

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.614 of 2018

Arising Out of PS. Case No.-801 Year-2004 Thana- GARDANIBAG District- Patna

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1. Amarendra Kumar Singh S/o Late Devendra Kumar Singh,
 2. Smt. Raka Singh @ Rekha Singh, W/o Sri Amrendra Kumar Singh, Both 1 and 2 R/o East of Officer's Hostel , Electricity, Board Colony, P.S.- Shastrinagar, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jayant Singh son of Late Debendra Kumar Narayan Singh R/O East of officers Hostel, Electricity Hostel , Electricity Board colony P.S- Shastri Nagar , District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Amarendra Narayan, Adv.
For the O.P.No.1	:	Mr. Zainul Abedin, APP
For the O.P.No.2	:	Mr.Sanjay Parasmani, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

12 26-07-2022 Heard learned counsel for the petitioners and learned counsel for the opposite party no.2.

The petitioners in the present case are seeking setting aside of the judgment dated 05.04.2018 passed by the learned Additional District Judge-III, Patna in Criminal Appeal No.88 of 2010 by which the learned court refused to interfere with the judgment and order dated 09.03.2010 passed by learned J.M.-1st Class/the learned trial court, Patna in Gardanibagh (Shastri Nagar) P.S. Case No.801/2004. The learned trial court has held the petitioner no.1 guilty under Section 324 of IPC and



petitioner no.2 guilty under Section 323 of IPC and sentenced them a fine of Rs.5000/- and Rs.1000/- respectively.

Learned counsel for the petitioners submits that in the present case the learned trial court as well as the learned appellate court could not appreciate the evidences available on the record. It is submitted that the I.O. (PW-4) has stated in course of his examination-in-chief that the local persons/neighbours told him that the petitioner no.1 is a quarrelsome person and on any petty issue he indulges in hurling abuses and threatened the person to assault. It is submitted that the I.O. did not record the statement of those persons in the case diary, in cross-examination he failed to speak as to who were those persons. It is further submitted that the I.O. had not prepared the injury report but has stated that on his asking the informant had shown his injuries to the I.O. which he had seen in course of investigation on 16.10.2004. It is submitted that he had not found any mark of the alleged occurrence at the place of occurrence.

It is further submitted that so far as the injury report in this case is concerned, the same is that of Magadh Hospital which is a private hospital and the doctor (C.W.-4) has stated that he had examined the informant in Magadh Hospital in



course of his private practice. It is thus his submission that the injury report is a fabricated one and it would not inspire confidence. It is further submitted that the injury report has been issued on 13.11.2004 i.e. after two months of the alleged occurrence.

It is further submitted that the maid (PW-1) who has supported the case of the informant has given a completely different manner of occurrence which is not corroborated in material particulars by any independent witness. Learned counsel thus submits that the impugned judgments are liable to be set aside.

On the other hand, learned counsel for the opposite party no.2 submits that in this case as per the prosecution story the informant's statement was recorded at Magadh Hospital, Rajendra Nagar, Patna on 17.09.2004 in course of his treatment, the Kadamkuan police station within whose jurisdiction the statement was recorded sent the same to Shastrinagar police station for registering the case and accordingly the case was registered but it took some time. The FIR was registered on 18.10.2004. Immediately on receipt of the fardbeyan of the informant the I.O. had visited the house of the informant and he had recorded the statement of the informant and his maid. He



had seen the injuries on 16.10.2004. This has been mentioned in the case diary. The I.O. has deposed in course of trial and has supported the prosecution version. It is submitted that the learned trial court has held the petitioners guilty for the offence under Sections 323 and 324 of the Indian Penal Code, still on the point of sentence the learned trial court has shown leniency by putting only a fine of Rs.5000/- and Rs.1000/- against the petitioner no.1 and petitioner no.2 respectively. It is submitted that no interference is required by this Court against the concurrent findings of the learned trial court as well as the appellate court.

Consideration

This Court has heard learned counsel for the parties and perused the materials available on the record.

As per the prosecution story, the informant's elder brother Amrendra Kumar Singh (petitioner no.1) entered in the flat of the informant and asked him to leave the flat and on protest informant was assaulted by fists and slaps and on arrival of informant's son from another room his elder brother Amrendra Kumar Singh left the flat by abusing and issuing threat for vacating the flat. It is further alleged that on 16.09.2004 in the morning at about 5.30 am the informant woke



up on hearing sound and saw that his elder brother Amrendra Kumar Singh and his wife Raka Singh are ousting his wife by pushing her. When the informant intervened into the matter then his elder brother Amrendra Kumar Singh caused assault on different parts of his body by means of Gupti like rod made of steel and any how he saved his life by escaping from there.

