

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.469 of 2013

Arising Out of PS. Case No.-92 Year-2005 Thana- KHANPURA District- Samastipur

1. Bindeshwari Paswan and Ors. S/O Late Munni Lal Paswan Resident Of Village Ilmasnagar, P.S. Khanpur, District Samastipur.
2. Mithilesh Paswan S/O Lat Munni Lal Paswan Resident Of Village Ilmasnagar, P.S. Khanpur, District Samastipur.
3. Sita Ram Paswan @ Siya Ram Paswan S/O Rajo Paswan Resident Of Village Ilmasnagar, P.S. Khanpur, District Samastipur.
4. Babloo Paswan S/O Bindeshwari Paswan Resident Of Village Ilmasnagar, P.S. Khanpur, District Samastipur.
5. Kalpu Paswan S/O Late Munni Lal Paswan Resident Of Village Ilmasnagar, P.S. Khanpur, District Samastipur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mukesh Kumar No-1, Advocate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date: 29-10-2024

The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the Judgment of conviction and order of sentence dated 04.06.2013 passed by the learned Additional District and Sessions Judge-III, Samastipur (hereinafter referred to as the 'learned trial Court') in Sessions Trial No. 837 of 2006 arising out of Khanpur P.S. Case No. 92 of 2005, instituted for an offence punishable under Sections 147,



148, 149, 323, 341, 379, 307 and 504/34 of the Indian Penal Code in which the appellants have been held guilty and sentenced for simple imprisonment of three months for the offence under Section 147 of Indian Penal Code, one year simple imprisonment for the offence under Section 148 of Indian Penal Code, six months simple imprisonment for the offence under Section 323 of Indian Penal Code and six months of simple imprisonment for the offence under Section 504 of Indian Penal Code and all above sentences shall run concurrently.

2. Heard Mr. Mukesh Kumar-I, learned counsel for the appellants and Ms. Anita Kumari Singh, learned APP for the State.

3. The brief facts leading to the filing of the present appeal are that as per the written statement of the informant that on 06.07.2005 at about 5 P.M. Bindheshwari Paswan and Mithilesh Paswan both appellants have grazed the maize field of the informant by their goats, thereafter the sister of the informant made objection then both of them started abusing her with filthy words. It has been further stated that on order of Bindheshwari Paswan, the appellant, namely Mithilesh Paswan came with *Farsa* and gave *Farsa* blow on head of the



informant's sister in which her sister sustained head injury. Other appellants also came there and kicked her and snatched her golden ornaments and gave in the hands of Babloo Paswan. Thereafter, Sitaram Paswan @ Siya Ram Paswan dragged her by tiding rope in her neck then on *hullah* being made, some villagers came at the place of occurrence then the accused persons had fled away.

4. That on the basis of above written report, a First Formal Information Report was drawn up in connection with Khanpur P.S. case No.-92 of 2005 for the offences punishable under Sections 147,148,149,341,323,307,379 and 504/34 of the I.P.C., and thereafter, investigation commenced and after completion of investigation, Investigating Officer submitted charge-sheet and the Court concerned has taken cognizance and the case was committed to session. It was disposed of by the Additional District & Sessions Judge-III, Samastipur.

5. The prosecution examined altogether 6 witnesses in this to substantiate the charges against the accused persons, out of them PW-1 Md. Lais (formal witness), PW-2 Naresh Sahni (Informant), PW-3 is the Rajo Devi (injured), PW-4 Radha Kant Prasad Singh (Investigating Officer). PW-5



Ramchandra Sahni (hostile witness) and PW-6 Pran Kumar (Formal witness) are there. All together, three documents were examined and exhibited, Exhibit- 1 is the signature and handwriting of the Officer-in- Charge of the police station, Exhibit- 2 is the signature of the informant on written statement and Exhibit- 3 is the signature and handwriting on prescription of the Hospital. Defence has neither examined any witnesses nor submitted any document to refute the charges levelled against them. Further, it is pertinent to note that the Doctor was not examined during the trial of the case.

6. After the prosecution evidence was closed, the statement of the accused was recorded under section 313 of the Cr.P.C in which the accused had claimed to be innocent and the allegations levelled against him were false and fabricated and had demanded fair trial.

