

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.163 of 2015**

Arising Out of PS.Case No. -26 Year- 1993 Thana -BIRAUL District- DARBHANGA

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Mantun Mandal, S/o Sri Baidyanath Mandal, resident of village-Agra, P.s.-
Biraul, District- Darbhanga.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Dharmendra Jha-Advocate
Mr. Vinay Kumar Mishra-Advocate
Mr. Shankar Prasad Roy-Advocate
For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 04-01-2018

Appellant Mantun Mandal has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo R.I. for one month, additionally, under Section 324 of the I.P.C. and sentenced to undergo R.I. for three years with a further direction to run the sentences concurrently vide judgment of conviction dated 25.02.2015 and order of sentence dated 26.02.2015 passed by the 1st Additional Sessions Judge, Benipur, Darbhanga in Sessions Trial No.200 of 1995.

2. PW-4, Kamlesh Mandal while was admitted at D.M.C.H. gave his fard-bayan on 09.02.1993 at about 8.30 p.m.



disclosing therein that on 08.02.1993 at about 1.00 p.m. while he was proceeding towards south from his house in order to wash his hands, Ram Sagar Mandal, Muso Mandal, Baijnath Mandal and Mantun Mandal, who were hidden in an orchard lying south-east to his house, came and out of them Ram Sagar Mandal, Muso Mandal incudced to kill, whereupon, Baijnath Mandal hurled bomb as a result of which, he sustained injury over his both legs. On fall, all the accused persons rushed near him and then, Mantun Mandal gave Chhura blow, which caused injury over his right eye as a result of which, he became unconscious. Then thereafter, accused persons left the scene treating him to be dead. After regaining sense, he found himself admitted at D.M.C.H., he had also come to know from his younger brother as well as father that his co-villagers Ram Bilash Mandal, Aasho Mandal, Arji Lal Mandal, Kusum Mandal and others along with them lifted him to D.M.C.H. for treatment.

3. After registration of Biraul P.S. Case No.26 of 1993, investigation commenced and after concluding the same, chargesheet was submitted facilitating the trial in a manner, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been suggested that



both the parties are on strained relationship and on account thereof, they have been roped in this false and concocted case. However, neither oral nor documentary evidence have also been adduced.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1 Md. Zahiruddin, PW-2 Arji Lal Mandal, PW-3 Bilti Devi, PW-4 Kamlesh Mandal, PW-5 Chandrama Singh, PW-6 Dr. Safiruddin Ahmad and PW-7 Dr. Umeshwar Prasad as well as had also exhibited the documents viz. Exhibit-1 injury report, Exhibit-2 signature of PW-2 over injury report, Exhibit-3 another injury report. Neither oral nor documentary evidence has been adduced on behalf of defence.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellant that this case suffers from improbabilities and that being so, after scrutinizing the evidence, the learned lower Court had acquitted the remaining accused persons. Though the appellant has been convicted, but from the judgment impugned, it is evident that same suffers from arbitrariness. In order to justify the same, it has been submitted that once the witnesses were disbelieved relating to other co-accused, then in that circumstance, their evidences should have been also disbelieved relating to the appellant, as the activity as alleged, have been during course of examination of alleged offence. In



its continuity, it has also been submitted that acquittal of co-accused completely dehorted the prosecution case in the background of the fact that no injury caused by bomb were found over the person of PW-4 (injured) as is evident from evidence of PW-7 and on account thereof, there was no question for getting PW-4 falling down over ground facilitating the appellant to pierce Chhura in his right eye. Therefore, the injured (PW-4) would not have fallen over ground and in that circumstance, the injuries would not have been in a position as indicated by the PW-6 (doctor), who had examined the PW-4. Virtually, the PW-4 had sustained accidental injury might have been stroking by domestic animal which in the background of persisting animosity found a golden opportunity to falsely implicate the appellant including others, whereupon got this case filed.

7. It has also been submitted that had there been examination of the Investigating Officer, then in that circumstance, actual affair would have been exposed. Therefore, non-examination of the I.O. has caused prejudice to the interest of the appellant, whereupon the judgment could not survive.

8. Apart from this, it has also been submitted that manner whereunder occurrence has been alleged to have taken place also looks improbable in the background of the fact that informant after taking meal inside his house came out and was moving towards



south for washing his hands, presence of appellant along with others in an orchard lying adjacent to the house of the informant waiting for informant, looks ridiculous and in likewise manner, the subsequent activity which has completely been nullified by the doctor (PW-7).

