

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.218 of 2017**

Arising Out of PS. Case No.-120 Year-2003 Thana- MINAPUR District- Muzaffarpur

Jagan Bhagat, Son of Late Haruni Bhagat, resident of Village- Bada Bishunpur Pandey, P.S.- Minapur, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Naresh Singh, Advocate
For the Respondent/s : None

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT
Date : 12-09-2022**

By this appeal, appellant/convicted accused, is challenging the Judgment and order dated 17.12.2016 and 23.12.2016 passed by the learned Sessions Judge, Muzaffarpur, in Sessions Trial No. 310 of 2005, thereby convicting him of the offence punishable under Section 307 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.10,000/- and in default, directing him to undergo simple imprisonment for fifteen days. For the sake of convenience, the appellant shall be referred to in his original capacity as “an accused”.

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. Injured, P.W. 5 Laxman Bhagat was resident of



village Bada Bishunpur Pandey falling under jurisdiction of Meenapur Police Station of District Muzaffarpur. The accused/appellant is his nephew. He used to reside in the neighborhood of injured Laxman Bhagat.

B. The incident in question allegedly took place at about 5 A.M. of 15.05.2003. At that time, injured P.W. 5 Laxman Bhagat was going for answering the nature's call. The accused who was sitting beneath the Litchi tree took that opportunity and assaulted injured P.W. 5 Laxman Bhagat by means of a "Kudal" - a sharp instrument of digging. The blow of Kudal landed on back side of neck of P.W. 5 Laxman Bhagat. He fell down bleeding profusely. Neighbors rushed to the spot of the incident. Kudal was snatched from the hands of the accused. Injured P.W. 5 Laxman Bhagat was then taken to the Primary Health Centre at Kanti, Muzaffarpur where P.W. 11 Dr. Md. Nazir gave preliminary medical aid to him. He was then shifted to S.K.M. College and Hospital at Muzaffarpur where P.W. 12 Dr. Sunil Kumar had given medical treatment to him. During the course of his medical treatment, on 23.05.2003 injured P.W. 5 Laxman Bhagat lodged the FIR, which has resulted in registration of Crime No. 120 of 2003 for the offences punishable under Sections 341, 323 and 324 of the



Indian Penal Code. Routine investigation followed and on completion of investigation, the Investigating Officer filed charge sheet against the accused/appellant.

C. The learned trial court had framed the charge for the offence punishable under Section 307 of the Indian Penal code. It was read over and explained to the accused. He pleaded not guilty and claimed trial.

D. In order to bring home the guilt to the accused, the prosecution has examined in all twelve witnesses. P.W. 1 Jai Kishun Bhagat is brother of the injured. P.W. 2 Pawan Kumar is nephew of the injured. He turned hostile to the prosecution. P.W. 3 Bindeshwari Pathak is a co-villager who has seen the post event happenings. P.W. 4 Sita Kumari is daughter of the injured. Injured, First Informant Laxman Bhagat is examined as P.W. 5. Co-villagers Satya Narain Singh, Manoj Kumar, Vinod Kumar and Bishun Rai are examined as P.W. 6 to P.W. 9. Advocate Pramod Kumar is examined as P.W. 10 in order to prove the handwriting on the printed FIR. P.W. 11 Dr. Md. Nazir and P.W. 12 Dr. Sunil Kumar are Medical Officers, who had medically treated the injured.

E. The defence of the accused was that of total denial. He however did not enter in the defence.



3. After hearing the parties, by the impugned Judgment and order, the learned trial court was pleased to convict the accused and to sentence him as indicted in the opening para of this Judgment.

4. Heard the learned Advocate appearing for the accused/appellant. He argued that evidence of the prosecution is not reliable and trustworthy. The Charge is not proved by the prosecution. Despite sufficient opportunities granted to the State, none appeared for the respondent/state. Hence, as the appeal is of the year 2017 and the appellant was not granted bail during pendency of this appeal, the appeal is taken up for hearing by this Court without waiting of the appearance of the prosecutor. I have perused the record and proceedings including oral as well as documentary evidence adduced during the course of the trial.

5. In the case in hand as the charge is for the offence punishable under Section 307 of the Indian Penal Code, we are having evidence of the injured witness before us. Injured witnesses are stamped witnesses whose presence on the scene of the occurrence cannot be disputed. Being the victim of crime, it is generally not possible for the victim to spare the real culprit and to rope in the innocent person as an accused. The case in



hand is a case of the single victim and the single accused. Therefore there is no possibility of false implication. On this backdrop, let us examine evidence of the injured witness.