7. PW1 is a formal witness who has proved Exhibit 1. Similarly, PW-6 is also a formal witness who has proved Exhibit 3. PW-5 had declared hostile as he does not know anything about the incident.

8. PW-2 Naresh Sahni (informant) has stated in his examination-in-chief that he is the brother of the injured Rajo Devi and eyewitness of the alleged incident. He came



running at the time of the incident and saved his sister. He further stated that the incident took place on 06.07.2005 and the time was 5.00 p.m. Bindeshwari Paswan and Mithilesh Paswan were grazing the maize field of the informant by their goats. When my sister Rajo Devi tried to stop both accused persons from grazing their field, then Bindeshwari Paswan and Mithilesh Paswan abused her. When she protested against the abuse, Bindeshwari Paswan said that she should be beaten, then Mithilesh Paswan brought *farsa* from home and gave *farsa* blow to my sister on the head with the intention to kill her. The collar was injured and blood started oozing out. Thereafter, Kashyap Paswan, Bablu Paswan and Siyaram Paswan came running and kicked my sister from behind and she fell on ground. He took out the gold earring from her ear and gave it to Bablu. Thereafter, Siyaram Paswan was hanging her with a rope, my sister screamed then I ran towards her and rescued her. Thereafter, all the accused person ran away. I took my sister to Khanpur police station by putting her on auto rickshaw and gave her an application written by my own handwriting with all signatures which is marked as Exhibit 2. The police officer wrote a slip and told me to go to Samastipur hospital. I went to Samastipur Sadar hospital and my sister was treated. The slip is



marked as Exhibit 3. I recognized all the accused. PW-2 in his cross-examination stated that when I reached the spot, the accused were running away. My sister had fainted and she regained consciousness in the hospital on the second day of the occurrence. When she regained consciousness, she told me about the occurrence on the second day.

9. PW-3 Rajo Devi (injured) has stated in her examination-in-chief that the incident took place five and a half years ago around 5.00 pm. I was in my house. Bindeshwar Paswan's goat was grazing my father's corn field. I was going to catch the goat and bring it back. Bindeshwari Paswan tried to snatch the goat, when I did not let go, he started abusing me. He further ordered to kill me, then, Mithilesh Paswan ran towards her house and came with a *farsa* and gave *farsa* blow on her forehead, due to which she sustained injury on her forehead. I started screaming. Kalpu Paswan kicked me and I fell on the ground after that he snatched both the earrings and gave them to Bablu. Siyaram tied a rope around my neck and started strangulating me, with intention of killing me. When everyone reached at the place of occurrence, the accused persons ran away. My Father and brother picked me up and took me to the police station. The police Inspector sent me to Samastipur



hospital after hearing the matter, where, I was treated. PW-3 in her cross-examination stated that after catching the goat, Mithilesh started shouting. Mithilesh and his maternal uncle were talking and suddenly Sunny attacked me. I fell down. When I screamed, people came and saved me. She further stated that her brother took her to hospital on motorcycle.

10. PW-4 Radha Kant Prasad Singh is the Investigating Officer in this case. He has clearly stated in his Examination-in-chief that in the year 2005, I was posted as Sub Inspector in Khanpur Police Station. On 06.07.2005 informant Naresh Sahni came to me with his injured sister Rajo Devi and Naresh Sahni gave a written application and on that Khanpur Police Station Case No. 92 of 2005 was registered. I was given Investigation of this case by Officer Shri V. Pathak who was the In-charge of the said Police Station. Formal investigation was in Shri Pathak's handwriting and signature, it has been marked as Exhibit 1. After taking over the investigation, the informant's statement was taken again and injured Rajo Devi was not in a position to give her statement, due to which she was sent to Samastipur Sadar Hospital for treatment and after that I left for the place of occurrence with the informant and investigated the place of occurrence. The place of occurrence was corn field



where corn was grazed and goat's footprints were found. By Investigating closely on the field, Investigating Officer didn't find any blood stain which is contradictory to the statement, made that Rajo Devi got *farsa* blow and blood was oozing out. Moreover, the time of occurrence is also not mentioned in the case diary. Upon further investigation, he came to know that at the North of the incident spot – Mithilesh Paswan's corn field, South – Sukhdev Sunny's corn field, East – Ilmas Nagar Dahman, and the western road runs from north to south was there. Statements of people living near the incident spot were taken. Statements of Sukhdev Sahni, Maksudan Sadni, Ramchandra Sahni, injured Razia Devi were taken. Investigation report of Rajo Devi was received. Statements of independent witnesses Mahendra Sahni, Shivan Sahto were also taken. After finding the incident correct, a charge sheet was submitted.

