

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.149 of 2018

Arising Out of PS.Case No. -94 Year- 2015 Thana -JALALPUR District- SARAN

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RAMJI SAH, SON OF LATE SHEOPUJAN SAH RESIDENT OF VILLAGE-KHAIRA, POLICE STATION- KHAIRA, DISTRICT SARAN (CHAPRA).

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s	:	Mr. Bashishtha Narayan Mishra, Adv. Mr. Brij Kishor Mishra, Adv. Mr. S.N. Rai, Adv.
For the Respondent/s	:	Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-04-2018

Appellant, Ramji Sah has been found guilty for an offence punishable under Section 354C of the IPC and sentenced to undergo R.I. for one year, 504 of the IPC and sentenced to undergo R.I. for one year, 326 of the IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.3000/- and in default thereof, to undergo R.I. for two months additionally, with a further direction to run the sentences concurrently, vide judgment of conviction dated 11.12.2017 and order of sentence dated 12.12.2017 passed by Addl. Sessions Judge, VIth, Saran at Chapra in Sessions Trial No.33/2016.

2. PW.4, Pramila Devi filed written report alleging inter alia that she along with her husband maintains her family by running a tea stall. Bimla Bari (ANM) lives adjacent to her house



along with her husband. Today at about 11:00 AM, Ramji Sah husband of Bimla Bari Nurse was peeping through window of her house whereupon she protested. He began to abuse. When she resisted, he inflicted knife blow over her chest which she prevented by her hand even then, it strike over her chest, right side, causing injury wherefrom, blood oozen out. On hue and cry the persons of the surrounding came, intervened and saved her. Then thereafter, she got herself examined at Primary Heath Centre, Jalalpur and then thereafter, this case has been instituted.

3. After registration of Jalalpur P.S. Case No.94/2015 investigation was taken up and during course thereof, statements of the witnesses were recorded, P.O. was inspected, injury report was procured and then, completing the same, charge sheet was submitted, facilitating the trial, meeting with ultimate result, 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. However, neither ocular nor documentary evidence has been adduced.

5. In order to substantiate its case, prosecution had examined altogether six PWs, PW.1-Veena Kumari daughter of informant, PW.2-Sheoji Mandal husband of informant, PW.3-Ajay Kumar Singh I.O., PW.4-Pramila Devi informant herself, PW.5-Pankaj Kumar @ Sanjit Kumar son of the informant and PW.6 Dr. Shashi Prakas Chandra. Side by side had also exhibited Ext.1-



Endorsement over fardbeyan, Ext.1/A-Signature of SHO over formal FIR, Ext.2-Memo of arresting, Ext.3-Charge sheet, Ext.4-Signature of informant over written report and Ext.5-Injury report.

6. While assailing the judgment of conviction and sentence, it has been argued at the end of the learned counsel for the appellant that no such kind of occurrence had ever taken place rather, on account of animosity prevailing since before, this false case has been instituted by the informant taking the police as well as doctor in her collusion. The first and foremost argument happens to be over authenticity of the motive whatever been assigned in the written report. The learned counsel drew attention towards the same and submitted that there happens to be specific disclosure in the written report that appellant was peeping through a window inside the house of the informant but, same is found not at all substantiated as, there happens to be inconsistency amongst the witnesses on that very score. Furthermore, submitted that only PW.1 and PW.4 are the competent witness on that very score. PW.1 had deposed that appellant was peeping through window whereupon her mother (informant) directed him not to peep whereupon he began to assault but, after going through the evidence of PW.4, it is evident that she herself shifted therefrom and had stated that after shutting the door, her daughter was sitting inside the house. She was ready for taking bath, one window was opened from outside and the accused was passing through gazing towards the window whereupon her daughter had asked for why he is seeing likewise this. Then she also gone there.



She had instructed him to go therefrom and during course thereof, he took out knife and then gave blow over her breast (right side) causing injury thereupon. He also repeated the blow. The aforesaid event is not at all found feasible in the background of objective finding of the Investigating Officer PW.3 relating to the house of the informant as, he had not found any window. Due to absence of window, the motive goes away.

7. It has also been submitted that none of the witnesses had stated the actual place of occurrence. PW.1 had not stated that PW.4, informant came out from the house and in likewise manner, PW.4 has failed to disclose. However, P.O. is found to be road that means to say, outside house of the informant. That means to say informant had came out from her house which none of the witnesses have deposed. Apart from this, also submitted that according to the evidence of PW.3, he had shown the boundary of the P.O. East-Government quarter allotted to informant, West-back portion of building of PHC, North South-Road. When the evidence of PW.4 is taken together on that very score, under para-5 she had stated North-her own house, South- House of nurse namely Geeta, East-Her house and west hospital. That means to say, there happens to be inconsistency with regard to place of occurrence.

