

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.479 of 2015

Arising Out of PS.Case No. -139 Year- 2012 Thana -PIPRA District- SUPAUL

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1. Sentu Ram Son of Jagdish Ram, resident of village- Hathwara, P.S.- Pipra,
District- Supaul

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun, Adv.
Mr. Anjani Parashar, Adv.
Mr. Sanjay Kumar @ S.K., Adv.
For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 10-04-2018

Appellant, Sentu Ram has been found guilty for an offence punishable under Section 341 IPC and sentenced to undergo RI for one month, Under Section 323 IPC and sentenced to undergo RI for one year, Under Section 324 IPC and sentenced to undergo RI for three years, Under Section 307 IPC and sentenced to undergo RI for seven years as well as to pay fine of Rs. 10,000/- and in default thereof, to undergo RI for one year, additionally, under Section 354 IPC and sentenced to undergo RI for two years, under Section 452 IPC and sentence to undergo RI for 7 years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo RI for one year additionally with a further direction to run the sentences concurrently vide judgment of conviction dated 08.07.2005 and order of sentence dated 14.07.2015 passed by 2nd Additional Sessions Judge, Supaul in



Sessions Trial No. 255/2012.

2. PW-5, Baby Devi while being admitted at Sadar Hospital, Supaul on 24.08.2012 at about 7.30 AM had recorded her Fard-e-beyan to the effect that she has been married about six months ago with Sintu Sah son of Ravi Sah of Village-Lal Ganj, PS-Kishanpur, Distt-Supaul. She was, for the present, staying at her *Naihar*. In between night of 23/24.05.2012 she after taking meal was sleeping at her *Naihar*. All of a sudden, at about 2.00 AM, her co-villager, Sentu Ram made house trespass, as a result of which she woke up. She protested whereupon, Sentu Ram gave indiscriminate knife blows causing injury over her forehead, hand, thigh. He ran therefrom on an alarm raised by her. It has also been disclosed that an earlier occasion also Sentu had disclosed to her that in case, she will marry at a different place, then in that event, she will be murdered. On hue and cry raised by her, her parents came and then has lifted her to Sadar Hospital, Supaul where she was being treated.

3. After registration of Pipra PS Case No. 139/2012 investigation commenced and concluded by way of submission of charge-sheet facilitating the trial, meeting with ultimate result, 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. It has also been suggested that at the instance of Parmeshwari Sah (PW 3) this case has falsely been instituted against him. However, neither ocular nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 7 PWs out of whom PW-1, Indu Devi, PW-2, Bimla Devi, PW-3 Parmeshwari Sah, PW-4, Gopal Sah, PW-5, Baby Devi, PW-6, Amit Kumar and PW-7, Dr. Vijay Kumar. Side by side had also exhibited Ext-1, Fard-e-beyan, Ext-2 Formal FIR, Ext-3 Injury report. As stated above, neither ocular nor documentary evidence have been adduced in defence.

6. Learned counsel for the appellant while assailing the judgment of conviction and sentence, has submitted that prosecution utterly failed to substantiate its case and on account thereof, the judgment impugned is found not at all supported by the materials available on the record. In order to justify his submission, learned counsel has urged that no independent witness has been examined. Whosoever has been examined are the informant as well as her own family members in spite of the fact that during cross-examination, all the witnesses have shown presence of so many independent witnesses and further, no explanation has been adduced at the end of the prosecution over their non examination.



7. It has also been submitted that there happens to be material development in the evidence of the informant PW-5, during course of trial and that makes her evidence suspicious. In the aforesaid background, It has also been submitted that presence of PW-1, Indu Devi has purposely been introduced and the material development visualizing in the evidence of PW-1 is found duly corroborated from the evidence of the Investigating Officer, PW-6. It has also been submitted that discarding the evidence of PW-1, none is an eyewitness to the occurrence and so far evidence of PW-5, informant is concerned, she herself became unreliable and that being so, there happens to be no cogent, reliable evidence available on the record to justify the finding. Hence the judgment impugned recorded by the learned lower court is fit to be set aside.

8. Then it has been submitted that for the purpose of attracting conviction under Section 307 IPC, grievous injury over the person of victim is to be which from the evidence of PW-7 is found absent and so, the judgment to that extent is found non sustainable in the eye of law.

9. On the other hand, learned APP while counter-meeting the submissions made on behalf of appellant has submitted that from the evidence of PW-7, it is crystal clear that the victim had sustained injuries in a way as narrated by her and, if same is taken



together with the evidence of PW-5, complicity of appellant is found duly exposed even discarding the presence of PW-1, Indu Devi corroborated by remaining witnesses. That being so, the judgment of conviction and sentence is fit to be confirmed.