6. P.W. 5, Laxman Bhagat who is injured witness, has stated in his evidence that he was on inimical term with the accused who happens to be his nephew. The dispute between them was in respect of immovable property, i.e., land. As per version of injured P.W. 5 Laxman Bhagat, at about 5 A.M. of 15.05.2003 when he proceeded to go for answering nature's call, the accused who was sitting beneath the tree gave a blow of Kudal from the back side and that blow landed on his neck. During the course of his evidence, injured P.W. 5 Laxman Bhagat had shown the mark of wound to the learned trial court. As per his version then P.W. 1 Jai Kishun Bhagat and P.W. 2 Pawan Kumar rushed to the spot of the incident and snatched the Kudal from the hands of the accused. He was then taken to the hospital for medical treatment and during the course of his medical treatment, his FIR came to be registered by the police.

During the course of his cross-examination, injured P.W. 5 Laxman Bhagat has stated about the dispute regarding landed property between him and the accused. It is elicited from his cross-examination that the Kudal was having sharp edge and



the blow was given by using both hands by the accused. From his cross-examination, it is brought on record that initially he took medical treatment at the Primary Health Centre, Kanti and then at S.K.M. College and Hospital, Muzaffarpur. With this cross-examination, it is not possible to hold that evidence of injured P.W. 5 Laxman Bhagat is doubtful and he is untrustworthy witness. P.W. 5, injured Laxman Bhagat has categorically attributed the blow on his neck to the accused. There is nothing in his evidence to infer false implication or mistaken identity of the accused.

7. Now let us examine whether evidence of this witness is corroborated by the medical evidence adduced by the prosecution. It is in evidence of P.W. 11 Dr. Md. Nazir that on 15.05.2003, he had examined injured P.W. 5 Laxman Bhagat at the Primary Health Centre, Kanti and found that injured Laxman Bhagat was having sharp cutting wound of size 6" X ½ muscle deep on the back of upper part of his neck. In cross-examination, this Medical Officer has stated that the wound had not touched the bone. Injured Laxman Bhagat was then referred for further medical treatment to S.K.M. College and Hospital, Muzaffarpur and there he was treated by P.W. 12 Dr. Sunil Kumar. As per version of this witness, no bony lesion was found



in the X-ray of the patient. In cross-examination, this Medical Officer has admitted that the injury suffered by patient was not sufficient in the ordinary course of nature to cause his death. From perusal of evidence of both these medical evidence, who had treated injured P.W. 5, it becomes clear that the injured was having bleeding wound on the back upper part of his neck which was having length of six inches and depth of half inch.

8. P.W. 1 Jai Kishun Bhagat is brother of the injured. This witness has stated that he heard shouts of his brother Laxman Bhagat and rushed to the spot to notice that Laxman Bhagat had suffered bleeding wound on back side of his neck and the accused was present there holding a Kudal in his hand. P.W. 1 Jai Kishun Bhagat has deposed that he had snatched Kudal from the hands of the accused. Similar is the version of P.W. 4 Sita Kumari, who happens to be daughter of the injured. She has stated that after hearing shouts of her father, she rushed and found her father lying out side the door of accused Jagan Bhagat with bleeding injury on the neck.

9. P.W. 3 Bindeshwri Pathak, who at the relevant time was going for performing Puja, has stated that he saw the accused holding Kudal and injured P.W. 5 Laxman Bhagat with bleeding injury. It is thus clear that evidence of P.W. 1 Jai



Kishun Bhagat, P.W Bindeshwari Pathak and P.W. 4 Sita Kumari is fully corroborating version of injured P.W. 5 Laxman Bhagat and evidence these witnesses in respect of post event happenings is not shattered in the cross-examination. Rest of the witnesses examined by the prosecution have not supported the case of the prosecution.

10. Thus from the evidence of injured coupled with the medical evidence on record, the prosecution has established that it was the accused who had caused wound on neck of injured P.W. 5 Laxman Bhagat by means of a Kudal. From cross-examination of injured P.W. 5 Laxman Bhagat, it is brought on record by the defence that the Kudal was having sharp edged and the blow was given by both hands by the accused. This material elicited from the cross-examination makes it clear that intention of the accused was to cause death of injured P.W. 5 Laxman Bhagat. The incident in question took place without there being any provocation by the injured to the accused. It was not preceded by any quarrel between accused or the injured. On the contrary, as per version of the injured, the accused was harbouring grudge against him because of dispute over immovable property. The blow given by the accused to the injured landed on neck of the injured. One cannot dispute the



fact that the neck is a vital part of the body. It thus becomes clear that intention of the accused was to cause death of the injured and that is how the blow of a sharp edged weapon was given by the accused on the neck of the injured. Hence, no infirmity can be found with the finding of the learned trial court that the accused had attempted to commit murder of injured P.W. 5 Laxman Bhagat. Sentence imposed by the learned trial court is also commensurate with the offence held to be proved against the accused. Hence the appeal is devoid of substance and the same is accordingly dismissed.

(A. M. Badar, J)

Bhardwaj/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2022
Transmission Date	15.09.2022