8. Now coming to the finding of the doctor, it has been submitted that it happens to be a peculiar kind of injury report issued by the doctor PW.7. PW.6 had found the injury 1" x ½" deep cut on right breast caused by sharp cutting weapon and has been found grievous in nature. He failed to disclose how the injury has



been identified as grievous in nature more particularly in the background of definition of grievous injury prescribed under Section 320 of the IPC.

9. It has also been submitted that from the evidence of PW.1, it is evident that appellant was arrested at the spot itself but, from Ext.2, the arrest memo it is evident that police had shown the date of his apprehension to be on 27.07.2015 that means to say he has been kept under custody without having any kind of disclosure. On that very score, PW.3 was cross-examined under para-7 thereof. In its continuity, which has also been submitted that some sort of flaw is found in the prosecution case as from Ext.2 it is evident that whatever been shown under para-1 thereof it happens to be Jalalpur P.S. Case No. 94/2015 dated 25.07.2015 the aforesaid activity is sufficient to expose the activity of the prosecution how the appellant has been implicated. That being so, judgment of conviction and sentence recorded by the learned lower court is fit to be reversed. Lastly it has been submitted that appellant happens to be under custody since 27.07.2015 and so, in the facts and circumstances of the case, in case appeal is found deficient one, then in that circumstance, be disposed of as sentenced already undergone.

10. The learned Additional Public Prosecutor controverted the submission made on behalf of appellant and had submitted that the finding recorded by the learned lower court is based upon proper appreciation of the evidence available on the



record. Consequent thereupon, is fit to be concurred.

11. Admittedly, PW.1 and PW.4 are only two witnesses whose presence, as, appeared from their evidences, to be at the place of occurrence. PW.4 is the victim herself, PW.1 is her daughter whose presence has not been shown in the initial version. PW.1 had deposed that on 26.07.2015 at about 11:00 AM accused Ramji Sah was peeping inside her house through window whereupon, her mummy scolded over which, he began to assault her with knife as a result of which, she sustained injury over her stomach, breast. On hue and cry raised by her, people came and apprehended the accused. Her mother was treated at Sadar Hospital, Jalapur. Identified the accused. During cross-examination she had stated that her mother after sustaining knife blow shouted loudly whereupon, she began to call the others to save her mother. She reached at the place of occurrence after hearing weeping of her mother. In para-6 she had stated that when she reached at the place of occurrence, she found blood oozing out from the injury of her mother. Her mother became unconscious. She had seen blood oozing out from her body only. In para-7 she had stated that when she raised alarm, people came subsequently and then took away her mother to hospital. She is unable to disclose the names of the persons who came after. In para-8 she said that she is unable to disclose their names.

12. PW.2 is the husband of the informant who had deposed that on the alleged date and time of occurrence, he had gone to her tea stall where, after hearing rumour came to his house



where he came to know about sustaining of *Chura* injury by his wife. His wife had disclosed that Ramji Sah was peeping into the house through window whereupon, his daughter protested as a result of which Ramji Sah had inflicted knife blow over breast (right side) who was apprehended. Identified the accused. During cross-examination at para-4, he had stated that he had not seen the occurrence as he was not present at the place of occurrence. Then had stated that he came to know regarding the occurrence from his wife as well as others.

13. PW.4 is the informant who had deposed that on the alleged date and time of occurrence her daughter was inside her house after closing the door. She was sitting for taking bath. One window remained opened. Accused Ramji Sah was passing through gazing through the aforesaid window whereupon her daughter protested. She also gone there. Then he had said that why he is indulged in an altercation with a girl. He should leave the place whereupon Ramji Sah had said that she will be given a lesson. She forbade him as a result of which, Ramji Sah took out knife and then gave a blow over breast (right side) causing injury thereupon. He repeated the blow but was presented. Then thereafter, she was taken to P.S., treated at Jalalpur Hospital. She had narrated the event to police who got it scribed whereupon she put her signature. Identified the accused. In para-5 she had disclosed the boundary of the place of occurrence North-her house, South-House of nurse namely Geeta, East-Her house, West-Hospital. In para-6 she had stated that even after commission of the occurrence, none came at



the place of occurrence. In para-7 she had disclosed that she had only said about the occurrence to the doctor as others themselves had seen the occurrence. In para-9 she had stated that she has seen the knife. She is also keeping the same. In para-10 she had disclosed that the knife was about six inch in length.

