

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.398 of 2020

Arising Out of PS. Case No.-169 Year-2015 Thana- KHARIK District- Bhagalpur

-
-
1. Angad Kumar, Son of Budho Bhagat, Resident of Village- Tulsipur, P.S.- Kharik, District- Bhagalpur.
 2. Gautam Kumar, Son of Dhandeo Sah, Resident of Village- Tulsipur, P.S.- Kharik, District- Bhagalpur.
 3. Gaurav Kumar, Son of Dhandeo Sah, Resident of Village- Tulsipur, P.S.- Kharik, District- Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar, Adv.
For the Respondent/s	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 28-11-2023

1. The instant appeal has been filed against the judgment of conviction and order of sentence dated 25.11.2019 passed by learned Additional District and Sessions Judge-III, Naugachia (Bhagalpur) in Sessions Trial Case No. 277 of 2017 (G.R. No. 898 of 2015) arising out of Kharik P.S. Case No. 169 of 2015, registered for the offences punishable under Sections 341, 448, 323, 307, 379, 504 and 506 read with Section 34 of the Indian Penal Code (in short IPC), whereby and whereunder the appellant No. 1 namely, Angad Kumar has been held guilty for the offence punishable under Section 341 of IPC and the appellant Nos. 2 and 3 namely, Gautam Kumar and Gaurav

Kumar have been held guilty for the offence punishable under Section 323 of IPC and the appellants have been given the benefit of the provisions of Section 3 of the Probation of Offenders Act, hence their sentence has been directed to be suspended and they have been released from custody after due admonition, however, the trial court held the appellants liable and directed to pay compensation of an amount of Rs. 5,000/- (Five thousand rupees) each to both the victims namely, Chhotu Sah (P.W. 4) and Muneshwar Sah (P.W. 7) in the light of provisions of Section 5 of the Probation of Offenders Act, 1958.

2. The substance of the prosecution's case is as follows:-

As per prosecution's case, on 11.08.2015 at about 8:00 P.M., the informant was resting in the courtyard of her house, then all of a sudden the appellants, other named accused and two unknown persons came there and started abusing and assaulting the informant and they also pulled her with an ulterior motive and took her near the door and thereafter, snatched away her gold chain from her neck. In the meantime, the informant's next door neighbour Muneshwar Kumar @ Munna came running to rescue her but as per the allegation, the appellants namely Gautam Kumar and Gaurav Kumar assaulted on the head of the said

Muneshwar Kumar @ Munna with an iron-rod, owing of that assault he fell down and lost his sense, thereafter the victim Muneshwar Kumar @ Munna was taken to nearby police station at Kharik in an unconscious condition from where he was referred to Mayaganj Hospital at Bhagalpur for better treatment.

3. With the above allegations, the informant filed written application (Ext - 1) at Kharik police station, on that basis, the formal FIR Kharik P.S. Case No. 169 of 2015 was registered for the offences under Sections 341, 448, 323, 307, 379, 504, 506 read with Section 34 of IPC which set the criminal law in motion.

4. After completion of the investigation, the police chargesheeted the appellants namely Gautam Kumar and Gaurav Kumar and others for the alleged offences but the appellant namely, Angad Kumar was not sent up for trial and thereafter, learned Magistrate took cognizance of the alleged offences and summoned the appellant Nos. 2 and 3 and also appellant no. 1 and others and thereafter the case of the appellants was committed to the court of Sessions for trial. Thereafter, all the three appellants and co-accused persons namely, Nitu Devi, Dhandeo Sah @ Dharmdeo Sah and Babli Devi were charged together for the offences punishable under Sections 323 read with

34, 341, 448 and 307 read with 34 of IPC and the appellant namely Angad Kumar and others were separately charged for the offences punishable under Sections 379, 504 and 506 of IPC and all the accused persons including the appellants were put on trial.

5. During trial, the prosecution examined altogether 10 prosecution witnesses and in documentary evidence, proved and exhibited the following documents : -

Ext. 1 – Signature of the informant on her Fardbeyan;

Ext. 1/1 – Signature of one namely, Chhotu Sah on the Fardbeyan;

Ext. 1/2 – Signature of one namely, Jai Prakash Sah on the Fardbeyan;

Ext. 2 – Signature of the Doctor Karamchand on the injury report of Chhotu Sah;

Ext. 2/1 – Signature of the Doctor Karamchand on the injury report of Muneshwar Sah;

Ext. 2/2 – Signature of the Doctor Karamchand on a certificate concerned to the injured Muneshwar Sah.

6. After the completion of prosecution's evidence, the statement of accused persons, including the appellants were recorded explaining the main circumstances appearing against them from the prosecution's evidences. The appellants denied the

said circumstances and claimed themselves to be innocent but the appellants did not give any evidence in their defence.

