

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.80 of 2014

Arising Out of PS. Case No.-191 Year-2008 Thana- SAHEBGANJ District- Muzaffarpur

1. Hasaruddin Mian S/O Late Noora Mian
2. Bhola Mian S/O Hasaruddin Mian
3. Islam Mian S/O Phoola Mian
4. Alauddin Mian S/O Foola Mian
All Resident Of Village- Anandi Chapra, P.S.- Shahebganj, District- Muzaffarpur
5. Md. Musha @ Md. Munna S/O Hazi Karim Resident Of Village- Zakariya Colony Sadpura, P.S.- Kazi Mohammadpur, District- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Prasad Singh, Sr. Adv. Mr. Bimal Kumar, Adv.
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 01-08-2019

1. At the very outset, it looks pertinent to say that appellant no.5 Md. Musha @ Md. Munna neither been put on trial, nor convicted and sentenced. Vakalatnama is also on behalf of appellant no.1 to 4, hence, presence of appellant no.5 is found a carpous.

2. Appellants, Hasaruddin Mian, Alauddin Mian, Bhola Mian and Islam Mian have been found guilty for an offence punishable under Section 307 of the IPC but so far sentence is concerned, appellants Hasaruddin and Alauddin



each one has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to rupees one thousand in default thereof, to undergo R.I. for three months, additionally, while Islam Mian and Bhola Mian each one has been sentenced to undergo R.I. for ten years as well as to pay fine appertaining to rupees five thousand in default thereof to undergo R.I. for three months, all of them have been found guilty for an offence punishable under Section 341 of the IPC and sentenced to undergo S.I. for one month by the Fifth Additional Sessions Judge, Muzaffarpur in Sessions Trial No.731 of 2009 arising out of Sahebganj P.S. Case No.191/2008 vide judgment of conviction dated 15.01.2014 and order of sentence dated 18.01.2014.

3. Injured, Sanjay Kumar Singh (PW.6) while was admitted at the clinic of Dr. Rajiv Bhushan Sinha, Juran Chapra, Muzaffarpur in an injured condition gave his fardbeyan before one of the police officials of Brahampura Police Station on 03.12.2008 at about 04:00 P.M. disclosing therein that at about 07:30 AM he has gone to see his field. He has seen two she-goat engaged in grazing the crop whereupon, in order to



ascertain the ownership of the aforesaid she-goat but, none came whereupon, he chased away by pelting stone. Then thereafter, he returned back to his house and during course thereof while he was near the field of Ramdeo Ram, Hasaruddin Mian, Bhola Mian, Islam Mian, Alauddin Mian armed with knife respectively and Munna Mian armed with lathi came from behind encircled him and then, scolded on account of chasing away the she-goat. Even having his disclosure that he has not bitten the she-goat, they have not paid heed to it and then, Alauddin and Hasaruddin caught hold him and on an order of Munna Mian, Bhola Mian and Islam Mian gave repeated knife blow over his chest, stomach as a result of which, he became severely injured and fell down. During course thereof, Munna Mian snatched away a wrist watch. On account of bleeding he became unconscious.

4. After transportation of the fardbeyan from Brahampura P.S. to local police station where it was received on 07.12.2008, Sahebganj P.S. Case No.191/2008 was registered followed with investigation as well as submission of charge sheet keeping investigation pending against Munna



Mian as well as Nizamuddin Mian, facilitated the trial, meeting with the ultimate result, subject matter of instant appeal.

5. 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 also been pleaded that no such kind of occurrence as alleged had taken place rather the prosecution party who happens to be the aggressor tried to forcibly possess the land having in possession of the appellant/accused and during course thereof, they have tried to commit murder of Allauddin and in order to save their skin, this case has been filed with false and frivolous allegation. It is also evident that though oral evidence has not been adduced documentary evidence has been brought up.

6. Altogether nine PWs have been examined on behalf of prosecution in order to substantiate its case who are, PW.1-Vinod Singh, PW.2-Mukesh Singh, PW.3-Naga Singh, PW.4-Arvind Singh, PW.5-Shiv Narayan Singh, PW.6-Sanjay Kumar Singh, PW.7-Dr. Nand Kumar Mishra, PW.8-Madan Hazara and PW.9-Dineshwar Prasad. Side by side, also



exhibited Ext.1-Fardbeyan, Ext.2-Injury Report issued by PW.7, Ext.3-Requisition issued by PW.8 while at the end of the defence, two notices relating to a proceeding under Section 145 Cr.P.C. in between the informant Sanjay Kumar Singh as well as appellants have been made Ext.A, A/1 and in likewise manner two judgment having been passed relating to mutation appeal by the DCLR, West has been made an Ext.B,B/1.

