

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2307 of 2018

Arising Out of PS. Case No.-77 Year-2017 Thana- KASIMBAZAR District- Munger

Bikash Kumar Singh @ Vikash Singh, Son of Sri Ram Balak Singh resident
of Village - Brahamsthan Kasim Bazar, P.S. - Kasim Bazar, District - Munger.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Sevak Choudhary, Adv.

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

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 24-07-2019

1. Appellant, Bikash Kumar Singh @ Vikash Singh has been found guilty for an offence punishable under Section 326 of the IPC and sentenced to undergo R.I. for four years as well as to pay fine appertaining to Rs.30,000/- in default thereof, to undergo S.I. for six months with a further direction that the period having undergone during course of trial be set off in accordance with Section 428 of the Cr.P.C. vide judgment of conviction dated 31.05.2018 and order of sentence dated 05.06.2018 passed by Additional Sessions Judge, IInd, Munger in Sessions Trial No.314/2017 arising out of Kasim Bazar P.S. Case No.77/2017.

2. Satyam Kumar (PW.4) gave his fardbeyan on 07-04-2017 at about 11.30 PM while he was admitted at Sadar Hospital, Munger in an injured condition having admitted by the police officials of Kasim Bazar Police disclosing therein that on



the same day at about 10.30 PM while he was proceeding to his house after closing his shop lying near the police station and reached at Chauwatiya, Vikash Singh caught hold him from behind, took him near beauty parlour and then, assaulted him with farsa, causing injury over his head, wrist, as a result of which, he came in pool of blood. Anyhow, in order to save his life, he rushed therefrom, came to police station and then, with the help of police he has been taken to Sadar Hospital. Motive for the occurrence has been shown as, prevailing animosity.

3. After registration of Kasim Bazar P.S. Case No.77/2017, investigation commenced and after concluding the same, charge sheet has been submitted, facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has been pleaded that informant might have sustained injury at different place in different manner but, on account of prevailing animosity accused has purposely been named.

5. In order to substantiate its case prosecution has examined altogether six PWs who are, PW.1-Sudhir Prasad Sah, PW.2-Manish Kumar, PW.3-Satish Kumar Gupta, PW.4-Satyam



Kumar, PW.5-Dr. Ram Pravesh Prasad and PW.6-Ramni Mohan Jha (I.O). Side-by-side has also exhibited Ext.1-Injury Report, Ext.1/1-Signature of doctor over the injury report, Ext.2-Fardbeyan, Ext.2/1-Signature of the police officials who had recorded fardbeyan, Ext.2/2-Endorsement over the fardbeyan, Ext.3-Formal FIR, Ext.4-Arrest memo, Ext.4/1-Signature over memo. As stated above, nothing has been adduced in defence.

6. Learned counsel for the appellant while assailing the judgment of conviction and order of sentence has submitted that the finding recorded by the learned lower court is against the material available on the record on account thereof, is fit to be set aside. In order to buttress such plea, it has been submitted that doctor has not deposed how he has categorized the injury as grievous as the same fails to satisfy any of the ingredients so prescribed under Section 320 of the IPC. Mere writing the injury grievous would not serve the purpose rather, the doctor has to mention reason, the basis to justify his finding, and being deficient thereupon would not justify classification of the injury to be grievous. In absence thereof, it could at best be said that the injury happens to be simple.

7. Furthermore, it has also been submitted that PW.1, PW.2, PW.3 have not seen the occurrence. PW.3 is the



uncle of the informant and his presence has been thrust at the end of the prosecution motivately. In worst case, PW.1 and PW.2 could stand as corroborative in nature. So far PW.4, informant is concerned less said is better. It is evident from his evidence that police station lies near to the place of occurrence. He was knowing since before that the appellant Vikash Kumar happens to be on inimical terms. As soon as Vikash Kumar had caught hold of him, it was expected that there should have been resistance at his end while he was being taken near beauty parlour and in likewise manner, there should have been an alarm at least attracting the police officials in order to save his life. The conduct of the informant is indicative of the fact that he had not sustained injury at the end of the appellant in a manner as suggested rather might have in different manner at different place, which is also found duly substantiated by the objective finding of the I.O. relating to P.O. on account of absence of blood. That being so, the P.O. is not at all found substantiated. Consequently thereupon, the judgment of conviction and sentence recorded by the learned lower court is not at all found to be in accordance with law whereupon, is fit to be set aside.

