

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.121 of 2004

1. Mahendra Singh son of Late Hardeo Singh
2. Lala Singh son of Late Hardeo Singh
3. Manoj Singh @ Manoj Kumar Singh son of Late Ram Gobind Singh, all
resident of village Jalpura, P.S. Chandi, District- Bhojpur

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Amicus Curiae
For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 17-10-2023

1. This appeal is directed against the judgment of conviction and sentence dated 20th February, 2004 passed by Additional District & Sessions Judge, F.T.C. II, Ara, Bhojpur in Sessions Trial No. 402 of 1992 by which the appellant no. 1 has been convicted and sentenced to undergo four months of rigorous imprisonment for the offence under section 324 of the Indian Penal Code and two months of rigorous imprisonment for the offence under section 148 of the Indian Penal Code. Appellant no. 3 has been convicted and sentenced to undergo three months of rigorous imprisonment for the offence under section 323 of the Indian Penal Code and a further one month of rigorous imprisonment for the offence under section 147 of the



Indian Penal Code. Appellant no. 2 has been convicted under section 148 of the Indian Penal Code and sentenced to undergo two months of rigorous imprisonment. All the sentences have been ordered to run concurrently.

2. The prosecution case is that on 17.12.1991 informant Vinod Kumar was coming back to his village Jalpura from Akhagao market within Chandi police station at 6.30 p.m. after purchasing vegetables. When he reached the road 50 yards north of Akhgao High School, all the six accused persons armed with Bhala, Fasuli, Pistol and Lathi surrounded him and accosted to kill the informant. On exhortation of Hridaya Singh (since dead) accused Mahendra Singh (appellant no.1) caused Bhala Injury on the left arm of the informant. Accused Satyendra Singh with a fasuli aiming on the neck waived it and the informant tilted his neck and sustained injury on his head. Accused Lala Singh pointing the pistol at the informant, was asking him to remain standing. Accused Mukesh Singh (since dead) and Manoj Singh assaulted the informant on his ankle joint with a lathi. The informant after sustaining injury fell on the ground. Thereafter accused Hardeo Singh and Mukesh Singh snatched wrist watch and cash of Rs. 500/- from the person of the informant. On cry, Manu Ram and Vinod Ram came there



and took him to the Doctor.

3. On the basis of the aforesaid statement of the informant Chandi P.S. Case No. 91 of 1991 was registered against the appellants and others. After the investigation, the police submitted chargesheet against all the six accused persons including the appellants. Thereafter cognizance of the offence was taken and the case was committed to the Court of Sessions for trial.

4. Appellant no. 1 was charged under sections 148, 307 and 326 of the Indian Penal Code; appellant no. 2 was charged under sections 148, 307 and 326 read with section 149 of the Indian Penal Code and 27 of the Arms Act; and appellant no. 3 was charged under sections 147, 326 and 307 of the Indian Penal Code.

5. During the trial the prosecution examined four witnesses. P.W. 1 Vinod Kumar, the informant of the case. P.W. 2 Umesh Kumar Singh, P.W. 3 Ramanuj Singh and P.W. 4 Dr. R.K.Himanshu.

6. In order to establish the charge, the prosecution has proved the following documents as exhibits :

*Exhibit 1 Signature of the informant on the
Fardbeyan*

Exhibit 2 Injury Report



7. Out of the six charge-sheeted accused persons Mukesh Singh and Hardeo Singh died and thus the proceeding against them was dropped. In the trial, only the appellants were tried as the other co-accused Satyendra Singh is still absconding.

8. P.W. 1 the informant and the injured of the case, in his evidence has reiterated the statements made in the first information report. Its repetition is not required. He proved his signature on the fardbeyan (Ext. 1).

9. P.Ws. 2 and 3 have been declared hostile.

10. P.W. 4, the Doctor, found the following injuries :

(i) one punctured wound on the left arm 1 ½" X 1 ¼" muscle deep with fresh bleeding from the wound.

(ii) one incised wound on the left parietal region 3 ½" X ½" up to bone-deep with the upper layer of the left bone is cut by the instrument.

(iii) one lacerated wound in leg 3" X 1"x skin deep.

(iv) Swelling on left foot size 3" X 4".

All the injuries were caused within six hours.

He proved the injury report (Ext.2).

11. The appellants in their statement under section 313 of the Code of Criminal Procedure have said that he



is innocent and has falsely been implicated in this case due to previous enmity.

12. The defence did not produce any evidence documentary or oral.

13. On the basis of the above evidence, the Sessions Court found the accused guilty and passed the order of conviction, as stated above.

14. The decision was challenged on the grounds that the informant has accepted the fact of previous enmity between the parties. In the injury report, there is no such injury as has been stated by the informant in the first information report of the evidence. The incident took place at 6:30 pm in the winter evening when it became dark but without any source of light, the informant identified all the accused persons with weapons in their hands. No independent witnesses were examined and if they came, they were declared hostile. Conviction has been made on the basis of the evidence of the sole witness after noticing the fact that there is previous enmity between the parties. The Investigating Officer has not been examined as a result of which the place of occurrence has not been proved.

15. The prosecution opposed this appeal and said



that the testimony of the only witness is also valid if the doctor's evidence confirms it.

16. Heard learned counsel for the parties and perused the record.

17. It is an established principle of criminal law that the prosecution has to prove its case beyond every shadow of a doubt, but after observing the facts and hearing the Amicus Curiae and A.P.P., on the basis of the following grounds it can be said that a shadow of doubt is cast on the prosecution case.

18. The incident took place at 6:30 pm on 17th December when it became dark. But without any source of light, it was difficult to identify all the accused persons with the weapons in their hands. Not only this, but which accused assaulted at which place where the injuries were caused and after the fall due to assault who snatched the watch and who took away the money, all these statements make the prosecution story doubtful as to when it has come in the evidence that there is previous enmity and dispute between the parties and all the accused are members of the same family.

19. The informant/injured talks about blood falling on the ground and he brings his blood stained clothes to the court and the Court, also marked them as Exhibit I and



Exhibit II but due to the non-examination of the investigating officer, all these facts remain unproved.

20. The formal first information report has also not been brought on record.

21. The injured person was admitted to the hospital for 20 days but no evidence in this regard has been brought. The persons who took the informant/injured person to the hospital have also not been examined by the prosecution.

22. The evidence of the doctor and the Injury Report (Exhibit-2) shows that the informant is injured, but for the reasons stated hereinabove it can not be said that the accused persons had a hand in it.

23. Under the aforesaid circumstances, it can be very well said that the prosecution has failed to prove its case beyond all reasonable doubts and accordingly the accused persons are entitled to be acquitted by giving them the benefit of the doubt.

24. Accordingly, the appeal is allowed. The impugned judgment of conviction and sentence dated 20th February, 2004 passed by Additional District & Sessions Judge, F.T.C. II, Ara, Bhojpur in Sessions Trial No. 402 of 1992 is, hereby, set aside.



All the accused persons are already on bail. They are also discharged from the liability of their bail bonds.

25. I put on record special thanks for Mr. Siddharth Harsh, advocate, who was appointed as an amicus curiae in this case, for rendering full assistance to the Court in hearing the appeal. The Registry is directed to make payment of the prescribed fee to Mr. Siddharth Harsh, the amicus curiae

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	27.07.2023
Uploading Date	17.10.2023
Transmission Date	17.10.2023

