

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.195 of 2013

Arising Out of PS. Case No.-135 Year-1996 Thana- Biraul District- Darbhanga

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1. Phusi Pandit S/o Makhan Pandit
 2. Bhulla Pandit @ Madhu Pandit S/o Ram Bahadur Pandit
 3. Sadhu Pandit S/o Ram Bahadur Pandit
 4. Govind Pandit @ Ram Govind Pandit S/o Ram Bahadur Pandit
 5. Jitu Pandit S/o Bhukhan Pandit
 6. Negar Pandit S/o Kari Pandit
 7. Soti Pandit S/o Ramji Pandit

All are residents of village – Saho, P.S.-Biraul, District – Darbhanga.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. Ganesh Chandra Thakur
For the State	:	Smt. Abha Singh, AAP.
For the Informant	:	Mr. Vinay Kumar Mishra, Advocate.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 11-10-2018

Heard learned counsel for the appellants, learned APP for the State and learned counsel for the informant on this criminal appeal.

2. This criminal appeal has been preferred against the Judgment and Order of conviction and sentence dated 22.01.2013 passed by Ad hoc Additional Sessions Judge, Benipur, Darbhanga in Sessions Trial No. 49 of 1998 arising out of Biraul P.S. Case No. 135 of 1996, whereby the learned trial court convicted the accused Phusi Pandit, Bhulla Pandit, Jitu Pandit, Sadhu Pandit, Govind Pandit, Negar Pandit and Soti Pandit for the offence punishable under Sections 147, 148 and



323 of the Indian Penal Code and sentenced them to undergo R.I. for one year under Section 147 of the Indian Penal Code, R.I. for two years under Section 148 of the Indian Penal Code and R.I. for six months under Section 323 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. Factual matrix of the case is that Biraul P.S. Case No. 135 of 1996 was instituted under Sections 147, 148, 149, 323, 324, 341, 307 and 379 of the Indian Penal Code against the accused Phusi Pandit, Jitu Pandit, Sadhu Pandit, Govind Pandit, Bhulla Pandit, Bechan Pandit, Soti Pandit, Bhikhan Pandit and Negar Pandit on the basis of the written report of Ramdev Sah, Son of late Buchhi Sah with the allegation in succinct that on 09.09.1996 at around 5 AM, Phushi Pandit and others removing the firewood from his land kept cow dung and planted two banana trees there. On asking by his son Dinesh Sah to remove the aforesaid articles from his land, accused persons refused to remove the same and started pelting bricks on his house. Responding the uproar, locals arrived at the place of occurrence and pacified the matter. Further allegation is that on the same day at 05:45 AM, when the informant arrived at Sati Chowk, Parari to catch the bus, accused Phusi Pandit, Jitu Pandit, Sadhu Pandit, Govind Pandit, Bhulla Pandit, Bechan Pandit, Soti



Pandit, Bhikhari Pandit and Negar Pandit who were present there from before assaulted him by means of fist and slap and dragged him towards his house and on the way Bhulla Pandit gave order to eliminate him whereupon Bhola Pandit gave farsa blow on his head inflicting bleeding head injury to him. Sustaining injury he fell senseless and the accused persons took out Rs. 5000/- from his pocket. Mahendra Sao, Chhannu Thakur and others rushed him to his house.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused Phusi Pandit, Jitu Pandit, Sadhu Pandit, Govind Pandit, Bhulla Pandit, Bechan Pandit, Soti Pandit, Bhikhan Pandit and Negar Pandit under Sections 147, 148, 149, 323, 324, 307 and 379 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 and committed the case to the court of sessions and after commitment and on transfer finally the case came in the seisin of Ad hoc Additional Sessions Judge, Benipur, Darbhanga for trial.