9. Apart from this, it has also been submitted that F.I.R. attesting witness happens to be Binod Kumar, one of the brother of the informant, who has not been examined nor any reason has been assigned. In likewise manner, father Siyaram Mandal has also not been examined. Whoever been examined, PW-2 is the full-brother, PW-3 is the mother and PW-4 is the informant himself without having appearance of independent material witnesses and their testimony in the facts and circumstances of the case are unacceptable on account of carrying hostility since before coupled with improbability. The cumulative effect did not satisfy the finding recorded by the learned lower Court, whereupon same is fit to be set aside.

10. On the other hand, learned Additional Public Prosecutor controverted the submission and submitted that from the evidence of injured (PW-4), it is found that appellant has properly been identified to be author of his injury corroborated by the doctor (PW-6) and that being so, rightly been convicted. It has further been submitted at the end of the learned Additional Public Prosecutor that



Court has to scrutinize the evidence and during course thereof, has to separate the falsehood like separating the grain from chaff and the admissible and reliable part thereof, are to be accepted brushing aside the remaining and the learned lower Court, who during course of convicting the appellant, had exercised aforesaid permissive part cautiously and that being so, the judgment of conviction and sentence did not attract interference.

11. PW-6, while was posted as Registrar in Eye Department at D.M.C.H., Darbhanga on 11.02.1993, had examined the injured Kamlesh Mandal, who was admitted on a requisition having at the end of Surgery Department and found the following (Exhibit-1):-

1) Right eye lid, ocdama and cheek with blast material at places which are simple in nature.

2) Perforating injury in congestive, cornea including selevel perforation as well heading loss of contants of eye ball producing plthisns bulbi permanent loss of right eye caused by sharp perforating substine object which is grievous in nature.

3) Other injury should be confected from the Surgery Department, Darbhanga. This case was dealt eye side only.

During cross-examination, it is evident that his



testimony has not been shaken at the end of the defence.

12. PW-7 is the another doctor, Dr. Umeshwar Prasad, who had examined the injured Kamlesh Mandal on 08.02.1993 at about 6.00 a.m. and found the following (Exhibit-3):-

I) Lacerated wound 2" x ½" x skin deep on left side of face.

II) Lacerated wound 2 ½" x ½" x skin deep on left knee

M.I.-One mole on back of chest on left side. Age of injury within 6 hours. Nature of injury-simple caused by hard and blunt substance.

During cross-examination, he had stated that when the patient was brought to him, he was conscious.

13. PW-4 is the injured, who had deposed that on the alleged date and time of occurrence, he after taking meal was going to hand-pipe for washing his hands lying south to his house. Ram Sagar Mandal, Muso Mandal, Baijnath Mandal and Mantun Mandal, who were hidden in an orchard lying east-south to his house, came out, out of whom, Ram Sagar raised alarm that he be killed, whereupon Baijnath Mandal hurled bomb as a result of which, he sustained injury over his both legs. He fell down and then thereafter, all the accused persons came near him. Muso Mandal had disclosed that he is still alive and so, be murdered by way of giving Chhura blow on his head,



whereupon Mantun Mandal gave Chhura blow over his head, but as he twisted his head, pierced his right eye as a result of which, he lost vision. Then thereafter, the accused persons treating him to be dead, escaped there from. After regaining sense, he found himself admitted at D.M.C.H. He was lifted by his brother, father. Police came and recorded his fard-bayan, identified the accused. During cross-examination although at Para-4, he had denied the event of institution of case at the end of Ram Sagar Mandal since before the occurrence, but in Para-7, had admitted the same. He had also admitted in Para-7 that in a dacoity case, he had deposed against him. In Para-5, he had further stated that they have got no land dispute. He had further stated that the occurrence is of dated 08.02.1993 at about 1.00 p.m. In Para-6, he had stated that after sustaining knife blow, he became unconscious. Before being unconscious, he had seen Binod Mandal, brother, father, Arji Mandal, Kusheshwar Mandal. In Para-8, he had stated that after hearing hue and cry, so many persons arrived. He became unconscious after arrival of five persons. He remained unconscious for 24 hours and so, he is unable to say the event materialized in between. In Para-10, he had stated that seizure list was prepared in his presence, but he is unable to say whether he had put signature or not. Police had recovered Suthli, iron ball etc. from the P.O.



