

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.21 of 2018

Arising Out of PS. Case No.-88 Year-2009 Thana- CHAPRA TOWN District- Saran

Abhay Kumar, Son of Shankar Mahto @ Shankar Prasad, Resident of
Muhalla-Mauna Dhanuk Toli, Police Station - Chapra Town, District-Saran at
Chapra.

... .. Petitioner/s

Versus

- 1) The State of Bihar
- 2) Ritesh Kumar, s/o Om Prakash Narayan, Vill- Mauna Dhanuk Toli,
Chapra, P.S. Chapra Town, Dist. Saran at Chapra

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Ram Binod Singh
For the Respondent/s : Mr. Uma Shankar Prasad Singh

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-02-2019

Heard parties.

This criminal revision application is directed against the judgment and order dated 23.09.2017 passed by 1st Additional Sessions Judge, Saran at Chapra in Criminal Juvenile Appeal No.90 of 2015 (arising out of Chapra Town P.S. Case No.88 of 2009) (C.I.S. Registration No. 62 of 2015) by which the appellate court has dismissed the appeal and affirmed the judgment of conviction passed by Juvenile Justice Board dated 10.07.2015, however, the period of sentence of three years has been reduced to one year.

Prosecution story in short is that on 31.03.2009 at 9.30



p.m., Chandan Kumar and Abhay Kumar (Petitioner) who are residents of Mohalla of informant had come along with other people near the house of the informant to change the electric supply phase of temple and without informing they climbed on the roof and when informant objected them Chandan and Abhay (petitioner) along with their associates entered the house of the informant and started assaulting his brother Tapeswar Kumar by fists and slaps and when informant protested, his left eye was damaged and on such allegation, F.I.R. was instituted and after completion of investigation, police submitted charge-sheet and learned C.J.M. took cognizance of the offence under Sections 341, 323, 326, 504, read with 34 of I.P.C. and case of petitioner (Abhay Kumar) was separated on 21.12.2010 and sent to Juvenile Justice Board and which declared petitioner as juvenile on 23.04.2011. In support of charge, seven witnesses were examined on behalf of prosecution and ten documents were marked as Exhibits whereas defence has examined one witness and produced two documents which were marked as defence Exhibits.

P.W.1, Manoj Kumar and P.W.2 Raj Kumar were declared hostile. P.W. 3 is Rithesh Kumar who is also the informant of the case has stated in his examination-in-chief that



on the day of occurrence, i.e, on 31.03.2009 at about 9.30 to 10 O' clock he was in his house and after hearing the noise on his roof he saw that Chandan had climbed on his roof and Abhay (petitioner) was standing near the electricity pole. He had altercation with Chandan then Chandan threatened him and came down and when his brother came outside Abhay (petitioner) and Chandan entered his *Varanda* and started assaulting his brother and when he went to save his brother, Ashok Mahto and Prama Mahto came with iron rod and told Chandan Mahto to strike him and make him blind then Chandan strike him on his left eye and, thereafter, Ashok Mahto assaulted by iron rod on his head which he stopped by his right hand and his thumb was fractured. Police jeep came and he was carried to hospital where doctor examined his eye and referred him to Patna. He was admitted in Heritage hospital thereafter in I.G.I.M.S. in the Eye Ward where his fardebyan was recorded by Daroga Ji and he put his signature on it which has been marked as Ext. 1. In his cross-examination, he has stated that he and Abhay (petitioner) reside in same Mohalla. He has further stated that when police was taking him to Sadar hospital, they made query from him and he had narrated the incident. He has denied the suggestion on the day of occurrence,



his family members were beating Chandan and Abhay (petitioner) and in course of said beating his eye was hit by electric wire as a result of which, he suffered eye injury.

P.W. 4 is Dr. K. N. Dubey who was Medical Officer in the Sadar Hospital and has stated in his examination-in-chief that he found punctured lacerated wound over left pupil and he referred him to higher center and nature of injury was grievous in nature caused by pointed object. He has identified the injury report which has been marked as Ext. 2.

P.W.5 Rajendra Prasad is the I.O. who has stated in his examination-in-chief that he received the fardebyan of informant Rithesh Kumar and after investigation, submitted charge-sheet against the accused persons under Sections 341, 323, 504, 326/34 of I.P.C. The formal F.I.R. has been marked as Ext. 3 and he received the F.I.R. on 11.04.2009 from Shastrinagar P.S. Patna and took the re-statement of informant Rithesh Kumar on 26.05.2009 as well as statement of other witnesses. He has further stated that informant in his fardebyan had not sated that Abhay (petitioner) came down with the help of electric pole and also did not say that after coming down, Abhay (petitioner) and Chandan entered the Varanda and started beating his brother.



Witness Rameshwar Prasad and Shiuballi had said in their statement that an electric wire was hanging from the pole which hit the eye of Ritesh and he was injured. Ritish Chander Gupta and Sanjeet Kumar Dubey had stated that Chandan was not present at the place of occurrence and came subsequently. He could not recover the iron rod from which it was alleged that Rithesh was assaulted. Chandan has not been charge-sheeted.

P.W. 8 is Tapeswar Kumar who in his examination-in-chief has stated that after hearing the noise on the roof his younger brother Rithesh Kumar went on the roof and saw Chandan there where he had altercation with him then he came out and saw Abhay (petitioner) standing near the pole and Chandan was coming down and asked him why he had climbed on the roof, then both started assaulting him then Ritesh came down and accused Ashok and Parma Mahto started assaulting him by rod and instigated Chandan to hit on his eye whereupon Chandan hit the eye of Ritesh. Abhay took away the curtains of the house and fled away.

Meanwhile, the police patrolling jeep came there and Ritesh was taken to Sadar Hospital from where he has been referred to Patna. In his cross-examination, he has stated that Chandan assaulted on the eye of his brother as a result, he



became blind.

After going through the order passed by both the courts and also going through the evidence on record, this Court does not find that there is even an iota of evidence to establish the charges as framed against Abhay Kumar (petitioner). All the witnesses including the informant have not alleged any overt act against petitioner. All allegations have been levelled against Chandan Kumar who was even not charge-sheeted by the police. The injury report does not support the prosecution case of assault by iron rod which damaged the eye of informant. According to injury report, pupil of eye was damaged by pointed object. According to defence, informant was injured by hanging electric wire. There is no evidence which even remotely indicates there being any common intention or object or any pre-meeting of mind of causing assault or injury to the informant by accused persons. There is no evidence to establish that occurrence was premeditated or planned, or common object and intention developed at the time of occurrence.

After considering the materials available on record, this Court finds that the judgment of conviction and order of sentence passed against the petitioner as affirmed by the appellate court is based upon no evidence. The prosecution has



failed to establish the charges as framed against the petitioner and, accordingly the revision petition is allowed. The judgment and order of conviction and sentence is set aside. Petitioner is acquitted of the charges and discharged from liabilities of his bail bond.

The criminal revision petition is allowed.

Let the records be sent to the court concerned immediately.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2019
Transmission Date	11.03.2019