7. After the completion of trial, the trial court acquitted the accused Nitu Devi, Dhandeo Sah @ Dharmdeo Sah and Babli Devi of all charges and concluded that the charge for the offences under Sections 307, 448, 379, 504 and 506 of IPC remained disproved and the appellant namely, Angad Kumar has been convicted under Section 341 of IPC and the rest two appellants namely, Gautam Kumar and Gaurav Kumar have been convicted under Section 323 of IPC and they have been given the benefit of the provisions of Section 3 of the Probation of Offenders Act, 1958 and directed to pay compensation of an amount of Rs. 5,000/- each to both the victims, hence the said convicts are here as appellants.

8. The main contentions raised by learned counsel appearing for the appellants are that in the present matter, the prosecution did not succeed to establish the place of occurrence as described in the FIR, in the written FIR one namely, Chhotu Sah is not stated to have sustained any type of injury in the alleged occurrence but the learned trial court deemed him to be one of the injureds, the prosecution's material witnesses namely, Nitesh Kumar (P.W. 1), Suman Kumar (P.W. 2) and Vishnu

Kumar (P.W. 8) did not support the prosecution's case and they were declared hostile and their testimony goes against the prosecution and other witnesses of the prosecution made contradictory statements regarding the specific role of the appellants as alleged in the FIR and the injury reports of the so-called injured persons are not reliable as the same do not bear the seal of the concerned hospital.

9. Learned APP appearing for the State has opposed the appeal and submitted that during trial, the most important witnesses who are the informant and injured persons namely, Chhotu Sah and Muneshwar Kumar @ Munna fully supported the case of prosecution as well as the allegations levelled against the appellants in the FIR and the same also gets support from the medical evidence of the Doctor concerned who examined the injured persons and the prosecution completely succeeded to prove the offences for which the appellants have been convicted and there is no force in the present appeal and the same is liable to be dismissed.

10. I have heard both the sides, perused the judgment impugned and gone through the evidences as well as statements of the appellants available on the record of the trial court. In the present matter, the most important witnesses of the prosecution

are Sarita Devi (the informant), Chhotu Sah, Muneshwar Kumar @ Munna (injured persons) and Jai Prakash Sah as these persons are stated to be the eye-witnesses of the commission of the alleged offences and as per the FIR, Muneshwar Kumar @ Munna sustained injuries in the alleged occurrence and during trial, Chhotu Sah was revealed as one of the injured, hence both are stated to be the eye-witnesses of the alleged occurrence and in the written FIR, Jai Prakash Sah was also shown as an eye-witness. As per the allegation, the appellants and co-accused persons, firstly, started abusing and assaulting the informant and thereafter forcefully took her by pulling at the door of her house and snatched her gold chain from her neck and in the meantime, the informant's neighbour Muneshwar Kumar @ Munna came running to save the informant but he was also assaulted by the appellants namely Gautam Kumar and Gaurav Kumar. The informant named all the appellants in the FIR, though she did not reveal any specific role of the appellant Angad Kumar in the commission of the alleged occurrence but he was alleged to be a member of accused persons and the FIR was lodged immediately after the commission of the alleged occurrence, hence the same can be deemed to be a natural statement.

11. Chhotu Sah (P.W. 4) deposed that on 11.08.2015 at about 7:00 P.M., he was taking food and when he heard *hulla-gulla*, he came out of his house and saw his brother Muneshwar Kumar @ Munna being caught hold by the appellant Angad Kumar and thereafter the appellant Gautam Kumar inflicted 4-5 *khanti* blows on the head of his brother and then he attempted to save his brother but one Dhandeo Sah caught hold of him and the appellant Gaurav Kumar assaulted at his left hand and neck by means of an *iron-rod*. He further deposed that the accused Babli Devi and Nitu Devi also assaulted the informant by means of *lathi* and in the occurrence, his brother became unconscious. From the evidence of this witness, it is clearly evident that the appellants actively participated in the alleged occurrence and assaulted this witness and his brother by means of *khanti* and *iron-rod* and the place of occurrence as described in the FIR also gets support from his evidence. This witness deposed in the cross-examination that in between the informant's family and the appellants, a land dispute was running. The said statement is sufficient to show the reason on the part of the appellants to commit the alleged occurrence. Accordingly, I find the evidence of this witness to be sufficient to substantiate the allegations levelled against the appellants by the prosecution.

12. Muneshwar Sah @ Munna (P.W. 7) is also stated to be an injured. He deposed that on 11.08.2015 at 8:00 P.M., he was standing in the courtyard of his house when the appellants namely, Gaurav Kumar and Gautam Kumar and other accused persons started assaulting the informant and then he attempted to save the informant but he was caught hold by the appellant namely, Angad Kumar and thereafter the appellants Gaurav Kumar and Gautam Kumar assaulted at his head by means of *khanti* and they assaulted him 3 times by the said means after that he became unconscious. At the time of cross-examination, this witness showed the injury marks being present at his head before the trial court. Though the witness could not give the details of the boundaries of the place of occurrence when he was cross-examined on the said aspect but merely by this fact his evidence cannot be deemed to be unreliable, particularly when the injuries sustained by him, as per his statement, get support from the medical evidence. The presence of the appellants at the place of occurrence at the time of commission of the alleged occurrence, the specific roles of the appellants as alleged by the prosecution and the date and time of occurrence as well as the means used by the appellants and other accused in assaulting the injured persons have been fully supported by this witness and his evidence

appears to be reliable to substantiate the offences for which the appellants have been convicted.