11. Learned counsel for the appellants Mr. Mukesh Kumar-I, at the outset, submits that the trial Court erred in convicting the appellants for the charges levelled against him, in spite of having no materials available on record, except for the oral evidence of three prosecution witnesses. He further submits that no independent witness has been examined in this



case and the evidence of the informant, injured witnesses have been contradictory i.e., not reliable as she never deposed that her brother came in rescue and brought her to the police station and she was unconscious but the informant deposed that when he went at the place of occurrence, he saw that his sister became unconscious and on next day she become conscious in the hospital and then she told to the informant about the occurrence and doctor has not been examined during the trial of the case and not even the injury report of the injured is put on the record by the prosecution. Hence, the prosecution has failed to prove their case beyond all reasonable doubts despite that the trial Court has convicted them therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused extending benefit of doubt.

12. On the other hand, learned Additional Public Prosecutor Ms. Anita Kumari Singh has vehemently opposed the appeal and submits that there is direct allegation against the present appellants for assaulting the informant's sister by *farsa* to commit murder of the informant's sister. She further contended that PW- 3 is injured and her testimony cannot be brushed away even if the Doctor was not examined and, therefore, prayed to confirm the judgment of the trial Court. In view of the aforesaid



statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

13. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

14. As per the Criminal jurisprudence, the burden is always on the prosecution to prove the guilt of the accused beyond reasonable doubt and the accused shall be presumed to be innocent till the guilt is proved.

15. On the basis of evidences available on record and after considering the submissions made by the learned counsel for the respective parties, it appears that there are major discrepancies regarding the sequence of events and the presence of individuals at the scene of the incident. It appears from the suggestions given in cross-examination of the witnesses by defence that informant and injured witnesses deposition have been contradictory which is not reliable as she never deposed that her brother came to rescue and brought her to the police station and she was unconscious but the informant deposed that when he went at the place of occurrence, he saw that his sister became unconscious and on next day she become conscious in



the hospital and then she told to the informant about the occurrence and not even the injury report of the injured is put on the record by the prosecution, to prove that she sustained injuries nor the doctor was examined before the trial Court. The non-examination of the Doctor is fatal to the case of the prosecution. In the present case, the injuries which were alleged to have been inflicted against PW- 3 was also not proved by the prosecution. It is the duty of prosecution to bring on record the Injury Reports of the injured to corroborate with the oral evidence of PW- 3. Moreover, PW-3 in paragraph 12 of her deposition states that she was taken to the hospital by motorcycle whereas PW-2 in his deposition states that he has taken her sister (Rajo Devi) on auto rickshaw which is totally contrardictory. In a criminal case, the accused is always entitled for benefit of doubt and it is for the prosecution to establish the presence of the accused at the time of occurrence. The intention of the accused can be ascertained from actual injury, if any, as well as other circumstances. The actual injury itself was not established in this case.

16. Admittedly, the nature of weapon used or the severity of the blows inflicted were also not established by the prosecution to prove the guilt of the appellants. It is also



relevant to note that under Section 313 of the Cr.P.C, (examination of the accused) these common questions were asked which reads as follows: -

Question I. Have you heard the statement of the witness?

Question II. There is an allegation on you that you along with the other accomplice tried to graze that corn field by their goat, what do you say?

Question III. What do you say in defence?

Except the said questions, nothing else was put to the accused persons with regard to incriminating evidence against the appellants.

17. In ***Indra Kunwar Vs. State of Chhattishgarh*** reported in **2023 SCC OnLine SC 1364**, their Lordships have evolved principles to be followed while framing questions under Section 313 of the Cr.P.C examination which are as follows: -

35. On perusal of various judgments rendered by this Court reveals the following principles, as evolved over time when construing such statements.

