

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.112 of 2009

Arising Out of PS.Case No. -283 Year- 2002 Thana –Buxar Town District- BUXAR

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1. Dadan Choudhary son of Late Gupteshwar Choudhary,
 2. Bhushan Choudhary son of Sh. Bindhyachal Choudhary,
 3. Chakraworti Choudhary son of Ram Bilash Choudhary,
 4. Rabindra Pathak @ Munna Pathak son of Late Jagannath Pathak, all residents of Village- Sohni Patti, PS-Buxar, Town, Post & Distt-Buxar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aruni Singh, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 05-11-2018

Appellants, Dadan Choudhary, Bhushan Choudhary, Chakraworti Choudhary and Rabindra Pathak @ Munna Pathak have been found guilty for an offence punishable under Section 324/34 of the IPC and each one has been sentenced to undergo RI for 3 years, under Section 448 IPC, each of them has been sentenced to under RI for 1 year with a further direction to run the sentences concurrently, vide judgment of conviction and order of sentence dated 28.01.2009 passed by Additional District & Sessions Judge, Fast Track Court No.3, Buxar in Sessions Trial No. 312 of 2004/108 of 2004.

2. Pantu Rawani (PW 1) gave his Fard-e-beyan on 02.11.2002 at about 12:00 Noon while he was admitted at Sadar Hospital, Buxar before the police officials of Buxar Town PS divulging the fact that he happens to be labourer and his livelihood is based upon daily earnings. He has gone to see a cultural programme



organized at Gauri Shankar Mandir in the night of 29.11.2002 (date wrongly scribed). He has gone there at 8:00 PM and returned back at 3:00 AM along with Manoj Rawani. Yesterday, i.e. on 01.11.2002 at 5.00 AM, Dadan Choudhary, Chakraworty Choudhary, Munna Pathak and Bhushan Choudhary, all residents of Sohni Patti, PS-Buxar, Town, Distt-Buxar came inside his house and inquired from him as to why he has stolen Television. He disclosed that he is a labourer. He has not committed theft till today, over which, they all began to assault him with fists, slaps, legs, shoe and stick. During midst thereof, Chakravorti, on the pretext of pistol said to produce the T.V, otherwise, he will be murdered. They have also searched out the T.V in his house but failed to locate. His mother, Pramila Devi and Bhabhi, Kamla Devi wife of Munna Rawani came in rescue but, the accused persons pushed them off. They have also disclosed that he will be made to dance naked. Then thereafter, they dragged him outside his house and Chakravorti took him to his house where, he was assaulted. Mohalla people have witnessed the same. He was assaulted up to 3:00 PM and during midst thereof, he was taken all around. Dadan snatched away chain (of silver) from his neck. He has sustained injury over his hand, leg, shoulder, chest, belly and back. When he became unconscious, then, Mohalla people took him to the hospital where saline was administered to him.

3. After registration of Buxar (Town) PS Case No. 283/2002, investigation commenced followed with submission of



charge-sheet which happens to be the basis of 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 pleaded that informant stolen away one colour TV which was affixed for screening cultural programme and for that, he was questioned as, people have seen him removing the TV whereupon, he confessed his guilt and further, undertook to produce the TV on 02.11.2002 whereunder, the he failed and for that, on the written report of President of Cultural Programme, Jayant Kumar Sinha, Buxar Town PS Case No.282/2002 was registered and in order to counter meet the same, this case has been instituted in order to make out a defence case. Oral as well as documentary evidence have also been adduced in support thereof.

5. In order to substantiate its case, prosecution had examined altogether 7 PWs who are PW-1, Pantu Rawani, informant PW-2, Binod Rawani, his full brother, PW-3, Pramila Devi, mother, PW-4, Minu Devi, Bhabhi, PW-5, Birendra Kumar Rana, Part I.O, PW-6, Dr. Raghuwansh Mani Pandey, PW-7, Ajay Kumar Singh, formal witness, as well as also exhibited injury report as Ext-1, endorsement over Fard-e-beyan, Ext-2, Formal FIR, Ext-3. Defence had also examined DW-1, Jaywant Kumar Sinha and had exhibited Formal FIR of Buxar (Town) PS case No. 282/2002 as Ext-A and written report as Ext-B (with objection).