7. Assailing the judgment impugned, it has been submitted at the end of the learned counsel for the appellants that the learned lower court has passed the judgment impugned in cryptic manner ignoring the settled principle of law. In order to substantiate the same, it has been submitted that no independent witness has been examined nor, there happens to be an explanation at the end of the prosecution. Whosoever been examined are own kith and kin, being interested partisan witness and that being so, their evidences are fit to be rejected. In likewise manner, it has also been submitted that when evidence of all witnesses is taken together, it is apparent that they are inconsistent over each



and every aspect that means to say, manner of occurrence, place of occurrence.

8. It has also been submitted that this case has purposely been filed and for that, drew attention towards the evidence of the informant whereunder he has admitted that at the time when he reached at the Sahebganj Primary Health Center he was very much conscious. Then in that circumstance, the fardbeyan should have been recorded at that very place itself but, no such effort was at the end of the prosecution. That being so, there happens to be inordinate delay and that has got a purpose in the background of the fact that it is an admitted case that both the parties are on litigating term relating to a land purchased by injured Sanjay Singh as well as the appellant Alauddin and Hasaruddin. In its continuity, it has also been submitted that from the evidence of witnesses, it is evident that informant PW.6 had sustained injury in the field of Jodha Singh wherein mustard crop was there but, during course of inspection of the P.O. as is evident from the evidence of PW.9, no trampling mark was there nor,



blood was found irrespective of the fact that informant had in his initial version disclosed that there was profuse bleeding.

9. Furthermore, it has also been submitted that from the cross-examination of PW.5, Shiv Narayan Singh who happens to be own uncle of the informant, it is evident that both the parties were on litigating term since before the occurrence. Some of the cases with aforesaid Shiv Narayan Singh had already been compromised while with the informant the same is continuing and in the aforesaid background, Ext.A Series, Ext.B Series have been brought up on record.

10. That being so, as submitted after having proper appreciation of the facts and circumstances of the case, coupled with the persisting admitted animosity amongst the party did not justify the finding recorded by the learned lower court, hence the judgment impugned is fit to be set aside.

11. The learned APP while supporting the finding recorded by the learned lower court has submitted that from the suggestion having been given to the respective witnesses, it is evident that one of the appellant namely Alauddin has claimed that there was murderous attack on him on the



alleged date and time of occurrence and only to have a safeguard upon their interest, this case has been filed, did not find support as, no FIR or complaint petition has been filed to substantiate the same. In the aforesaid background, it has been submitted that commission of an occurrence is an admitted fact. When the defence himself happens to be at fault as, failed to substantiate the counter version then, in that circumstance the finding of the learned lower court was but natural as, the only one version i.e. the prosecution version remains and, accepted. Apart from this, it has also been submitted that enmity is a double edged sword. It is also evident from the mode of cross-examination that with regard to purchase of land from Rafikan, Jasiran and Mariyam, as is evident Sanjay is purchaser from Jasiran and Mariyam while the appellant claimed to be purchaser from Rafikan whose identity is under challenge and in the aforesaid background, the dispute prevails, appears to be the motive for commission of the occurrence and is found duly proved. In likewise manner, the manner of occurrence and the injuries having over person of informant is found properly placed by way of



examination of PW.7 inconsonance with the evidence of PW.6, injured corroborated by PW.1 to PW.5. In its continuity, it has also been submitted that the submission of the learned counsel for the appellant that witnesses are interested one is found duly falsified from the evidence of PW.5 Shiv Narayan Singh with whom, the appellants were also on litigating term and from his evidence, it is evident that all the cases pending amongst PW.5 and the appellant have been compromised, even then he came to support the occurrence. Accordingly, the judgment is fit to be confirmed.

12. PW.7 had examined the victim/informant PW.6, Sanjay Kumar Singh on 03.12.2008 and found the following:-

- "(1) Incised penetrating injury 2 ½" x 1/2" x deep to abdominal cavity on the right lower quadrant. (Profuse Bleeding)
- (2) Incised penetrating injury 2 ½" x 1/2" x deep to abdominal cavity x on the middle of abdomen (Intestinae loop come out having cut injury on the loop of abdomen)
- (3) Incised penetrating injury 2"x1/2" x deep to abdominal cavity right side of abdomen.



(4) Incised penetrating wound on the left side of chest 3" x 1/2" x deep to muscle (Just above nipple).

N/I-Injury No.I to III are grievous in nature and danger to life. Injury IV is simple in nature. All injuries are caused by sharp cutting weapon like (chura).