10. Furthermore, it has also been submitted that there happens to be no requirement with regard to applicability of Section 307 IPC that the injuries should be grievous in nature. It is the action of the accused which is to be perceived whether indulgence of accused happens to be duly inter-mingled suggesting that he was carrying an intention to commit murder or the action whatever adopted at the end of the accused was with the knowledge with its ultimate result would be murder. That happens to be reason behind that hurt has been recognized at the latter part of Section 307 IPC, which as per Section 319 IPC did not speak about nature of injury. So, presence of grievous injury is not *sine-qua-non* for attracting conviction under Section 307 IPC. That being so, the judgment of conviction and sentence did not call for interference.

11. The evidence of injured lies upon upper pedestal and unless and until, there happens to be cogent ground suggesting unworthiness of the evidence of the injured, in normal circumstance, it should not be discarded.

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.”

12. If the opponent wants to discredit the testimony of the witness, then in that event, he has to cross-examine the witnesses on that very score so that the witness has got an opportunity to explain the circumstance. If that part is not performed at the end of the adversary, then in that event, not only he is debarred from raising the issue rather that will tantamount to admission at his end. In **Gian Chand & others v. State of Haryana** reported in **2013(4) PLJR 7 (SC)** it has been held:-

11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in **Laxmibai (Dead) Thr. L.Rs. & Anr. v.**



Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204

observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”
(Emphasis supplied)

13. In the background of aforesaid settled principle of law, now the evidences are to be seen. PW-7, Dr. Vijay Kumar had deposed that on 24.08.2012, he was posted at Sadar Hospital, Supaul as a Medical Officer on which date at 4.45 AM, he had examined Baby Devi and found the following:-

- i) Sharp cutting wound $\frac{3}{4}$ ” x $\frac{1}{4}$ ” x



- skin deep over shoulder with excessive bleeding.
- ii) Sharp cutting wound $\frac{3}{4}$ " x $\frac{1}{4}$ " x skin deep over left frontal parietal area.
- iii) Sharp cutting wound 2" x $\frac{1}{2}$ " x $\frac{1}{2}$ " in middle left thigh at lateral area.
- iv) $\frac{1}{2}$ " x $\frac{1}{4}$ " x skin deep sharp cutting wound over palm aspect of left hand. All injuries are caused by sharp cutting weapon such as knife. Simple in nature, caused within 12 hours.

14. During cross-examination, it is evident that he was tested over whether injuries could be manufactured or not and had answered that the injuries so found could not be manufactured but it could be caused if a person fell on a sharp edged weapon. Out of the aforesaid injuries, injury no.2 could be caused by a blade. That means to say, presence of sharp cut injury in the night of 24.08.2012 over person of victim is found duly substantiated.

15. PW-5 is the victim. She had stated that on the alleged date and time of occurrence, she along with her sister Indu Devi was sleeping in a room. Sentu Ram (appellant), after giving a push to the door, intruded in the room at night and then injured her by inflicting Chhura blows. On her alarm, her parents and others came and named them as Parmeshwari Sah, Laxman Paswan and others, till then the appellant succeeded in his escape. Then thereafter, she was



lifted to Supaul Sadar Hospital where she was treated. Police had come and recorded her Fard-e-beyan whereupon she had put her thumb impression. Identified the accused. During cross-examination at para-3, she had stated that she was not intimate with the appellant since before. He was not on visiting terms. She had seen him for the first time on the alleged date of occurrence. As soon as the appellant came out from her room, she raised alarm whereupon her parents and others came. Para-4 happens to be cross-examination over topography of her house. In para-5, she had stated that the room in which she was sleeping lies at the north side of her house. It happens to be thatched room. She is unable to disclose its length and breadth. There was wooden door affixed. Latch of the door was broken. She was sleeping over Chowki. Then had disclosed that blanket, pillow, bed-sheet soaked with blood which was shown to the police. Her Sari, Saya, blouse also got soaked with blood. Police had seen but had not seized the same. In para-7, she had stated that she had not fallen unconscious after sustaining injury. She was in sense at the hospital. Then had stated that she was in deep slumber. After sustaining first blow, she woke up even then repeated blow was given by the accused. She raised alarm. Her sister had also raised alarm whereupon her parents immediately came. Just after inflicting repeated blow, Sintu ran therefrom. Both the sisters have not tried to apprehend him. Then had



stated that her parents came through different way than the way through which the accused has come. In para-9, she had stated that her parents are labourers. Parmeshwari Sah happens to be her cousin brother. Then there happens to be cross-examination regarding her visit to her Sasural. In para-13, she had stated that she was not knowing who was doing *Batai* under Parmeshwari Sah. All the family members happen to be engaged under him. Then at para-14 had denied the suggestion that no such kind of occurrence had ever taken place rather at the instance of Parmeshwari Sah, this false case has been instituted.