8. The learned APP while controverting the submission having been made on behalf of learned counsel for the



appellant has submitted that in accordance with Section 134 of the Evidence Act number is not at all relevant factor for proving the facts in issue. Apart from this, the status of PW.4 happens to be that of injured so his evidence has become upon upper pedestal. After going through the same, it is evident that none else than the appellant is the assailant and so, the learned lower court has rightly recorded the judgment of conviction and sentence against the appellant.

9. From the evidence available on the record, it is evident that two kinds of witnesses have been produced. The first one is who corroborated and on that very score, PW.1 and PW.2 are who have simply stated that they have seen the appellant, Vikash Kumar running from the place of occurrence while victim/injured Satyam Kumar is an injured condition. He had gone to police station and from there, he was shifted to hospital. PW.3 is the uncle of the informant and who claimed to be an eyewitness to occurrence. After going through his evidence, it is evident that his evidence happens to be inconsistent with the injured so far weapon of assault is concerned, excluding the same, he stood in category with PW.1. & PW.2.

10. Now coming to the evidence of PW.4, it is evident that he had substantiated his earlier version by way of



deposing that on the alleged date and time of occurrence he, after closing the shop, was in a way to his house and as soon as came at Kasim Bazar, Chaupatiya Vikash came from behind, caught hold him, dragged towards beauty parlour and then, with an intention to kill gave farsa blow over his neck which was prevented as a result of which he sustained injury over his wrist. Vikash repeated the blow causing injuries over his shoulder, back of the head. He, after raising an alarm, rushed towards police station and from police station, he was taken to Sadar Hospital by the police itself. Then he has stated that on raising alarm, attracted presence of so many persons including his uncle, egg shopkeeper and others. He has also stated that police recorded his fardbeyan in presence of his grandfather Prithavi Chand Gupta and father Santosh Kumar Gupta at hospital (exhibited the same). Seeing his precarious condition, he was referred to Bhagalpur and then from Bhagalpur to Patna where for more than a month he remained admitted. Identified the accused in dock. During cross-examination he has stated at para-4 that it was a dark night. He has further stated that because of the fact that accused is of his mohalla so he identified him. Then has stated that he has got no knowledge with regard to mental condition of the accused. He has further stated that he has got no previous animosity with the accused. Then again said that



whatever he has recorded in the fardbeyan that long standing animosity is prevailing is correct. Again said that he has got no animosity with the accused. Then said that he is not remembering whether he has stated before the police with regard to prevailing animosity. In para-5 he has stated that he got no idea with regard to boundary of the place of occurrence. He further stated that *farsa* was about one hand but he is unable to say its length and width. None was present at the place of occurrence save and except both of them. People came later on after hearing shout. Beauty parlour is near about place of occurrence but he has not named owner of the beauty parlour as witness. Then has denied the suggestion that he has sustained injury some other place in different manner.

11. PW.5 is the Dr. Rampravesh Prasad who had examined the informant on 07.04.2017 at about 10:30 PM while he was posted at Sadar Hospita, Munger and found the following:

- (i) Sharp cut injury at right wrist 3" x 1/2" x 1/2"
- (ii) Sharp cut injury at left side of head 4" x 3" x scalp deep.
- (iii) Sharp cut injury at left upper arm 3" x 2" x bone deep



Nature of injury no.1 and 3 grievous while injury no.2 is simple in nature. Age within six hours, caused by sharp cutting weapon.

12. During cross-examination nothing substantial has been elicited from his mouth save and except that those injuries would be caused on fall over sharp weapon but, again controverted that multiple injury over different part of body could not be, like the present one. He has further said that injury no.2 is simple.