6. Learned counsel for the appellant while challenging the finding recorded by the learned lower court has submitted that in spite of absence of legal evidence, the judgment of conviction and sentence has been recorded. To justify the same, it has been submitted that the main I.O. has not been examined. There happens to be material development in the evidence of PWs regarding which, attention has been drawn up but, in absence of examination of the main I.O., the same could not be brought up on the record in accordance with law whereupon, the interest of the appellant has severely been prejudiced. It has also been submitted that on account of non examination of main I.O., the objective finding regarding place of occurrence could not properly been flashed, more particularly, in the background of the fact that the I.O. during course of investigation had identified only one place of occurrence i.e. the house of informant as shown by the prosecution. Had there been examination of I.O., the deficiency in the evidence of prosecution would have been properly exposed whereupon, the whole case would have fallen like the house of cards as, whatsoever allegations for which appellants have been convicted and sentenced for, happen to be allegedly committed at the house of Chakrawaty Choudhary which was not at all the alleged place of occurrence. That being so, the materials which, had there been examination of the I.O., would have properly been placed in accordance with law improbabilizing the case of the prosecution and further, substantiating that this case has been launched with a false



and frivolous allegation to counter-meet with the case which, the informant as well as his family members have admitted that informant remained under custody for quite a long time relating to theft of TV, caused serious prejudice and that being so, it happens to be sole ground whereupon the judgment impugned would not survive.

7. Then it has been submitted that Kamla Devi, Bhabhi whose presence, the informant noticed in the Fard-e-beyan has been withheld and replaced by Minu Devi whose presence was not at all in the Fard-e-beyan. No explanation is there with regard to non examination of aforesaid Kamla Devi, the inmate of the house. Not only this, PW-2, Binod Rawani also did not find his presence in the Fard-e-beyan, brother of the informant. Whosoever been, the informant himself along with his mother PW-3. When the evidence of PW-3, mother is properly scrutinized, then in that event, the whole prosecution case as unfolded by PW-1 by way of material development, became falsified and, in the totality of the event, makes the judgment impugned non entity in the eye of law.

8. Apart from this, it has also been submitted that medical evidence is nothing but a farce. Whatever finding has been recorded completely nook the prosecution, more particularly, in the background of initial version whereunder, it has been incorporated by the informant that when he was abandoned at the end of the accused and was unconscious, was lifted by his Mohalla people to the hospital where saline was administered to him so it was on 01.11.2002 while,



the injury report having been issued at his end speaks about his examination on 02.11.2002, mincingly the prosecution case.

9. Apart from this, when the informant, according to his initial version was to be admitted at the hospital on 01.11.2002, then in that event, was it possible for PW-6, the doctor to trace out smell of petrol over or around his anus when there happens to be admission at the end of PW-6 that the smell of petrol would survive only for ½ an hour, is another circumstance which also creates doubt over proper finding of the doctor. The cumulative effect as referred hereinabove, persisting on the record, if properly appreciated, would not justify the finding, hence is fit to be set aside.

10. Learned APP while counter-meeting with the submissions raised on behalf of learned counsel for the appellants, has submitted that whatsoever been deposed before the court is a substantial evidence which is only to be considered for coming to a conclusion. True it is, that the development is to be viewed adverse to the reliability of a witness but, the same has also to be seen in the background of the fact that as to how the Investigating Officer had proceeded with the investigation of the case. Due to defective investigation, prosecution version could not be doubted, rejected. It has further been submitted that mere non examination of Investigating Officer would not put dent in the prosecution case, more particularly, when the witnesses are natural, reliable, creditworthy then the finding recorded by the learned lower court is fit to be confirmed.



11. PW-6 is the doctor who had examined the victim/informant Pantu Rawani @ Langer on 02.11.2002 and found the following:-

1. Bruises on both sides of face (i) 2 CM x 2 CM and (ii) 2 CM x ½ CM simple in nature caused by hard blunt substance,
2. Bruises with abrasion on left shoulder ½ CM x muscle deep, simple in nature caused by hard blunt substance,
3. Bruise one on sternal area 3 CM x 2 CM, simple in nature caused by hard blunt substance,
4. Bruise back of thorax 2 CM x 1 CM, simple in nature caused by hard blunt substance,
5. Abrasion of old wound on dorsum of left sole 1 CM x ½ CM, simple in nature caused by hard blunt substance,
6. Bruise with abrasion one on head, simple in nature caused by hard blunt substance,
7. Lacerations around anus, Opinion reserved. Petrol smell coming from the anus.
8. Pain abdomen. Opinion reserved, caused by hard blunt substance. Advised to attend PMCH for further investigation and treatment. All the injuries were caused within 48 hours.

12. During cross-examination, he had stated that he examined the injured on police requisition. He had further stated that injury no.5 has been found old one. So, did not find any connection with the present episode. He had further stated that he had not found injury over anus. He had further stated that he had smelt the anus. He



had further stated that smell of petrol would survive only for ½ hour.