16. PW-1 is Indu Devi, younger sister of PW-5. She had stated that that on the alleged date and time of occurrence while she was sleeping along with her sister, Baby Devi, the appellant trespassed into room after breaking the latch whereupon both the sisters woke up, flashed torch and then saw the appellant armed with Chhura. Her sister caught hold him, protested whereupon she was given repeated blows causing injury over hand, head, thigh. She became injured whereupon both the sisters raised alarm attracting her parents and others who came thereafter. Till then, Sentu managed to escape. Her parents had also seen the appellant fleeing therefrom. At about 3.00 PM, they came at Sadar Hospital, Supaul where her sister was treated. Identified the accused. During cross-examination at para-



3, there happens to be contradiction and is found corroborated with PW-6 para-12. At para-4, there happens to be cross-examination with regard to topography of her house. At para-5, she had disclosed presence of persons having house in her surroundings. She had also disclosed presence of house of appellant lying at a distance of about 1 KM. In para-7, she had stated that her parents were sleeping at Darwaza where there happens to be one room. In para-8, she had stated that after hearing hue and cry, about 100-150 persons assembled comprising male, female and children. They were trying to carry the injured to hospital. At that very time, her sister became unconscious. She was lying over bed. Sari, Bed-sheet were soaked with blood. Then had stated that she had not gone to the hospital. In para-10, she had stated that Parmeshwari happens to be her cousin brother. She had further stated that wooden door was affixed. Then had stated at para-11 that she had not seen the appellant engaged by Parmeshwari Sah or by her father. Then had denied at para-12 that at the instance of Parmeshwari, this false case has been instituted as the accused had declined to work under him.

17. PW-2 admittedly is not an eyewitness to occurrence. She woke up after hearing cry and then saw the appellant running therefrom after assaulting her daughter with Chhura. She had also seen blood stain over Chhura. She rushed to her daughter who



had also disclosed that the appellant was fleeing after assaulting her with Chhura. She had found injury over her thigh, head, palm. Then she was taken to the hospital. Identified the accused. During cross-examination, para-2, 3, 4, 5, happen to be cross-examination relating to her house. In para-6, she had stated that first of all her daughter raised alarm and then she also raised. She rushed after hearing alarm of her daughter. After hearing alarm, people of the surrounding came. About 100-150 persons assembled and then named some of them. In para-7, she had stated that she along with her daughter have disclosed regarding occurrence. At para-8, she had stated that clothe as well as bed-sheet were soaked with blood. Then at para-11, 12, there happens to be cross-examination, with regard to possession of torch, flashing of torch and identification of accused in the light of torch. At para-13, she had stated that none had rushed to apprehend the accused. In para-14, she had stated that the house of appellant lies about a mile from her house. Then had stated that her daughter was not intimate to him. Again she has been cross-examined on that very score under para-17, 18. In para-18, she had further stated that the persons who had assembled have also seen Sintu in torch light. Then had denied the suggestion that at the instance of Parmeshwari this case has been instituted.

18. PW-3 is Parmeshwari Sah who had stated that



on the alleged date and time of occurrence while he was urinating, heard cry of Baby Devi whereupon he rushed there and had seen the appellant running therefrom armed with Chhura. He had seen injuries over the person of Baby Devi. On query, her sister, Indu Devi had disclosed that Sentu inflicted those injuries and ran away. Then thereafter, Baby was taken to Sadar Hospital, Supaul for treatment. During cross-examination at para-3, there happen to be contradiction supported by PW-6, Para-13. In para-4, there happens to be cross-examination over topography. In para-5, he had stated that when he reached at the place of occurrence, none of the villagers was present. At that very time, Baby was unconscious. She was lying over a Chowki. At that very time, she was wearing Sari, Saya and Blouse and then detailed the physical features, injuries having over her person, blood oozing out therefrom. Then thereafter, he directed his son, Lalan Sah to call other persons whereupon villagers arrived. Then had stated that blood was over her clothe as well as over her bed. In para-6, he had stated that he had seen the appellant running away towards northern direction from back side of Angan of Baby Devi. He had seen the injured in Angan. It was a dark night. At that very time, he had not tried to apprehend as at that very moment, he was not knowing. In para-7, he had further disclosed that first of all, Indu Devi had disclosed regarding the occurrence. At that very time,



he was alone. In para-8, he had stated that he was knowing the appellant since his childhood. He had not seen him visiting her place. He had further admitted that his field lies near his house. He never instructed him to do menial work but, once he had taken on *Batai*. Then thereafter, he was not engaged. Then had denied the suggestion that at his instance, this case was instituted.