13. PW.6 is the I.O. who during course of his examination-in-chief has stated that after having been entrusted with the investigation of Kasim Bazar P.S. Case No.77/2017 he took investigation. He copied the FIR. He recorded statement of uncle of informant who had also disclosed that injured has been taken to Patna. He had also examined Sudhir Pd. Sah, Vidyasagar and Manish Kumar. He had inspected the place of occurrence and shown the boundary thereof. Conducted raid and arrested the accused. Also examined witnesses. Received supervision note. Recorded further statement of the informant after returning from Patna. Procured injury report and then, after completing investigation, submitted charge sheet. During cross-examination at para-11 he has stated that the P.O. is hundred meter east to the



police station. Then at para-12, 13 there happen to be contradiction with regard to witness Sudhir Pd. Sah, Manish Kumar, Santosh Kumar. Then at para-14 he said that he was not knowing whether injured was treated at Bhagalpur, Patna and in likewise manner denied the suggestion that his investigation happens to be collusive one.

14. From the evidence available on the record as discussed herein above, it is apparent that PW.4, injured has not been tested over manner of occurrence and in likewise manner, PW.5 the doctor. He was not at all cross-examined at the end of the appellant on what basis he had categorized the nature of the injuries to be grievous one. In the aforesaid background, aforesaid deficiency as submitted at the end of the appellant that the doctor failed to disclose reason in order to classify the injury no.1 & 3 to be grievous is not tenable as, PW.5 has not been cross-examined on that score. In likewise manner, the defence also failed to cross-examine PW.6 over the place of occurrence as well as, having the injured shifted to hospital by them, the search of non-recording of fardbeyan at the police station, while informant was staying there. It is settled principle of law, that in order to challenge reliability of evidence of PW, cross-examination has to be made on that aspect, otherwise, it will be adverse to the party.



15. The Hon'ble Apex Court in *Gian Chand & others v. State of Haryana* reported in *2013(4) PLJR 7 (SC)* has observed:

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in *Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors.*, *AIR 2013 SC 1204* observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(Emphasis supplied)

16. Now coming to the status of the witness, rightly in accordance with Section 134 of the evidence Act, the number is immaterial. The material fact is, the reliability of the evidence of the witness. It, after going through the evidence of witness,



evidence is found trustworthy, then in that circumstance, the same is fit to be admitted. Moreover, PW.4 is an injured being an additional factor.

17. In State of Uttar Pradesh vs. Krishna Master & Ors. reported in (2010) 12 SCC 324, it has been held:

“It is well known principal of law that reliance can be placed on the solitary statement of a witness if the court comes to the conclusion that the said statement is the true and correct version of the case of the prosecution. The courts are concerned with the merit and the statement of a particular witness and not at all concerned with the number of witnesses examined by the prosecution. The time-honoured rule of appreciating evidence is that it has to be weighed and not counted. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, where, the court finds that the testimony of solitary witness is neither wholly reliable nor wholly unreliable, it may, in given set of facts, seek corroboration but to disbelieve reliable testimony of a solitary witness on the ground that others have not been examined is to do complete injustice to the prosecution.”

18. In Smt. Shamim vs. State (GNCT of Delhi) reported in 2018(4) PLJR 160 (SC) it has been held:

“11. PW2 is an injured witness whose throat was slit in the occurrence causing loss of voice requiring hospitalization for two months. The evidence of an injured witness carries great weight as it is presumed that having been a victim of the same occurrence the witness was speaking the truth. She has deposed that the appellant came upstairs after the deceased persons had been shot dead by the other accused. On the exhortation of the appellant accused Naushad, brother of PW4, again assaulted the witness on her throat with the razor. While the accused were leaving the appellant tripped over the witness. The blood



stained 'Chunni' of the appellant discovered the next day on her confession, therefore stands explained.”

19. Giving anxious consideration to the evidence having on the record, it is found that due to own lapses at the part of appellant, no cross-examination over relevant, crucial points have been done, and that being so, coupled with the evidence of PW.4, PW.5, PW.6 there happens to be no prospect to interfere with the judgment impugned. Hence, this appeal sans merit and is dismissed. Appellant is under custody, which he will, till saturation of the period of sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
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