6. Charge against the accused persons, namely, Phusi Pandit, Jitu Pandit, Sadhu Pandit, Govind Pandit, Bhulla Pandit,



Bechan Pandit, Soti Pandit and Negar Pandit was framed under Sections 323/149, 379/149, 149, 147/149, 148/149, 324/149 and 307/149 of the Indian Penal Code. Charges were read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried. During the pendency of case accused Bechan Pandit and Bhikhari Pandit passed away hence the proceeding against them was dropped. Thus now seven accused persons faced the trial.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether nine prosecution witnesses namely, Mahendra Sao as PW-1, Hirdaya Yadav as PW-2, Jitendra Sao as PW-3, Md. Nasir as PW-4, Laxmi Narayan Poddar as PW-5, Shambhu Mahto as PW-6, informant Ramdeo Sah as PW-7, Kritiya Nand Thakur as PW-8 and Dr. Ramesh Chandra Jha as PW-9. Out of the aforesaid witnesses, PW-4 happens to be formal witness while PW-8 turned hostile. Prosecution has also filed and proved several documents by way of documentary evidence in the case.

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. In ocular evidence, accused persons



have also examined one witness, namely, Laxman Pandit as DW-1 and in documentary evidence they have filed and proved several documents 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, the convicts have 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 appellants beyond all reasonable doubt or not.

12. It is submitted by learned counsel for the appellants that as per the prosecution case, it is the Bhola Pandit who had given farsa blow on the head of the informant but in quite contradiction to the aforesaid prosecution case, informant has stated that Madhu Pandit assaulted on his head by means of farsa inflicting bleeding head injury to him. Likewise PW-1, PW-2, PW-3, PW-5 and PW-6 have also stated about giving farsa blow not by Bhola Pandit rather by Madhu Pandit to the informant. Aforesaid statement of the said witnesses goes to rule



them out to be the eye witness of the occurrence and the statement of the informant happens to be in quite contradiction to the prosecution case and is not reliable and worth credence. It is further submitted that PW-2, PW-3 and PW-6 happens to be on inimical terms with the accused persons and due to the aforesaid animosity, they had given statement against the accused persons. It is also submitted that there is land dispute between the parties and several civil and criminal cases have been fought between the parties prior to the occurrence. Hence informant has falsely implicated the accused persons in the alleged occurrence due to animosity. It is also submitted that the inconsistent ocular evidence of the prosecution also does not stand corroborated by the medical evidence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and the charge levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy and reliable evidence. Hence aforesaid judgment and order of conviction and sentence passed against the appellant is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP and learned counsel for the informant 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 other witnesses who happen to be eye witnesses of the occurrence have also corroborated the occurrence and aforesaid ocular evidence of the witnesses also stands corroborated by the medical evidence 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. As per prosecution case genesis of occurrence is keeping of cow dung and planting of banana trees by the accused persons on the land of informant and on asking by his son for its removal slating and pelting bricks on his house earlier to the occurrence of assault on the informant but none of the witnesses even the informant examined by the prosecution has whispered about the aforesaid earlier occurrence. Thus genesis of occurrence does not stand established by the prosecution.

15. From perusal of the written report of the informant, it appears that in the written report, the informant has stated that on the order of Bhulla Pandit, Bhola Pandit gave



farsa blow on his head inflicting bleeding head injury to him, but in quite contradiction to the aforesaid prosecution case, the informant (PW-7) has stated in his examination-in-chief that Madhu Pandit gave order to eliminate him and Madhu Pandit himself gave farsa blow on his head inflicting bleeding head injury to him. Likewise PW-1, PW-3 and PW-6 have stated that Madhu Pandit gave farsa blow on the head of the informant while PW-2 and PW-5 have stated that on the order of Phusi Pandit, Madhu Pandit gave farsa blow to informant inflicting bleeding head injury to him. Aforesaid contradictory statement of the informant and that of the aforesaid witnesses on the material aspect of the case creates serious doubt about the prosecution case and the witnessing of the occurrence by the aforesaid witnesses.