14. PW.5 is the son of the informant who had deposed that on the alleged date and time of occurrence he was sleeping at his house. After seeing commotion, he reached at the place of occurrence where he had seen Ramji Sah inflicting knife blow over breast of his mother at right side. He had attempted to repeat blow but was caught hold by her mother. When he reached there, seeing him, accused fled away. Then had said that altercation took place as, accused was peeping through window. Then thereafter, he took his mother to hospital. Police came, caught hold accused and taken away. At para-5 he had stated that at the time of occurrence he was sleeping at his old house. In para-6 he had shown the boundary of the P.O. North-open land, south-House of the nurse, East-godown, West-hospital. In para-7 he had disclosed distance of his old house from the P.O. having 150 feet. At that time, his mother had sustained injury, door of his house was closed. His mother was outside the house while his sister was inside the house. In para-8 he had stated that first of all Santosh Kumar Mishra reached at the place of occurrence and then thereafter others of the colony including he himself reached. At that very time accused was at a distance of about 15-20 feet from them. In para-18 he had further stated that when he reached at the place of



occurrence, he found his mother lying on the ground in an injured condition having injury over her breast, right side. Blood was oozing therefrom.

15. PW.3 is the Investigating Officer. He had deposed that after being entrusted with the investigation, he proceeded therewith. He had arrested the accused from the colony lying back of the PHC Jalalpur, prepared the arrest memo, recorded the statement of the witnesses. Inspected the place of occurrence which happens to be the pukka road lying in front of house of informant having boundary East-Government quarter allotted to informant, West-Back portion of PHC, North-Road, South-Pakka Road. Then thereafter submitted charge sheet. During cross-examination at para-7 he had stated that on 26.07.2015 he had taken investigation of the case and soon thereafter, he had apprehended the accused. He was kept in the Hajat and then on 27.07.2015, he was forwarded to judicial custody. He had recorded further statement of the informant at the police station itself. In para-10 he had further stated that he had inspected the place of occurrence as pointed out by the informant. He had not seized the cloth more particularly, blouse. In para-12 he had stated that at the instance of Sheoji Mandal he had apprehended the accused. In para-13 he had stated that he had not recorded statement of the people having in the boundary.

16. PW.6 is the doctor who had examined the injured on 26.07.2015 and found the following:-



1" x ½" deep cut injury on right breast caused by sharp cutting weapon, grievous in nature. Time of injury-half hour back.]

During cross-examination at para-8 he had stated that on the basis of nature of bleeding and he had assessed the age of injury.

17. After giving minute observation of the materials available on the record as referred herein above, it is apparent that doctor had not found the injury, bleeding nor doctor had found blood clotted injury. In the aforesaid background, the finding of the doctor to be deep cut injury is found suspicious more particularly in the background of the fact that PW.3 during course of inspection of the P.O. at para-4 had not said a word whether he had found blood over the road alleged P.O.. However, at para-10 of his cross-examination he had stated that on account of injury the cloth which the informant was wearing soaked with blood but, he had not seized the same, more particularly, the blouse. The aforesaid event is to be seen in the background of evidence of PW.4, the victim herself who had stated that at that very time she was in nighty and that has been incorporated by her in paragraph 2 of the examination-in-chief.

18. Furthermore, when the evidence of the witnesses have been gone through in order to identify the actual place of occurrence, it is evident that PW.1 had not been able to disclose the same and in likewise manner, happens to be the evidence of PW.2 but, PW.3 I.O. had found the place of occurrence East-



Government quarter appertaining to informant, West-Back portion of Primary Health Centre, North-Road, South-Road and while PW.4 had disclosed North-her house, South-House of nurse namely Geeta, East-Her house and West-Hospital, PW.5 her son had identified the P.O., North-open land, South-House of Nurses, East-Godown, West-Hospital. That means to say, there happens to be inconsistency amongst the evidence of the witnesses with regard to proper identification of the place of occurrence. So far motive is concerned, there also happens to be inconsistency amongst the PWs as, PW.1 and PW.2 had said that on account of peeping from a window inside her house the informant scolded whereupon occurrence took place while PW.4, informant had said that her daughter was sitting inside the room after closing the door while a window having outer opening remained opened and the accused was passing through gazing towards the same whereupon her daughter scolded, Ramji Sah indulged with an altercation with her whereupon she directed the accused to leave whereupon she was given a knife blow. There happens to be no evidence at the end of the prosecution that PW.4 came out from her house to the road. PW.4, informant/victim herself is silent on that very score. Moreover, the Investigating Officer had not recorded that any window was there affixed over the wall of house of the informant and that being so, the sanctity, reliability of the evidence of the witnesses over motive, also became doubtful. The cumulative consideration, did not justify the finding recorded by the learned lower court.



19. In the aforesaid facts and circumstances of the case, the judgment impugned would not survive and is accordingly set aside. Appeal is allowed. Appellant is under custody, hence is directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	03.05.2018
Transmission Date	03.05.2018

