

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.421 of 2016

Arising Out of PS. Case No.-42 Year-2014 Thana- AHIYAPUR District- Muzaffarpur

Rajesh Sah Son of Madan Sah, resident of village- Karja, P.S. Karja, District- Muzaffarpur. Appellant

Versus

The State Of Bihar Respondent

Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 13-04-2023

Heard learned counsel for the appellant and learned A.P.P.

for the State.

2. The present criminal appeal has been preferred against the judgment of conviction dated 02.03.2016 and order of sentence dated 08.03.2016 passed by Sri Ved Prakash Singh, Additional Sessions Judge-III, Muzaffarpur in Sessions Trial No. 529/2014 (arising out of Ahiyapur P.S. Case No. 42/14) whereby and whereunder the appellant has been convicted under Sections 364/34, 302/34 of the Indian Penal Code and Section 27 of the Arms Act and sentenced the appellant to undergo rigorous imprisonment for ten years under Section 364 of the Indian Penal Code and a fine of Rs. 15,000/- and imprisonment for life under section 302 of the Indian Penal Code and a fine of Rs. 20,000/- and rigorous imprisonment for three years and a fine of Rs. 5,000/- under Section 27 of the Arms Act and in default of payment of fine, to undergo rigorous imprisonment three months, four months and one



month additionally under Section 364, 302 of the I.P.C. and Section 27 of the Arms Act respectively. All the sentences so awarded shall run concurrently.

3. The prosecution case, as per the written report submitted by Md. Asim before the S.H.O. of Ahiyapur Police Station on 26.09.2014, is that the informant namely Md. Asim (P.W.8) who deals in selling of meat and in the said business, informant's son namely Md. Shehrab (deceased) helps him. The appellant and his family members always used to purchase meat from the informant's shop and due to which Rs. 3,000/- of the informant became due with the appellant. It is further case of the prosecution that about a week earlier, the informant sent his son to the place of appellant to get back the said due amount where the father of the appellant, the appellant and one Mukesh Sah were also present. When the son of the informant demanded the due amount from them, the accused persons got angry and accused Madan Sah threatened him of dire consequences. The informant's son came to him and told about the said incident. On 25.01.2014 at 9.30 p.m., when informant's son along with two others were returning home, the appellant along with three other accused persons were standing near a petrol pump and when informant's son saw the appellant, he went to him and demanded due amount whereafter the appellant got angry and abused son of the informant and also assaulted with fists and slaps and also threatened him on the point of pistol. Thereafter, all the four accused persons took informant's son into the vehicle and went towards



eastern side. The incident has been witnessed by one Prakash Kumar (P.W.3) who informed the informant about the said incident. Thereafter, the informant along with Mohalla people started searching his son. The informant further states that the appellant is a criminal and because of fear, he went to meet father of the appellant and requested for compromise on which accused Madan Sah and Mukesh Sah told that you will not get your son. The informant suspected that the appellant along with three unknown persons has abducted the informant's son with an intention to kill him.

4. On the basis of written report of the informant, Ahiyapur P.S. Case No. 42/14 was registered under Sections 364, 365 and 120(b)/34 of the Indian Penal Code. After the death of informant son, sections 302 and 201 of the Indian Penal Code have been added on 30.01.2014. Thereafter investigation was taken up. After completion of investigation, Charge-sheet was submitted under sections 364, 302/34 of the Indian Penal Code and section 27 of the Arms Act. Thereafter cognizance was taken by the Jurisdictional Magistrate and the case was committed to the Court of Sessions. Charges were framed against the appellant to which the appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether fourteen witnesses, namely, P.W. 1 Anuj Kumar Singh, P.W. 2 Rajendra Sah, P.W.3 Prakash Kumar, P.W. 4 Sadre Alam , P.W.5 Rajeeve Ranjan, P.W.6 Ajay Kumar, P.W. 7 Shailendra Paswan, P.W. 8 Mohd. Asim



(informant), P.W. 9 Mohd. Badrul Haque, P.W. 10 Naresh Paswan, P.W. 11 Deepak Kumar, P.W. 12 Shankar Kumar Paswan, P.W. 13 Dr. Vipin Kumar and P.W. 14 Satyendra Kumar Suman. In support of its case, the prosecution has produced exhibits as Ext. 1 (signature of P.W. 3 or statement under section 164 Cr.P.C.), Ext. 2 (C.D.R.), Ext. 3 (inquest report), Ext. 4 (formal F.I.R.), Ext. 5 (confessional statement of accused Rajesh Sah), Ext. 6 (petition of Satyendra Kumar Suman, owner of vehicle), Ext. 7 (P.M. report). One Prakash Kumar was also examined as Court Witness. The defence has not produced any oral or documentary evidence in support of its case. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant in the manner indicated above.