13. Now coming to the material evidence. PW-1 is the informant himself, the sole victim. In terms of injury whatever been found by PW-6, because of the fact that the other victims have not been subject to medical examination. He had stated that on the alleged date and time of occurrence while he was at his house, Chakraworty, Munna, Dadan and Bhushan came at his house and inquired about TV whereupon, he shown his unawareness, as a result of which, accused persons began to assault. His mother and Bhabhi came in rescue and during course thereof, Chakraworty caught hold of his mother's hair and assaulted her. Then had said that they will get him dance nakedly and, took him to their house. His Bhabhi was also thrashed. Then all of the accused assaulted him, as a result of which, he became unconscious. Dadan put petrol in his anus and at that very time, Chakraworty had caught hold of his hands. Munna had caught hold of his neck and Bhushan spread his legs. Dadan snatched away silver chain. Accused persons were also threatening that if by 3:00 PM, he fails to return the TV back, they will again assault him. Then thereafter, the family members took him to hospital where he was treated. Police came and recorded his statement. Identified the same. Identified the accused. During cross-examination, he had admitted at para-5 that with regard to theft of TV, a case has been instituted against him. Cultural programme was organized at the instance of Jai Hind Club. He had not seen where TV was affixed at different



location to facilitated the views. He had further admitted that there happens to be allegation against him with regard to lifting of TV and for that, accused persons had apprehended him, demanded the aforesaid TV but, he is unable to say whether the case has been instituted at the instance of President of the Club, namely, Jayant Kumar Singh whereunder Dadan, Chakraworty and others were witnesses. Then had denied the suggestion that he had confessed his guilt and undertook to return back the aforesaid TV upto 10:00 AM on 02.11.2002 whereupon, this case has been instituted. In para-6, he had stated that he had witnessed the cultural programme only for five minutes. He had further stated that during course of his statement before the police, had disclosed that he had gone to see the cultural programme at 8:00 PM and remained there till 3:00 AM. In para-7, there happens to be discloser with regard to presence of the house of the different persons having in his boundary. In para-8, he had stated that when the accused persons came at his house, the door was open. None of neighbours woke up but his family members were awoken. As soon as accused persons entered into his house, they began to assault. At that very time, he was lying on the Chowki. At para-9, he had stated that on account of falling from Chowki, he had sustained injury over his knee. The accused persons assaulted right from 5:00 AM to 3:00 PM and during midst thereof, they poured petrol inside his anus. He had further stated that on account of assault, he became unconscious. He regained his consciousness at the hospital. At that



very time, his mother and Bhabhi were present at the house. They have not gone to hospital along with him. Binod, Ashok, Srikishun and Munna taken him to hospital. He had gone to hospital on the following day at about 11.30 AM. He was not taken to the hospital on the day of assault. At para-10, there happens to be cross-examination with regard to activity relating to pouring of petrol in his anus. He had further stated that during course of statement before police, he had stated that Chakraworty had poured petrol in his anus. At that very time, other family members were present. He had further stated that Manoj Rawani son of Baban Rawani had informed the police on the date of occurrence itself. Manoj Rawani had accompanied him during course of seeing cultural programme. In para-11, he had further stated that police station lies ½ Kilometre away. He had not gone to police station. Then at para-13, there happens to be contradiction which have not found substantiated due to non examination of Investigating Officer. He had further admitted that he remained under custody in connection with a case relating to theft of TV.

14. PW-2 is brother of PW-1. During his examination-in-chief, he had reiterated the version of the informant, PW-1. During cross-examination at para-3, he had stated that doctor had informed the police. He had further stated that Manoj informed the police orally with regard to commission of the occurrence as Manoj was present at the time of occurrence but, the police had not come. He had further stated that Pantu was dragged by accused persons to their house. He



took Pantu from the house of accused and then to hospital. During midst thereof, police was not informed. In para-5, there happens to be contradiction. In para-6, he had stated that at an earlier occasion, he remained under custody with regard to stealthily cutting of electric wire. In para-6, he had admitted that at the time of occurrence Pantu was in Baithka, outside of his house. He was also present there. At that very time, his mother and Bhabhi, both were inside the house. It has further been disclosed by him that accused persons came, asked for with regard to stealing of TV. Then began to assault. They assaulted for an hour. During course thereof, neighbours also arrived. His mother and Bhabhi sustained injury as they intervened. They were treated privately. He had further admitted at para-7, regarding presence of case having been instituted prior to this case with regard to stealing a TV Set by Jayant Kumar Sinha wherein his brother had gone to jail.