M/I-Black mole on the left side of chest.

Age of injury-within ½ hour."

The doctor has further found that the injuries were caused within half an hour. The injuries were caused by sharp cutting weapon like knife and further injury no.1,2 and 3 were found not only grievous in nature rather dangerous to life and injury no.4 to be simple in nature.

13. During cross-examination, as is evident he had faced lengthy cross-examination. At para-5, he had stated that patient was directly brought to the Primary Health Centre for treatment. He was examined having entry in the injury register which has been incorporated at the top of the injury report and then thereafter, patient was referred to Muzaffarpur for further treatment. His injuries were incorporated in the injury register. He had further stated that while discharging his official duty he does not use to issue prescription over his pad. The most surprising feature is that the doctor has not



been cross-examined over nature of injury and the kind of weapon by which such kind of injury could be caused including that of time.

14. It is true that Dr. Rajiv Bhushan Singh has not come to give evidence but, presence of injured /informant PW.6 having admitted at his clinic is found duly corroborated by the cross-examination of PW.8 Madan Hazra who on 03.12.2008 was one of the S.I. posted at Brahampura P.S. whereunder the clinic of Dr. Rajiv Bhushan Singh lies. He had further deposed that after receiving UD slip at his police station, he was directed to record the fardbeyan of the injured whereupon, he came and recorded fardbeyan (exhibited). Not only this, he had seen the physical condition of the informant and had issued the requisition for obtaining injury report which is also an exhibit of the record, which happens to be at the back of the OD slip. Again during cross-examination, this witness has not been tested over manner of recording of fardbeyan and, the time when it was dispatched at least to trindle the prosecution over delay during registration of the



case on 07.12.2008. So registration of FIR on 03.12.2008 is found out controversy.

15. PW.9 is the I.O. Admittedly he took investigation after registration of the case that means to say on 07.12.2008 and so, though he had visited the place of occurrence, field belonging to Jodha Singh son of Maharaja Singh but so far objective finding is concerned, he could not procure due to efflux of time and that happens to be admitted during course of cross-examination. However substantiated the other steps taken up during course of investigation by way of recording statement of the witnesses, procured injury report and after completing investigation, submitted charge sheet. Again evidence of this PW has not been shaken at the end of appellant during course of cross-examination.

16. It is needless to say that evidence of an injured is to be seen with priority. In likewise manner, presence of injury is indicative of the fact with regard to presence of the injured at the place of occurrence. 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.”

17. On account thereof, first of all the evidence of PW.6 is taken up for consideration. When his evidence has been gone through, it is evident that he has categorically stated that after getting the she-goat ousted from his field, was returning to his house and as soon as reached near the field of Jodha, Hasaruddin, Alauddin, Munna Mian, Islam and Bhola Mian came from behind, incircled him and then made query why he has beaten she-goat. Even having his denial that he has not, they began to abuse and then, Hasaruddin and Alauddin caught hold him and an order of Munna Mian, Islam had given knife blow over his stomach another blow over his chest while Bhola over his stomach as a result of which, intestine came out. He became unconscious. Munna Mian



snatched away wrist watch. Shiv Narayan Singh, Arvind Singh, Mukesh Singh, Binod rushed in rescue seeing whom, the accused persons fled away. He was taken to Sahebganj Hospital and then to the clinic of Rajiv. Bhushan at Muzaffarpur he was referred to SKMCH, where police came, recorded his fardbeyan, he had put his signature (exhibited). Identified the accused. It is evident from deposition that he was only tested on the score of having distance in between his village as well as PHC Sahebganj which he disclosed to be half KM. He has further stated that he regained sense at Sahebganj PHC after being treated. Then had stated that subsequently, when he regained sense properly he found himself admitted at the clinic of Rajeev Bhushan. He has further stated that when he regained sense at the clinic of Rajiv Bhushan, police was not sitting since before. Police came at 04:00 PM and then recorded his statement. Then thereafter, the learned counsel refused to cross-examine him as a result of which he was discharged. Even on recall, the aforesaid witness has not been cross-examined. In the aforesaid background, the evidence of PW.6 remained in tacked



whereupon sole testimony of the injury found sufficient to maintain the conviction and sentence recorded by the learned lower court irrespective of the fact that same is corroborated by the other witness that means to say PW.1 to PW.5.

18. Appellants are under custody which they will remain till saturation of the period of sentence and remaining appellants are already on bail, their bail bonds are cancelled and are directed to surrender before the learned lower court within fortnight, failing which, the learned lower court will proceed against them in accordance with law. Consequent thereupon, this appeal lacks merit and dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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