

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.25 of 2009**

Arising Out of PS.Case No. -46 Year- 1996 Thana -K-Hat District- PURNIA

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Manoj Kumar Singh son of Sree Sharda Prasad Singh, R/O Village Dumra, P.S.  
Bhawanipur, Distt-Purnea. .... Appellant/s

Versus

The State of Bihar .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Vikramdeo Singh,  
Mr. Manoj Kumar, Advocates  
For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 26-09-2018**

Appellant, Manoj Kumar Singh has been found guilty for an offence punishable under Section 323 IPC and sentenced to undergo RI for 1 year, under Section 353 IPC and sentenced to undergo RI for 2 years with a further direction to run the sentences concurrently by Additional Sessions Judge-Fast Track Court-8, Purnea in Sessions Trial No. 101/1997/125/2008.

2. Sattan Muni (PW 1), Chaukidar of Halka No. 12/2 of Sarsi PS gave his Fard-e-beyan on 25.01.1996 before the Officer Incharge, Sarsi PS disclosing therein that today at about 7:30 AM, he along with Hawaldar and Sepoy escorted the accused of Sarsi PS Case No. 280/95 to Purnea Jail to facilitate judicial custody. Hawaldar took all the six accused inside the jail gate while he along with Sepoy, Banarsi Tuddu remained outside the gate. After some time, the Sepoy who was on duty at the jail gate called him on the pretext that Hawaldar Saheb was calling him to sign. After hearing such



instruction, he reached near the jail gate whereupon, the Jail Sepoy took him inside the jail. He rushed to Hawaldar, Jattu Yadav and inquired where he has to sign whereupon, he said that he has not called him. He is not required to be present. At that very time, Bara Babu of Jail along with 8-10 other prisoners including that of Karku Singh, Subodh Chaudary and Manoj Kumar Singh were present. All the three began to assault him with fists and slaps and during course thereof, Karku Singh gave a leg blow over his testicle. During midst thereof, Butan Singh came and rescued him. Manoj took away Rs. 55/- from his pocket. Karku Singh said that he is the person who got him apprehended.

3. After the Fard-e-beyan, the same was sent to K-Hat Police Station for registration and investigation of the case, whereupon, K-Hat PS Case No. 46/1996 was registered followed with an investigation as well as submission of charge-sheet. It is further evident from the record that on account of absence of Karku Singh, trial was separated on 22.07.2008 and then thereafter, trial proceeded against Subodh Chaudhary and Manoj Kumar Singh out of whom, by the judgment impugned, Subodh Chaudhary has been acquitted while Manoj Kumar Singh (appellant) has been convicted in a manner as indicated above.

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. Furthermore, it has been suggested that this case has been instituted falsely at the instance of O/C, Sarsi PS though, nothing has been adduced in defence on that very score.

5. In order to substantiate its case, prosecution had examined altogether two PWs out of whom PW-1, informant, Sattan Muni and PW-2 is Ballo Singh as well as had also exhibited signature of PW-1 over Fard-e-beyan as Ext-1. Nothing has been adduced in defence.

6. Gone through the evidence. It is evident that during course of trial, only PW-1 had deposed on the merit of the case as, PW-2 did not support the case of the prosecution whereupon, was declared hostile. So far legal position is concerned, as provided under Section 134 of the Evidence Act, evidence of a single PW, if found reliable, would be the basis for conviction. So, trustworthiness, credibility, truthfulness of the evidence of the witnesses appears to be of prime consideration. Before coming to the evidence of PW-1, it is evident that the occurrence is said to be committed inside the jail premises, in presence of jail Sepoy. Neither there happens to be compliant before the jail authority nor there happens to be examination of any of the jail officials. Not only this, there happens to be no paper to suggest, at least there should have been command depicting presence of informant/PW-1 having been deployed to carry the accused of Sarsi PS Case No. 280/1995. That means to say, there



happens to be no document to substantiate presence of informant at Purnea Jail.

7. In likewise manner, there happens to be specific disclosure that informant was called upon by the jail Sepoy to come inside as his presence was required by the Hawaldar Saheb. When he reached at the jail gate, he was taken inside, he had gone to Hawaldar Saheb who disowned to have called him and even then, he stayed there without any rhyme and reason though, none is permitted to stay inside the jail premises save and except jail officers on duty as well as the prisoners. Apart from this, it is the case of the prosecution that inside the jail gate, 8-10 prisoners were present. Whether they were allowed to remain there leaving their barrack/ward is another circumstance in the background of the fact that unless and until the literate prisoners are entrusted to discharge official function, such as maintaining register etc, they are not allowed to come outside the barrack/ward. So, there would have been presence of jail Sepoy or the authority in order to justify presence of the appellant at the place as per their instruction and further, any kind of occurrence having been at the end of the appellant and others. In absence of the aforesaid material, one could not see presence of prisoners in a manner as suggested. Another circumstance which is visualizing from the conduct of the informant is, in spite of absence of relevant documents, even if considering the prosecution case, for a moment, no case was



instituted at K-Hat within which jurisdiction the jail lies. Informant had gone to Sarsi PS and at about 8:30 PM gave his Fard-e-beyan over which, neither there happens to be presence of Hawaldar nor Sepoy as an attesting witness.

8. In the aforesaid background, now evidence of PW-1 is to be seen. During his cross-examination, he had deposed that on the alleged date at evening hour, he had gone to jail gate along with the accused. He was accompanied by Hawaldar Jattu Yadav. He brought the accused to the court and after getting custody warrant, he had gone to the jail gate. After reaching at the jail gate, he began to unlock handcuff and during course thereof, Manoj Kumar Singh and Karku Singh began to assault who were in custody since before. Karku Singh had said that he had gone to Patna to identify him. Then had said that he was unlocking the handcuff inside the jail premises where they were present and assaulted him with fists and slaps. Bara Babu of Jail was also present. Subodh Chaudhary was also present who had gone inside and called Butan Singh and Madho Singh who rescued him. Then had exhibited his signature. He was examined by the doctor. He had claimed identification of Karku Singh, Subodh Chaudhary and Manoj Kumar Singh. During cross-examination at para-2, he had stated that jail lies within the jurisdiction of K-Hat police station. He had not registered the case at K-Hat police station as Hawaldar Saheb had disclosed to register the case at his own police



station. In para-3, he had stated that he only knows to sign. What Bara Babu had scribed he is unable to say. He was taken to hospital where he was examined by Dr. Murli Singh. He had not issued any prescription. There was bleeding from his nose which he disclosed during his statement.

9. In the background of the aforesaid deficiency persisting on the record, it looks improbable to accept the evidence of PW-1, which itself suffers from incredibility. That being so, the judgment of conviction and sentence recorded by the learned lower court is found unsustainable in the eye of law, whereupon, is set aside. Appeal is allowed.

10. Since appellant is on bail, he is discharged from the liability of his bail bond.

(Aditya Kumar Trivedi, J)

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