15. PW-3 is the mother. During her examination-in-chief, she had substantiated the case of the prosecution having exaggeration that while Pantu was being carried to their house by the accused persons, they have also followed and during course thereof, Chakraworty took out pistol and threatened to kill. During cross-examination at para-3, she had stated that she had witnessed whole of the occurrence from her Angan. Just after arriving at her house, the accused persons began to assault his son, Pantu and during course thereof, her son was taken out to Sahan where he was assaulted for



half an hour. He became unconscious and then, accused persons lifted Pantu and took him away. Accused persons lifted Pantu on their hands. After 24 hours thereof, they had taken Pantu to hospital. In para-4, she had admitted that police was informed before taking away her son to hospital on the date of occurrence itself. Police had recorded her statement over which took her thumb impression. Police had lifted Pantu to hospital. After releasing from the hospital, he was forwarded to judicial custody.

16. PW-4 is Minu Devi, who during course of her examination-in-chief had reiterated the prosecution version. She had further stated that on account of assault, her Devar became unconscious. Even thereafter, the accused persons continued with assault. Munna Pathak had poured petrol in anus of her Devar on the order of Chakrworthy. Chakraworthy had snatched away silver chain. During cross-examination, she had stated at para-4 that, her Devar returned back at 8:00 PM after attending the cultural programme. He slept at the place where he was assaulted. She had further stated that he was assaulted in a room. In para-4, she had stated that she had shown the blood stain at the place of occurrence to the police. Then there happens to be contradiction which happens to be material one. She had further stated that when the accused persons took away Pantu, then Mohalla people informed the police but she is unable to disclose their name. She had further stated that when accused persons threw him over the road, then she had gone there and lifted him. On



the following day, Pantu was taken to hospital.

17. PW-5 is the part Investigating Officer who took up investigation on 16.07.2003 and during course of investigation arrested all the accused persons, got them remanded to the judicial custody and then, submitted the charge-sheet. So, he is not the main Investigating Officer and that happens to be the reason behind that PW-7 formal witness, has been examined. He had got the relevant document exhibited.

18. It is needless to say that there happens to be material development in the statement of each of the witnesses and with regard thereto, their attention has been drawn up. PW-1 (para-10, 13), PW-3 (Para-5) PW-4 (Para-4, 5). In the aforesaid background, non examination of the Investigating Officer has certainly caused prejudiced to the interest of the appellant. Apart from this, it is also evident that witnesses have admitted that police having been informed since before institution of this case. PW-3 at para-4 had clearly stated that she had made statement before the police over which, she had put her thumb impression. Due to non examination of the Investigating Officer, the appellant has been deprived of an opportunity to cross-examine on the score of earlier version and in likewise manner, non presence of earlier version is another circumstance, cast doubt over the genuineness of the instant version, apart from the fact that the present version is found hit by Section 162 CrPC. Not only this, there also happens to be inconsistency amongst the witnesses so far proper



identification of accused having been involved in pouring petrol in the anus of the PW-1 as PW-1 has shown Dadan Choudhary while other accused/appellants have been arrayed at his end to have actively participated by over-powering the informant in order to facilitate the same while PW-2, PW-3 have not substantiated the same. PW-4 pointed out finger towards Munna Pathak. Apart from this, the story of threatening by means of fire-arm has also been introduced at the end of PW-3 without having any kind of corroboration. Not only this, there also happens to be inconsistency in the evidence of the PWs as PW-2 had stated that he brought back Pantu from the place of accused while PW-4 had stated that he was thrown over the road and from there, she took him to the house. Further PW-3 had stated that PW-1 became unconscious at his house, and from there, he was lifted by the accused to their place is not at all corroborated by any of the witness. She had also disclosed that they followed but, none had deposed like so. The most surprising feature as is evident from the examination of PW-6, doctor is that he had examined the injured PW-1 on 02.11.2002, the occurrence is said to be of dated 01.11.2002, as per his evidence during cross-examination, the smell of petrol was not perceptible for more than ½ an hour, then how he smelt presence of petrol is another circumstance. It is also evident from his evidence that he examined the injured on police requisition which is not the case of the prosecution.

19. Giving anxious consideration to the evidence available



on the record, the material exaggeration, non examination of the Investigating Officer coupled with an admission at the end of almost all the material witnesses that before institution of this case, Jayant Kumar Sinha, President of Jai Hind Club had already instituted the case with regard to theft of TV by PW-1 wherein these appellants are witnesses, creates doubt over authenticity of the prosecution version. Consequent thereupon, judgment of conviction and sentence recorded by the learned lower court is, hereby, set aside. Appeal is allowed.

20. Since all the appellants are on bail, they are discharged from the liability of their bail bonds.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.11.2018
Transmission Date	19.11.2018

