

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1043 of 2016

Arising Out of PS.Case No. -47 Year- 2013 Thana -
GAYGHAT District- MUZAFFARPUR

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Prem Thakur Son of Late Tuntun Thakur Resident of Village -
Kumhraul, P.S. Gaighat, District - Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vijay Kumar Singh, Advocate
Mr. Pankaj Kumar Singh, Advocate
For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 20-07-2018

The appellant/Prem Thakur has been convicted under Sections 341, 447 and 326(A) of the Indian Penal Code by judgment dated 17.09.2016 passed by the learned 14th Additional District & Sessions Judge, Muzaffarpur in Sessions Trial No. 440 of 2013 and by order dated 22.09.2016, he has been directed to suffer rigorous imprisonment for ten years for the offence under Section 326(A) I.P.C, to pay a fine of Rs. 10,000/-; simple imprisonment for one month for the offence under Section 341 I.P.C; simple imprisonment for three months for the offence under Section 447 I.P.C and in default of payment of fine, to suffer simple imprisonment for six months. The sentences have been directed to run



concurrently.

2. The appellant is said to have thrown acid on the informant/P.W. 7 which caused injuries to her as also to her grand-daughter who was five years of age at the time of the occurrence and who has been examined at the trial as P.W. 13.

3. Kariya Devi/P.W. 7 has lodged the F.I.R on 08.03.2013 at 9:30 A.M, alleging that in the night intervening between 6-7th of March, 2013 while she was sleeping in her house along with her daughter and grand-daughter, his co-villager, the appellant, came and threw acid on her, as a result of which she was injured in her chest, back and face. The daughter of the informant viz. Sunaina Devi who has been examined as P.W. 12 was also injured. Her grand-daughter viz. Komal, who at the relevant time was five years old has also received burn injuries. The cause of occurrence has been stated to be old enmity.

4. On the basis of the aforesaid fardbeyan statement of P.W. 7, a case vide Gaighat P.S. Case No. 47 of 2013 dated 08.03.2013 was instituted for investigation for the offences under Sections 341, 447, 326 and 307 of the Indian Penal Code.

5. The police, after investigation submitted charge-sheet whereupon cognizance was taken and the case was



committed to the Court of Sessions for trial.

6. The learned Trial Court, after examining fourteen witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as aforesaid.

7. The learned advocate appearing for the appellant has submitted that an absolutely false case has been lodged by the informant. He has further submitted that most of the independent persons have not supported the prosecution version and have been declared hostile. Additionally, it has been argued that the cause or the genesis of the occurrence also could not be established by the prosecution. The witnesses have differed on material particulars and it was rather unsafe for the Trial Court to have relied upon the deposition of even the informant in convicting and sentencing the appellant.

8. In order to appreciate the contention of the appellant, it is first necessary to examine the evidence of Kariya Devi/P.W. 7. She has deposed before the Court that about two years ago, while she was sleeping in her verandah along with her daughter/Sunaina Devi and grand-daughter, the appellant came and threw acid on her. Because of such act of the appellant, her daughter/Sunaina Devi also received acid burn injuries on her person. The appellant was



thereafter stated to have run away. On the shout of the informant/P.W. 7, the persons of the village arrived and took her to the hospital. She has proved her fardbeyan (Ext-1). However, in her cross-examination, she has categorically stated that she had no enmity with the appellant. On an earlier occasion, when some occurrence had taken place, the informant/P.W. 7 was a young lady whereas the appellant was a child. On specific question whether any issue or fight had taken place in a day or two, that was also answered in the negative. After the occurrence, the persons of the neighbourhood had arrived. She claims to have shown her injuries to all the persons who came to her house.

9. What is of relevance in the deposition of the informant/P.W. 7 is that in her cross-examination, she has stated that she, her daughter/Sunaina Devi and her granddaughter were sleeping at the time of the occurrence. While acid was thrown on her, she was fast asleep. Only when she felt some kind of burning sensation, she came out of her house and ran towards the appellant. On *hulla* raised by her, many persons of the village arrived. She was discharged from the hospital after about sixteen days of the occurrence. She was taken to the hospital by one Dinesh Rai. After 4-5 days of the occurrence, her son and daughter-in-law came from Delhi.