13. The informant (P.W. 9) deposed that the alleged occurrence took place on 11.08.2015 at 8:00 P.M., at that time she was sleeping in the courtyard of her house when the appellants Gaurav Kumar and Gautam Kumar came there and started pressing her neck and assaulted her and thereafter started pulling her forcefully and then Chhotu Sah (P.W. 4) and Muneshwar Kumar @ Munna (P.W. 7) came there to rescue her but the appellant Angad Kumar caught hold of Muneshwar Kumar @ Munna and the appellants Gaurav Kumar and Gautam Kumar assaulted him at his head by means of *khanti*. She further deposed that the injured Muneshwar Kumar @ Munna became unconscious and after the occurrence, the injured Muneshwar Kumar @ Munna was firstly taken to Kharik police station by her husband and thereafter he was taken to hospital. The witness deposed in her cross-examination that a land dispute was running in between both the parties which was the main reason to commit the alleged occurrence. She further deposed in the cross-examination that Muneshwar Kumar @ Munna and Chhotu Sah came just 10 minutes after the commission of the incident of pulling her by the accused persons and the moment they reached,

they were assaulted. She further deposed in the cross-examination that the injured persons Muneshwar Kumar @ Munna and Chhotu Sah were not her relatives but they are her neighbours. Accordingly, the evidence of this witness also seems to be reliable to substantiate the allegations levelled against the appellants. Though regarding the manner of occurrence and the specific roles of the appellants in the commission of the alleged occurrence as alleged, the witness made some contradictory statements but merely by this fact, her evidence does not seem to be unreliable.

14. Though in the present matter, the prosecution did not produce one person namely Jai Prakash Sah, who is stated to be an eye-witness of the occurrence as per written FIR and the said person is stated to be husband of the informant and some witnesses of the prosecution, who are not stated to be eye-witnesses, have been declared hostile but it is not so fatal to the case of the prosecution as to make the allegations levelled against the appellants to be unreliable.

15. In the present matter, Medical Officer (P.W. 10), who examined both the injured persons namely, Muneshwar Kumar @ Munna and Chhotu Sah, proved the injury reports concerned to the injured persons and the medical evidence given

by him is completely corroborative to the prosecution's case. Though some irregularities in preparing the injury reports of the injured persons have been pointed out by the learned counsel for the appellants during the course of argument but the irregularities do not appear to be so fatal as to make the case of prosecution unreliable. The evidence of this witness also helps the prosecution to prove its case against the appellants.

16. It has been argued by learned counsel for the appellants that the so-called injured Chhotu Sah has not been shown in the FIR as an injured which is sufficient to raise a serious doubt in the prosecution's case. I find no force in the said argument. Though in the FIR, the said person Chhotu Sah has not been shown as an injured but the FIR was registered immediately after the commission of the alleged occurrence and presence of the said person at the time of commission of the alleged occurrence at the place of occurrence was revealed in the FIR and the factum of him sustaining injury in the alleged occurrence was fully supported by all the material witnesses named-above.

17. It has been argued by learned counsel for the appellants that all the appellants are very young persons and they are first offenders and also tender aged persons and they had good academic results in the past and at the time of commission

of the alleged occurrence, they were regular college going students and their conviction shall affect their future academic career and they will not be able to get any kind of private or government job, so they should be granted a benefit under Section 12 of the Probation of Offenders Act in the light of the principle laid down by the Hon'ble Apex Court in the judgment of **Rajbir vs. State of Haryana passed in Cr. App. No. 449 of 1985**, reported in **AIR 1985 (SC) 1278**.

18. After the above discussions of the evidences and materials available, this Court is of the view that the appellant namely Angad Kumar has been rightly convicted for the offence punishable under Section 341 of IPC and rest appellants have also been rightly convicted for the offence punishable under Section 323 of IPC and this Court finds no reason to interfere in the said conclusion of the trial court. The benefit of the provisions of Section 3 of the Probation of Offenders Act, 1958 given by the trial court to the appellants also appears to be proper in the background of the case. Accordingly, this Court finds no merit in this appeal and the same is liable to be dismissed.

19. Considering the appellants being first offenders and their young age as well as their past academic records, the judgment of the trial court holding the appellants to be guilty of

the alleged offences shall not be deemed to be a disqualification of any of the appellants in getting any kind of government or private job as well as in getting any type of certificate which they may require from the administration in order to fulfill any condition of employment.

20. Accordingly, with the above observation, **the instant appeal stands dismissed.**

21. Let the LCR be sent back to the trial court forthwith.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.12.2023
Transmission Date	05.12.2023