, during the course of assault PW-1 rushed to the lady hostel and took night guard Moti Singh with her at the place of occurrence who intervened the occurrence and rescued the informant from the clutches of the accused persons. Hence aforesaid night guard Moti Singh appears to be material witness



of the occurrence, but the said night guard has not been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for his non-examination. Hence, adverse inference is drawn against the prosecution.

16. From perusal of the record, it appears that informant Uma Devi addressing the written report to S.H.O. Town P.S. Darbhanga had handed it over to District Welfare Officer who had forwarded the same to the S.H.O. Town P.S. Darbhanga. PW-1 has also stated in para-4 of her examination-in-chief that the District Welfare Officer arrived at the place of occurrence and Uma Devi (PW-2) gave written report to him who forwarded the same to the P.S. in turn and on the basis of the said written report, F.I.R. was lodged. But in quite contradiction to the aforesaid prosecution case and account of PW-1, informant (PW-2) has stated in para-3 of her cross-examination that both the sisters i.e. PW-1 and PW-2 rushed to the P.S. from the place of occurrence and divulged the occurrence to the S.H.O. who had written the written report on the basis of her divulgence which was read over to her by the constable and she had signed the same. Aforesaid statement of PW-2 happens to be in vital contradiction to the prosecution



case and the statement of PW-1 and it creates serious doubt about the prosecution case and sanctity of the written report and the F.I.R. The aforesaid written report written by the S.H.O. Town P.S. Darbhanga on the basis of the divulgence of the occurrence to him by the informant has not been brought on record which also creates serious doubt about the prosecution case.

17. Though the informant appears to have supported the prosecution case in her examination-in-chief but she has completely backtracked and demolished her statement regarding the occurrence given in her examination-in-chief by stating in para-6 of her cross-examination that on hulla crowd was gathered at the place of occurrence and she could not witness as to who jostled and teased them. Witnessing the appellant in the dock, she has stated that the said accused had neither slated nor assaulted nor teased her. In the said para, she has further stated that she had lodged the case as per the instruction of other persons.

18. 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 and bring home the charges levelled against the appellant beyond all reasonable doubts by



adducing consistent, trustworthy, reliable and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellant is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is on bail, he is discharged from the liability of his bail bonds.

19. Accordingly, this criminal appeal is allowed.

20. Let a copy of the first and last page of this judgment be handed over to the learned Amicus Curiae, Mr. Prince Kumar Mishra and the learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
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