14. PW-3 is the mother, who had stated that on the alleged date and time of occurrence, she was sitting at her verandah. While her son Kamlesh Mandal was washing his hand after taking meal, Baijnath Mandal hurled bomb over him, which exploded as a result of which, her son sustained injury over his both leg. Then thereafter, Mantun Mandal gave Chhura blow which caused injury below his eye. Muso Mandal and Ram Sagar Mandal have directed to kill. When she intervened, all the accused persons escaped there from. Then thereafter, her younger son Binod, eldest son Arji Lal Mandal, husband lifted Kamlesh Mandal to Baheri and then to Darbhanga. During cross-examination at Para-3, she had stated that she happens to be on strained relationship with the accused persons since before the occurrence. She had further stated that P.O. lies 5-6 lagga away from his house intervened by orchard of Shivji Mandal. In Para-4, she had stated that her son had fallen 10-15 hands away from her courtyard. Her son was unconscious seeing whom, she also became unconscious. In Para-5, she had stated that when she regained sense, she had seen injury over his leg, eye. In Para-6, she had stated that only she along with Arji Mandal remained at her house. Later on, Kamlesh Mandal and Binod Mandal came and then, disclosed regarding the occurrence.

15. PW-2 is Arji Lal Mandal, elder brother of PW-4, who had stated that on the alleged date and time of occurrence, he was



at his house. When his brother had gone to wash his hand after meal, at that very time, four persons were hidden in an orchard. He heard alarm of Ram Sagar Mandal to kill, whereupon Baijnath Mandal hurled bomb as a result of which, Kamlesh Mandal sustained injury. There was smoke. Kamlesh Mandal became unconscious. Then thereafter, Baijnath Mandal, Ram Sagar Mandal, Muso Mandal and Mantun Mandal came near him, out of whom, Mantun gave Chhura blow over Kamlesh Mandal. On hue and cry, villagers came and then, Kamlesh Mandal was lifted to Baheri and then, to D.M.C.H., police had taken his statement. Police had also seized remnants of the bomb from the P.O. for that, seizure list was prepared over which, he had signed. During cross-examination at Para-3, he had stated that he had got no enmity with the accused persons. He had further stated that when he reached, he saw injuries over both legs of Kamlesh Mandal as well as near eye, he was unconscious. In Para-4, he had stated that he was lifted to D.M.C.H. in an unconscious state. In Para-5, he had stated that he had also gone to the D.M.C.H. In Para-6, he had stated that police had recorded his statement 8-10 days after the occurrence. At Para-7 had stated that P.O. was inspected by the I.O. 8-10 days after the occurrence.

16. After going through evidence of PW-6, it is apparent that the victim had lost his right eye on account of injury



caused by sharp piercing weapon and on account thereof, has been shown as grievous. So far evidence of remaining witnesses are concerned, from the evidence of PW-2 as well as PW-3, it is crystal clear that though during course of examination-in-chief, they have claimed themselves to be an eye witness to occurrence, but during course of cross-examination, their status is found unworthy as when they arrived at the P.O. found the injured (PW-4) to be unconscious on account of presence of injuries over his both legs as well as near eye. So far evidence of PW-4, injured, is concerned, it is apparent that during course of examination-in-chief, he had categorically stated and identified the appellant to have pierced Chhura in his right eye and that part of occurrence has not been challenged at the end of appellant during course of cross-examination. If the aforesaid assertion is taken together with the evidence of doctor (PW-6), it is found duly corroborated.

17. Evidence of an injured is to be accepted unless and until, there happens to be cogent reason to disbelieve the same. Though there happens to be admission that both the parties were on strained relationship since before, cases were pending, accused had deposed against them, but so far occurrence is concerned, for want of proper cross-examination, same is found duly substantiated. Moreover, Section 134 of the Evidence Act did not require the



quantity rather the quality of the evidence in material in order to substantiate the facts in issue which, as is found PW-4 duly discharged.

18. 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.”

19. Now, coming to propriety of the finding recorded by the learned lower Court, there happens to be no repetition of blow, nor the injury has been found dangerous to life. Furthermore, though the witnesses have stated with regard to hurling of bomb, which has



not been found duly substantiated by PW-7 and on account thereof, the other co-accused were acquitted and in the aforesaid background, intention to commit murder or an assault with a knowledge that the injuries having been inflicted is going to cause murder is found absent and that being so, the conviction and sentence under Section 307 of the I.P.C. is not at all found justifiable and is accordingly, converted to under Section 326 of the I.P.C. reducing the sentence from R.I. seven years to five years enhancing the quantum of fine from Rs.2,000/- to Rs.5,000/- and in default thereof, to undergo R.I. for one year, additionally. In the aforesaid circumstance, there happens to be justification for concurring the finding of the learned lower Court relating to Section 324 of the I.P.C. and is set aside. Accordingly, the judgment of the learned lower Court is modified in terms as indicated hereinabove. Consequent thereupon, appeal is partly allowed. Appellant is on bail, hence his bail bonds is hereby cancelled directing him to surrender within fortnight before the learned lower Court to serve out the remaining part of sentence, failing which, the learned lower Court will proceed against him in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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