6. Learned counsel for the appellant submits that the judgment of conviction assailed in the present appeal is not only bad in the eye of law but has been passed by giving erroneous findings on the facts of the present case. It has been argued on behalf of the appellant that the learned Trial Court has fallen in error of law and has ignored major lacunae in the case of the prosecution. The prosecution has miserably failed to prove its case beyond reasonable doubt. The learned Trial Court has ignored material considerations which fall in favour of the appellant. Learned counsel for the appellant has drawn our attention towards the fact that the informant of the present case is admittedly not an eye witnesses to the alleged occurrence. As per the F.I.R. (Ext.4), the informant (P.W.8) was informed regarding the alleged occurrence by



P.W.3. It has come in the evidence of P.W.8 (informant) that it was P.W. 3 who came and informed him about the alleged occurrence. Therefore, whatsoever has been stated by the informant (P.W.8) in the F.I.R. is nothing but renarration of what has been narrated to him by P.W.3. Learned counsel next submitted that from the record, it would be manifest that there is only one eye witness in the present case and i.e. P.W. 3. It has been further argued that upon perusal of the ocular evidence of P.W.3, it is clear that he has denied his knowledge regarding the alleged occurrence. The statement of P.W.3 was recorded under Section of 164 Cr.P.C. before the Magistrate during the course of investigation and from his deposition during the trial, it is clear that the said 164 Cr.P.C. statement of P.W.3 was made by him at the instance of the police. Therefore, it has been contended that said statement of P.W.3 cannot form the basis of conviction of the appellant. Learned counsel for the appellant further argued that the judgment of conviction of the appellant is based on section 164 Cr.P.C. statement of P.W. 3 which vis-a-vis the oral evidence of P.W.3 becomes doubtful and thus the conviction of the appellant cannot be sustained.

7. Learned A.P.P. appearing for the State, on the other hand, submitted that the judgment of conviction rendered by learned Trial Court requires no interference. From perusal of the judgment of the learned Trial Court, it would appear that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt on the basis of sufficient evidence adduced by the prosecution during trial.



8. After hearing both the sides and perusal of materials available on record, following issues arise for consideration:

i) Whether in the given facts of the present case, is there any witness who can be said to be the eye witness to the alleged occurrence except P.W.3?

ii) Whether the oral evidence of P.W.3, who is the sole eye witness to the alleged occurrence, can become the basis for convicting the appellant ?

iii) Whether the appellant can be convicted on the basis of the section 164 Cr.P.C statement of P.W.3 recorded, before the Magistrate, during the course of investigation?

9. While adverting to the first issue, we have gone through the entire material available on record and after minute examination of the deposition of all the prosecution witnesses, we find that the prosecution has examined altogether 14 witnesses. However, none of the prosecution witnesses can be said to be the eye witness to the alleged occurrence, except P.W.3. The case of the prosecution is of abduction-cum-murder. In such cases, it is very difficult that the witnesses see the occurrence, while it is being committed. Therefore, we can safely come to the conclusion that a bare perusal of the depositions of each of the prosecution witnesses would make it evident that except P.W.3, none of the prosecution witnesses can be said to be eye witness to the alleged occurrence.



10. Now, in order to deal with issue No. (ii) as framed above, we have thoroughly gone through the oral evidence adduced by P.W.3 who claims to be the sole eye witness in the present case. In such cases, where the fate of the trial relies upon the evidence adduced by the sole eye witness, it becomes paramount duty of the Court to meticulously examine the evidence adduced by such witness. From perusal of the judgment of the learned Trial Court, it is evident that during trial, P.W.3 who happens to be sole eye witness of the present case has denied his knowledge regarding the alleged occurrence. It is evident that the learned trial Court has given undue weightage to the evidence adduced by P.W.3. It would also not be out of place to mention that during investigation, the statement of P.W.3 was recorded under section 164 Cr.P.C. before the Magistrate. The said section 164 Cr.P.C. statement of P.W.3 is available on record. P.W.3 in his deposition has categorically stated that the said section 164 Cr.P.C. statement was made by him before the Magistrate at the instance of the police. In such view of the matter, where the sole eye witness alleges that the section 164 Cr.P.C. statement made by him before the Magistrate was under undue pressure by the police speaks volume regarding the manner in which the investigation of the present case has been conducted. However, at this juncture, we restrain ourselves to comment any further on the manner of investigation.

In view of the aforesaid, where the sole eye witness in his deposition categorically denies his knowledge regarding alleged



occurrence, his deposition, in our opinion, cannot become the basis for convicting the appellant. Hence, issue No. (ii) is decided in negative.

11. So far issue No. (iii) is concerned, we reiterate as stated above that P.W.3, in his deposition, has stated that section 164 Cr.P.C. statement has been made by him before the Magistrate at the instance of the police. Learned trial Court in its judgment has heavily relied upon the section 164 Cr.P.C. statement of P.W.3. In the backdrop of the fact that the person who has made such statement in his deposition before the trial Court reveals that such statement under section 164 Cr.P.C. has been made by him at the instance of the police makes the said statement of P.W. 3 a hollow evidence. We find that the learned trial Court has fallen in error of law by even relying upon, much the less, convicting the appellant solely on the basis of Section 164 statement of P.W.3. The section 164 Cr.P.C. statement recorded before the Magistrate cannot solely be the basis for convicting the appellant in the facts of the present case. Learned trial Court has turned blind eye to what has been stated by P.W. 3 in his deposition regarding his 164 Cr.P.C. statement.

In view of the discussion made hereinabove, we are of the considered opinion that the appellant cannot be convicted by placing heavy reliance upon the section 164 Cr.P.C. statement of P.W. 3 and, as such, the issue No. (iii) is also decided in negative.

12. In view of the findings arrived at on the issues formulated above, we are of the considered opinion that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt by



adducing sufficient evidence required in law for convicting the appellant.

12. Therefore, the present appeal is allowed. Judgment of conviction dated 02.03.2016 and order of sentence dated 08.03.2016 passed by Sri Ved Prakash Singh, Additional Sessions Judge-III, Muzaffarpur in Sessions Trial No. 529/2014 (arising out of Ahiyapur P.S. Case No. 42/14) is hereby set aside. The appellant is directed to be released from jail forthwith if not required in any other case.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	04.05.2023
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