16. As per the prosecution case, it is the Mahendra Sao and Chhannu Thakur who took the informant to his house after assault, but aforesaid Mahendra Sao examined in this case as PW-1 has stated in Para-9 of his cross-examination that he does not know as to who had taken Ramdev Sah from the place of occurrence and where. He has further stated in para 11 of his cross-examination that he was behind the mob and he could not clearly witness that who assaulted the informant by which



weapon. Aforesaid contradiction between the prosecution case and testimony of the aforesaid witness and aforesaid testimony of said witness also rules out the presence of the aforesaid witness at the place of occurrence and witnessing of the occurrence by him. From perusal of testimony of PW-6 Shambhu Mahto, it appears that the aforesaid witness has stated in Para-1 of his examination-in-chief that when he arrived near Satti Sthan, he witnessed that accused persons had assaulted Ramdeo Sah and he was fallen on the ground. He was injured and was crying for help. In para-12 of his cross-examination, he has further stated that when he arrived at the place of occurrence, he witnessed head injury and injury on the back of Ramdeo Sah. Aforesaid statement of PW-6 eloquently indicates that the said witness does not happen to be eye witness of the occurrence as when he arrived at the place of occurrence, he had found the informant injured which means that he had arrived at the place of occurrence after culmination of the occurrence and not witnessed the occurrence of assault upon the informant at the hand of the appellants.

17. PW-2 Hirdaya Yadav has stated in Para-6 of his examination-in-chief that he has given deposition against the accused in Title Suit No. 6 of 1996. PW-3 Jitendra Sao has



stated in Para-2 of his cross-examination that accused Phusi Pandit has lodged a criminal case against him. PW-5 Laxmi Narayan Poddar has stated in Para-8 of his cross-examination that he had given statement against the accused Phusi Pandit in a case. Aforesaid statement of the said witnesses indicates that aforesaid witnesses are on inimical terms with the accused persons.

18. As per prosecution case and witnesses account after sustaining head injury informant fell senseless. Informant Ramdeo Sah (PW-7) has stated in Para-25 of his cross-examination that on regaining sense in the night, he had found witnesses present there while the accused persons had made good their escape by that time. Aforesaid statement of the informant indicates that on sustaining injury in the morning he fell senseless and regained sense in the night. But the informant has stated in para-23 and 24 of his cross-examination that after the occurrence, he was rushed to his house and remained there for 10-15 minutes. Thereafter, Mahendra Sah rushed him to P.S. Biraul on bicycle. He had arrived at the P.S. at around 08:30-9:00 AM and divulged the occurrence to the O/c. Aforesaid statement of the informant goes to create serious doubt about the prosecution case and sanctity of the written report and F.I.R. As



as per the aforesaid account of the informant, he fell senseless at the place of occurrence sustaining injury and regained sense in the night of the occurrence, then how he filed the written report in the morning on the date of occurrence at 08:30-9:00 AM.

19. As per the statement of the informant as given by him in Para-25 of his cross-examination, he remained admitted in the hospital for one day and was discharged on the following morning at 7 AM. But from perusal of the testimony of Dr. Ramesh Chandra Jha (PW-9), it appears that the doctor has stated in para-5 of his cross-examination that he had examined the injured as outdoor patient and on examination of the injured he found that he was not required to be admitted. Aforesaid vital contradiction between the testimony of the witnesses creates serious doubt about the prosecution case.

20. As per the prosecution case and the witnesses' account, accused persons were armed with lathi and farsa and they assaulted the informant by means of fist, slap and lathi and accused Bhola Pandit assaulted the informant on his head by means of farsa inflicting bleeding head injury to him. PW-3 Jitendra Sao has stated in Para-13 of his cross-examination that the informant had sustained 10-20 lathi on his back, but from perusal of the testimony of the doctor (PW-9) and the injury