19. PW-4 is the father. He also did not claim to be an eyewitness to occurrence and whatever he had deposed happens to be on the basis of information having been conveyed by his daughter. However, he had stated that after hearing alarm of his daughter, when he reached, he found the appellant fleeing therefrom in torch light. Then had stated that Baby was lifted to hospital where police came and recorded her Fard-e-beyan. She was treated. Identified the accused. During cross-examination at para-5, there happens to be contradiction but aforesaid contradiction has gone worthless as has not been confronted to the Investigating Officer. In para-6, he had stated that Baby was married six months prior to the occurrence. In para-7, he had stated that appellant had not visited his place since before. He had seen the appellant from a distance of 2-3 Lagga. He was running towards southern direction. Angan lies in his house at northern side. He had not chased. He only raised alarm whereupon villagers came and then they were acknowledged with the fact. Then



had stated that Baby became senseless whereupon Shravan, a village doctor was called who attended the injured. His daughter regained the sense at the hospital. In para-9, he had stated that his house happens to be of thatched one. Door was broken. Then had detailed the description of the house and to that extent, para-10, 11, 12 also happen to be. In para-13, he had stated that appellant had not taken land of Parmeshwari Sah on Batai. He had not worked as a labourer under Parmeshwari Sah. In the aforesaid background there was no dispute of wages. Then had denied the suggestion.

20. PW-6 is the Investigating Officer. He had deposed that after being entrusted with the investigation of the case, he proceeded therewith, inspected the place of occurrence, recorded further statement of the informant, received injury report of the victim and then after completing investigation, submitted charge-sheet. Then at para-4 had detailed divulging the fact that after having been entrusted with the investigation, gone to the place of occurrence which happens to be *Maika* of the informant/victim. Then had detailed the same. Then identified the room lying over northern flank of the house where a Chowki was there. Furthermore, he had disclosed that there was no latch affixed over the door. Then had identified the boundary of the house of Maika of the informant as North-Parmeshwari Sah, South-Road, East-Parmeshwari Sah, West-Siyaram



Sah. During cross-examination, he had stated that the place of occurrence lies within Pipra PS which happens to be at the distance of 16 Kms. In para-6, he had stated that he was entrusted with the investigation on 24.08.2012. At para-2, 3, 4, of the case diary, he had not mentioned the date and time. In para-7, he had stated that he had examined only Parmeshwari Sah whose house lies in the boundary of the place of occurrence. Others have not been examined. In para-10, he had stated that he had not seized broken latch, blood stained clothe, bed-sheet and in likewise manner, he had not searched for the same. Then at para-12, there happens to be contraction relating to statement of Indu Devi and para-13 is regarding Parmeshwari Sah. Then had denied the suggestion that investigation happens to be cryptic.

21. From the evidence recorded as discussed hereinabove, it is apparent that from the evidence of doctor, PW-7, presence of injury over PW-5 happens to be duly substantiated and to that extent the evidence of victim happens to be. PW-5 has not been cross-examined on the score of assault. Only on the score of deficiency during course of investigation wherein PW-6, Investigating Officer at para-10 had stated that no blood stained clothe, bed-sheet etc were produced before him will not cause dent as the same happens to be contrary to the material whatever deposed by him during course of examination-in-chief. That means to say, the aforesaid material



happens to be beyond the case diary. So far status of other witnesses are concerned, even for a moment excluding evidence of PW-1 as, her presence is not at all affixed by the informant, PW-5 during course of her initial version which, she had deposed during course of her evidence but on that very score, she was not at all cross-examined nor her attention has been drawn, that means to say, remained intact, event then, the presence of injury could not be controverted at the end of the appellant. While cross-examining PW-5, there happens to be no cross-examination that there was no possibility of proper identification. Contrary to it, simply had denied that at the instance of Parmeshwari Sah, this case has been instituted. Furthermore, it is also apparent from the evidence of PW-5 that she was not at all tested over the occurrence.

22. Now only question remains whether the offence, more particularly, Sections 307 IPC, 323 IPC and 341 IPC are made out or not. From the evidence available on the record, it is apparent that there was no intervening circumstance. Had there been an intention to commit murder of PW-5, then in that circumstance, the blow would have been given over the delicate part of the body. Location of the injury did not justify the finding recorded by the learned lower court and in likewise manner there happens to be no hurt having at the end of appellant so no offence under Section 323



IPC is made out. So far Section 341 IPC is concerned, considering the presence of Section 452 IPC, the same is also found inappropriate and that being so, the conviction and sentence recorded therefor is hereby set aside maintaining the conviction for an offence under Sections 324 IPC, 354 IPC and 452 IPC. Furthermore, considering the background of the event, the sentence so inflicted by the learned lower court relating to Section 452 IPC is reduced to RI for 3 years as well as quantum of fine from 10,000/- to 5000/- and in likewise manner, the default clause RI for 1 year to 6 months with a further direction to run the sentences concurrently. In terms thereof, this appeal is partly allowed.

23. Appellant is on bail hence his bail bond is hereby cancelled directing him to surrender before learned lower court to serve out remaining part of sentence.

(Aditya Kumar Trivedi, J)

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