35.1. The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.



35.2. *The intent is to establish a dialogue between the Court and the accused. The process benefits of the accused and aids the Court in arriving at a final verdict.*

35.3. *The process enshrined is not a matter of procedural formality but is based on the cardinal principles of natural justice i.e. audi alterum partem.*

35.4. *The ultimate test when concern with the complaints of the section is to inquire and ensure whether the accused got the opportunity to say his piece.*

35.5. *In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretations. The accused may not be put to prejudice to any omission or inadequate questioning.*

35.6. *The right to remain silent or any answer to question which may be false shall not be used to his detriment being the sole reason.*

35.7. *This statement cannot found the sole basis of conviction and is neither a substance to or a substitute piece of*



evidence. It does not discharge but reduces the prosecution burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

35.8. This statement is to be read as a whole. One part cannot be read in isolect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.9. Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of Indian Evidence Act, 1872, however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

35.10. The circumstances not put to the accused while rendering his statement under Section R to be excluded from consideration as no opportunity has been offered to him to explain them.

35.11. The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defense. The defense so articulated



must be carefully scrutinized and considered.

35.12. Non-compliance with the section may cause to the prejudice to the accused and may impede the process of arriving at a fair considerations.

18. In ***Prem Chand Vs. State of Maharashtra*** reported in **2023 5 SCC 522** their Lordships also evolved the guidelines for examination of the accused under Section 313 of Cr.P.C. which held as follows: -

15. What follows from these authorities may briefly be summarized thus:

15.1. Section 313CrPC [clause (b) of sub-section (1)] is a valuable safeguard in the trial process for the accused to establish his innocence.

15.2. Section 313, which is intended to ensure a direct dialogue between the court and the accused, casts a mandatory duty on the court to question the accused generally on the case for the purpose of enabling him to personally explain any circumstances appearing in the evidence against him.

15.3. When questioned, the accused



may not admit his involvement at all and choose to flatly deny or outrightly repudiate whatever is put to him by the court.

15.4. The accused may even admit or own incriminating circumstances adduced against him to adopt legally recognized defences.

15.5. An accused can make a statement without fear of being cross-examined by the prosecution or the latter having any right to cross-examine him.

15.6. The explanations that an accused may furnish cannot be considered in isolation but have to be considered in conjunction with the evidence adduced by the prosecution and, therefore, no conviction can be premised solely on the basis of the Section 313 statement(s).

15.7. Statements of the accused in course of examination under Section 313, since not on oath, do not constitute evidence under Section 3 of the Evidence Act, yet, the answers given are relevant for finding the truth and examining the veracity of the prosecution case.

15.8. Statement(s) of the accused



cannot be dissected to rely on the inculpatory part and ignore the exculpatory part and has/have to be read in the whole, inter alia, to test the authenticity of the exculpatory nature of admission.

15.9. If the accused takes a defense and proffers any alternative version of events or interpretation, the court has to carefully analyse and consider his statements.

15.10. Any failure takes a defense the accused's explanation of incriminating circumstances, in a case, may vitiate the trial and/or endanger the conviction.

19. Considering the well-settled principles in mind, every criminal court proceedings under Clause (b) of Sub-section (1) of Section 313 of Cr.P.C. has to shoulder the onus responsibility of scanning the evidence after the prosecution closes its case, to trace the incriminating circumstances in the evidence against the accused and to prepare relevant questions to extend opportunity to the accused to explain any such circumstances in the evidence that could be used against him.

20. In the present case, it does not appear from the records that the incriminating evidence was put to the



appellants and Investigating Officer didn't find any blood stain from the place of occurrence which is contradictory to the statement, made by Rajo Devi (injured) who got *farsa* blow on her forehead. Moreover, Investigating Officer had not seized the clothes of Razo Devi, the time of occurrence is also not mentioned in the case diary. The place where statement made by Rajo Devi is also not been mentioned in the Case Diary which was already been taken on 15.07.2005. Taking into consideration the entire material on record it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellants. Therefore, conviction granted by the trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably failed to prove the guilt of the accused/appellants for the charges levelled against him.

21. Hence, the impugned judgment of conviction and order of sentence dated 04.06.2013 passed by the learned trial Court against the appellant is set aside and the appellant is acquitted from the charge levelled against him. As the appellant is on bail, he is discharged



from the liability of bail bond.

22. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

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CAV DATE	
Uploading Date	
Transmission Date	