Both the petitioners have been tried for the charges under Sections 448, 341, 323 and 324/34 of the Indian Penal Code.

It appears on perusal of the records that in course of evidence the prosecution produced as many as five witnesses. PW-1 is the maid, PW-2 is the informant's wife, PW-3 is the informant, PW-4 is the I.O. and PW-5 is the Medical Officer. The informant has while supporting his case, stated in course of his cross-examination that Shastrinagar Hospital is situated at a distance of 2-3 kms from his house and the police station is also situated at the same distance. He has further stated that in between his house and Nala Road Gardener Road hospital is situated. From his house towards Bailey Road a hospital is situated at 1 km. He has also stated that on his way from his house to Nala Road, Kotwali police station is falling. He has stated that it took about 20-30 minutes in reaching to Magadh



Hospital. He reached there at about 6.30 A.M. and he cannot say the time when bed tickets were made. His statement was taken on 17.09.2002 at about 10.45 A.M. by a Sub-Inspector of Kadamkuan Police Station. He had not prepared any injury report. He says that his clothes were soaked with blood but he can produce the same only after searching out.

The evidence of the I.O. (P.W.4) becomes important in the present case. He has stated in his cross-examination that he had not entered the name of the persons who had stated that the petitioner no. 1 is a quarrelsome person. He says that on his asking the informant had shown his injuries but he had not prepared any requisition of the same. In course of investigation, he was not made available any cloth soaked with blood. In his further cross-examination in paragraph '10' he says that he had not found any injury on the body of the wife of the informant. He had not entered the date on which he had recorded the statement of Ranjana (P.W.2). As regards the statement of P.W.1 I.O. says that he had not entered the date of recording of her statement in the case diary. He states that Rupa (P.W.1) had not given any statement that “रका सिंह नीचे आये एवं मेरी मालकिन के साथ हाथापाई एवं मारपीट करने लगे”. I. O. has further stated that P.W. 1 had not stated that J.N. Singh (P.W.3) had gone to save her and



she had not stated that when P.W. 1 went to save her then petitioner no. 1 had assaulted him by rod. She had also not stated that petitioner no. 1 had assaulted him by rod because of which he had started bleeding.

I.O. (P.W.4) has further contradicted P.W.2 (Ranjana) saying that in course of investigation she had not stated that Raka Singh had assaulted her by hand and fists blow and on hulla her husband came to save her. She had also not stated that her husband had been brutally injured. She had not stated that there was any blood oozing out of any injury caused by such assault.

In his further cross-examination, the I.O. has stated that he had not entered the date on which he had recorded the statement of the informant (P.W.2). He has contradicted the statement of P.W.3 and says that P.W.3 had not said that he was assaulted by hand and fists blow. This witness has contradicted the statement of P.W. 3 on the point of injuries also.

On perusal of the entire material on the record, this Court finds that the prosecution has miserably failed to prove the allegations beyond all reasonable doubts. The conduct of the informant (P.W.2) in not going to the nearest hospital and not reporting the occurrence to the Police Station situated at a



distance of 2-3 kilometers only remains wholly unexplained and that creates a doubt over the veracity of his statements. The fact that he chose to go the jurisdiction of another Police Station in a private hospital and on the next day of the alleged occurrence after more than 24 hours his statements were recorded by a Sub-Inspector whose name he does not remember and then the same was sent to the Shastri Nagar Police Station goes a long way to show that the informant chose a place of recording her fardbeyan and getting an injury report as per his own convenience.

In the facts of this case even the delay in recording of the fardbeyan would be in the nature of an inordinate delay because the petitioner was very much conscious and it is not his case that he was not in a position to lodge an F.I.R. or to go to the nearest Police Station immediately after the alleged occurrence.

The I.O. (P.W.4) has strongly contradicted the evidences of P.W. 1, P.W.2 and P.W. 3.

In such circumstance, this Court is of the considered opinion that the impugned judgments would fall in the category of the perverse finding of guilt recorded by the learned court below.



This Court, therefore, sets aside the impugned judgment of conviction and order of sentence. The revision application is allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