10. Ragni Devi, daughter-in-law of the informant has been examined as P.W. 8. Though she has supported the prosecution version but her statement cannot be accepted as admittedly and according to the deposition of the informant/P.W. 7, the son and daughter-in-law of the informant came home only after 3-4 days of the occurrence.

11. In that event, her statement that she was present in the house when the occurrence had taken place cannot be accepted to be correct.

12. The daughter of the informant viz. Sunaina Devi has been examined as P.W. 12. Though she has also supported the prosecution version but had made contradictory statements in her cross-examination. She has stated that for the first time she was examined by the Police in the hospital. Simultaneously, she has stated that her statement was taken after about 3-4 days of the occurrence. However, she has also testified of the fact that there was no enmity with the appellant and no prior history of any litigation between them. At the time of occurrence, P.W. 12 has deposed, it was a dark night and the appellant had concealed his face with a towel.

13. On perusal of the deposition of P.W. 12, what becomes evident is that there was no reason for the appellant to have come in the dead of the night to throw acid



on the informant/P.W. 7 and Sunaina Devi/P.W. 12. The identification of the appellant by P.W. 12 appears to be doubtful as the appellant had covered his face and it was a dark night.

14. Komal Kumari, the grand-daughter of the informant, who, at the time of deposing before the Court was seven years of age was found to be competent to make statement in the Court of law. She has, though, supported the prosecution version but has made a general statement that because of the appellant having thrown acid, she, her mother and grand-mother were burnt. The appellant is stated to have run away after committing the act. She identified the appellant in the dock.

15. The doctor, who had treated the injured, has been examined as P.W. 14. He has stated that the grand-daughter of the informant had received nine percent burn injuries whereas the informant was burnt by fifteen percent. The injuries on their persons were not on the vital part of their bodies and other injuries were not sufficient to cause death. There is no injury report of the daughter of the informant on record.

16. Despite the Court having giving several opportunities to the prosecution, the Investigating Officer of this case was not examined.



17. The learned counsel for the appellant has therefore submitted that non-examination of the Investigating Officer has caused serious prejudice to the case of the appellant and therefore the conviction and sentence of the appellant cannot be allowed to be sustained in the eyes of law.

18. From the perusal of the deposition of the aforesaid witnesses, it appears that though they have tried to support the prosecution version but their deposition has to be seen and read with greater circumspection and caution.

19. No injury has been found on the person of the daughter of the informant who has been examined as P.W. 12. P.W. 12 making a categorical statement that appellant had covered his face at the time of the occurrence and the night of the occurrence being a dark night makes the prosecution case highly doubtful so far as the identification of the appellant is concerned.

20. What strikes this Court is that no independent person has supported the prosecution version and some of them who were brought in the witness box have been declared hostile. The daughter-in-law of the informant, as has been observed earlier, cannot be believed for she came to her home only after 3-4 days of the occurrence. Because of the aforesaid facts, the identification of the appellant



becomes highly doubtful.

21. What is surprising is that in the F.I.R, it has been alleged by the informant that the cause of occurrence is old enmity. However, the informant and her daughter, both, during their cross-examination at the trial have categorically stated that there was no enmity with the appellant.

22. In that view of the matter, it is difficult to fathom as to what could be the reason for the appellant to have committed such a crime. It appears, as has been argued, that only because the appellant is a neighbour of the informant/P.W. 7, a wild suspicion has been raised against him. It is a matter of common knowledge that such occurrence takes place only when there is some enmity which is sought to be avenged.

23. In the absence of any proof of any prior dispute or even any recent dispute, it appears to be rather strange that appellant would resort to such an act and that also in the mid of the night without any provocation.

24. The identification of the appellant also has become doubtful.

25. In such an event, despite the assertions of the witnesses viz. P.W.s 7, 12 and 14, benefit of doubt is required to be given to the appellant.

26. For the aforesaid facts, the judgment and



order of conviction and sentence dated 17.09.2016 and 22.09.2016 respectively passed by the learned 14th Additional District & Sessions Judge, Muzaffarpur, in Sessions Trial No. 440 of 2013, arising out of Gaighat P.S. Case No. 47 of 2013 is set aside.

27. The appeal is allowed.

28. The appellant is acquitted of all the charges.

29. The appellant is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

30. A copy of the judgment be transmitted to the Superintendent of the concerned Jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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