report, it appears that the doctor has found only one injury on the head of the informant, swelling with tenderness over right chick and complain of pain. He has not found any other apparent and visible injury on his person. As per prosecution case, accused Bhola Pandit gave farsa blow on the head of the informant inflicting bleeding head injury to him, but the doctor has found only one lacerated wound of size 1½”x1/8” up to scalp over Right side of head and has opined that the aforesaid injury has been caused by hard and blunt substance and simple in nature. The doctor has not found any sharp cut injury on the head of informant. In Para-7 of his cross-examination the doctor has stated that aforesaid injury could not be inflicted by any sharp edged weapon. PW-3 has stated in para-13 of his cross-examination that Madhu had given farsa blow from frontal side. Thus as per the aforesaid statement of PW-3 the informant must have sustained injury on the frontal side of the head but doctor has found lacerated injury on the right side of the head. Thus the aforesaid inconsistent ocular evidence of the prosecution also does not stand corroborated by the medical evidence.

21. From perusal of the record, it appears that the F.I.R. was lodged on 09.09.1996 and it was sent from the P.S. on 10.09.1996, but the F.I.R. was received in the court of SDJM on



11.09.1996, but the prosecution has not assigned any plausible and convincing explanation about the aforesaid delay in receiving the F.I.R. in the court which also creates serious doubt about the prosecution case.

22. Informant (PW-7) has stated in para-20 of his cross-examination that his shirt and dhoti were drenched with blood oozed from his injuries. As per prosecution case accused persons assaulted the informant by means of fist and slap at Satti Chowk, Parari and Bhola Pandit gave him farsa blow on the way to their house by dragging him, but in quite contradiction to the aforesaid prosecution case, PW-1 has stated that accused persons assaulted the informant in the Bus and then dragged him and assaulted by means of farsa on the way. PW-2 has not stated about assaulting the informant at Satti Chowk by accused person rather on the way by means of lathi. While PW-3, PW-5 and PW-6 have stated that accused persons assaulted the informant on Sattirani Chowk. Thus there happens to be vital contradiction regarding place of occurrence but I.O. has not been examined by the prosecution and for want of examination of I.O. objective evidence could not be brought on record and place of occurrence also does not stand established by the prosecution.



23. As per the statement of the informant and other witnesses, there is animosity between the parties. Informant has also stated in Para-7 of his cross-examination that his wife Lalita Devi has filed Title Suit No. 6 of 1996 against Phusi Pandit and others. Exhibit-5/1 indicates that Criminal Appeal No. 03 of 2011 was filed by the informant and his sons against State of Bihar and Phusi Pandit. Exhibit-6 indicates that Criminal Appeal No. 36 of 2012 was filed by the accused Phusi Pandit and others against the State of Bihar and son of the informant Sanjit Kumar and son of the informant, namely, Sanjit Kumar has filed G.R. Case No. 171 of 2001 against the accused Phusi Pandit and others. Exhibit-A/1 indicates that accused Phusi Pandit has filed C.R. No. 214 of 1996 against the informant Ramdeo Sah and his sons and Exhibit-C indicates that wife of the informant Lalita Devi has filed a case under Section 145 Cr.P.C. against the father of the accused persons namely Ram Bahadur Pandit. Thus from perusal of the aforesaid ocular and documentary evidence of the parties, it appears that civil and number of criminal cases were fought between the parties and both the parties are inimical to each other. It is settled principle of law that animosity cuts both the edge. But in view of the aforesaid vital contradiction between the prosecution case



and statement of the informant, between the statement of the witnesses inter se regarding manner of occurrence, assailant, injury and place of occurrence, non-corroboration of the ocular evidence by medical evidence, delay in sending F.I.R. to the court not establishing of genesis of occurrence, PW-2, PW-3 and PW-5 being inimical to the appellants false implication of the appellants due to aforesaid animosity cannot be ruled out.

24. 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 beyond all reasonable doubts by adducing consistent, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellants is set aside and the appellants are acquitted from the charges levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds.

25. Accordingly, this criminal appeal is allowed.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
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