

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.95 of 2013

Arising Out of PS. Case No.-107 Year-2007 Thana- BARACHATTI District- Gaya

Girdhari Yadav S/O Late Budhu Yadav R/O Village-Nima Tola Buniyada
Bigha, P.S.-Barachatte, P.S.and Distt.-Gaya

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Yadav, Advocate
For the Respondent/s : Mr. S.A.Ahmad, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date : 21-11-2024

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 16.01.2013 passed by the learned Adhoc Additional District Judge-III, Gaya in Sessions Trial No. 262 of 2009 arising out of Barachatte P.S. Case No. 107 of 2007, instituted for an offence punishable under Sections 341, 323 and 325 of the Indian Penal Code whereby and where under sole appellant have been sentenced to undergo simple imprisonment for nine months for offence punishable under Section 323 of the Indian Penal Code and further for imprisonment for one month for offence punishable under Section 341 of the Indian Penal Code with a direction that all



sentence shall run concurrently.

2. Heard Mr. Rajesh Kumar, learned counsel for the appellant assisted by Mr. Sunil Kumar and Mr. Achyut Kumar and Mr. S. A. Ahmed, learned APP for the State.

3. The brief facts leading to the filing of the present appeal are that as per the fardbeyan of the informant, he was working in the field and his son Vikash Kumar was taking water from the house, then at about 12 noon there was a dispute between the Children, then it is said that Girdhari Yadav turned his Son Vikash Kumar down twice with intention to kill him and also put his body on his stomach when his Son became unconscious then he was brought to his house on his shoulder and being strand by the side of wall at his house in the unconscious stage when the villager came to know about the fact and *Hulla* was there, then he has left his son at his door step and it was stated to the informant and the other Children who is in field told that his son was killed by the Girdhari Yadav he and put at his door step. Then he came to his house and taken his son to the BNP Clinic where he was kept under treatment at the whole night after some recovery his son was taken to the house then his son was treated in Dr. Farasat Hussain and again turned to his house 04.08.2007 after treatment at last his son was treat



at PHC Barachatte.

4. Initially the First Information Report lodge under Sections 341, 323 and 325 Indian Penal Code and after investigation the charge sheet was submitted under Sections 341, 323, 325 and 307 Indian Penal code on that basis cognizance was taken and the case was cancelled to the Court of Session and the charge was framed on 14.09.2009.

5. The prosecution examined altogether 8 prosecution witnesses in this to substantiate the charges against the appellants persons, out of them PW-1 Gauri Devi, PW-2 Mabina Khatoon, PW-3 Raj Kumar Singh, PW-4 Ramdeo Prasad, PW-5 Rajendra Prasad, PW-6 Vikas Kumar, PW-7 Gauri Devi and PW-8 Ranju Devi. On the other hand, the defence has not produced any oral evidence rather the signature of the informant on the fardbeyan is marked as Ext-1. It is necessary to mention here that the Doctor along with Investigating Officer has not been examined during the trial and no medical report has been submitted by the prosecution to substantiate that informant sustained any injury.

6. In support of the prosecution case, the prosecution has brought eight witnesses and, out of which, PW-1 mother of the victim, PW-2 is hostile, PW-3 and PW-4 are



here say witnesses, PW-5 Rajendra Singh is the informant of this case and he is also not an eye witness in this case, PW-6 is stated about the assault, PW-7 not supported the case and all the witnesses are interested witness and they have not seen the occurrence.

7. PW-1 Gauri Devi stated that the occurrence is of 12:00 noon. She had gone for showing the seedling of paddy and she was informed by Rupa Kumari her daughter that Vikas has been assaulted by Girdhari Yadav. Then she came to her house and saw his son in unconscious condition at her door step and the assailant had fled away. Then he was brought to a doctor at Sobh in evening, who had also examined the injury through x-ray and saline was also given, bleeding was there from his nose and mouth and next morning her son was brought back to the house, then again was taken to doctor Farasat Hussain at Gaya as he has not recovered and again, he was brought to Barachatti hospital for treatment. As such she is hearsay on the point of occurrence and the cause of dispute is stated as the dispute between the boys for playing. The suggestion that she has given false evidence and involved Girdhari falsely has been denied by PW-1.

8. PW-5 Rajendra Singh informant has stated that



the occurrence is of 01.08.2007 of 12:00 Noon, he was working in his field and after turning down and causing assault Girdhari Yadav had fled away. The assault was made to his son Vikas who was got seated at the doors and when he came to his door step, then he had seen bleeding from his nose and through a distance he had also seen the assault and when he has cried, the accused had fled away. His son was treated at Sobh and on third day by Dr. Farasat Hussain, then he was brought to Barachatti medical hospital and was treated. Police has taken his statement at Barachatti PAC. He has also identified his signature on the *fardbeyan* which is Ext. 1 and has also identified the appellant facing trial. In cross-examination of the defence, it has come that he was at the distance of 20-25 steps at the time of assault. He also stated the boundary of his house and occurrence took place at his door step. He could not see that who has come there and his son was at his door step and the accused has fled away and the suggestion that after a planning he falsely implicated accused to pressurise him has been denied. The suggestion that to extort some money he has filed this case and no such occurrence had taken place has also been denied.

9. Learned counsel for the appellant, at the outset, submits that the trial Court erred in convicting the



appellants for the charges, inspite of having no material available on record, except for the oral evidence of prosecution witnesses. He next argued that he has falsely been implicated by the informant in a criminal case. There is vital contradiction in manner of occurrence and genesis of the case has not been proved by the informant as there is delay of 4 days in lodging of FIR and no explanation for such has been given by the informant. There was no injury on caused to the informant's son or whatsoever. Further, the Doctor has also not examined to prove that injury is sustained by the informant's son or his son was treated anywhere and Investigating Officer of the case is also not examined so as to prove the offences, and therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused extending benefit of doubt.

10. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Apex Court in the case of ***Munna Lal Vs. State of Uttar Pradesh***, reported in **2023 SCC OnLine SC 80**, paragraph Nos.-28,39 and 40 of the said judgment are reproduced here-in-below:

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and



crystallized into 'settled principles of law.'
These are:

(a).

(b).....

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e).....

“39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye- witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non- examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having



regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case”.

“40. As far as non-obtaining of ballistic report is concerned, it is no doubt true that its essentiality would depend upon the circumstances of each case. Here, since no weapon of offence was seized, no ballistic report was called for and obtained. Although Mr. Giri contended that Munna Lal had a licensed gun, this Court has not been able to trace any evidence in the records in regard thereto. However, nothing turns on it. The failure/neglect to seize the weapons of offence, on facts and in the circumstances of the present case, has the effect of denting the prosecution story so much so that the same, together with nonexamination of material witnesses constitutes a vital circumstance amongst others for granting the appellants the benefit of doubt”.



11. On the other hand, learned Additional Public Prosecutor Mr. S. A. Ahmed has vehemently opposed these appeals and submits that there is direct allegation against the present appellants, for assaulting the informant's son. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeals should not be entertained.

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

13. 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 during the course of trial, the Learned Trial Court pleased to absolve the appellant from criminal liability under Sections 307 and 325 of the Indian Penal Code, but so far as Sections 323 and 341 of the Indian Penal Code are concerned, the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals



at the scene of the incident. Further, it appears that there is vital contradiction in manner of occurrence and genesis of the case which has not been proved by the prosecution as there is delay of 4 days in lodging of FIR and no explanation for such has been given by the prosecution and prosecution has failed to prove the injury sustained by the victim as neither any medical report has been exhibited nor any medical practitioner has been examined during the course of the trial. Further essential ingredient of Section 341 Indian Penal Code is also not fulfilled as the appellant/accused person have by no means voluntarily obstructed any one of the victims so as to prevent them from proceeding in any direction, as it had been so the victims would not have gone for their medical treatment. Investigating Officer has also not been examined during the course of trial as it was vital since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellant, thereby creating reasonable doubt in the prosecution case.

14. In the present case, it does not appear from the records that the incriminating circumstance under Section 313 of Cr.P.C. was put to the accused / appellant. 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/appellant for the charges levelled against him.

15. Hence, the impugned judgment of conviction and order of sentence dated 16.01.2013 passed by the learned Adhoc Additional District Judge-III, Gaya in Sessions Trial No. 262 of 2009 arising out of Barachatte P.S. Case No. 107 of 2007 against the appellant is set aside and the appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from his liability of bail bonds.

16. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
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