

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.117 of 2006

1. Intekhab Khan @ Golu son of Md. Ilyas Khan, resident of village Dhanghai, P.S. Bikramganj, District-Rohtas.

2. Firoj Alam son of Jibral Ansari, resident of mohalla Dhibra Bikramganj, P.O.+ PS- Bikramganj, District – Rohtas.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Soni Kumari, Amicus Curiae

For the Respondent/s : Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

Date : 14-11-2024

Heard Ms. Soni Kumari, learned Amicus Curiae (appointed vide order dated 05.09.2024) and Mr. Mukeshwar Dayal, learned A.P.P. for the State.

2. This appeal has been filed by the appellants under Section 374 (2) of the Cr.P.C. against the judgment of conviction dated 01.02.2006 and order of sentence dated 04.02.2006 passed by learned Additional Sessions Judge, F.T.C. 2, Rohtas at Sasaram in Sessions Trial No.436 of 2002 (arising out of Bikramganj P.S. Case No.73 of 2002) whereby and whereunder the appellants, namely, Intekhab Khan @ Golu and Firoj Alam have been convicted under Sections 450, 376/511 of the I.P.C. and the accused Firoj Alam has further been convicted



under Section 25(1-B)a of the Arms Act. Both the appellants have been sentenced to undergo R.I. for four years under Sections 450, 376/511 of the I.P.C. Further the appellant Firoj Alam was also sentenced to undergo R.I. for five years under Section 25(1-B)a of the Arms Act. It has been directed that both the sentences will run concurrently.

3. The prosecution case in brief is that while the informant Taramuni Kuer on 05.04.2002 at 10 PM was sleeping with her daughter Kanchan Devi, she heard the sound of knocking the door then she asked who was knocking the same, upon which one man told that he was Firoj then she opened the door. Then accused Firoj and Golu Khan entered the room. Firoj aimed the pistol at the neck of the informant and threatened her not to raise alarm. Accused Golu shut her mouth and threw her on Chowki. It is further alleged that her daughter Kanchan Devi, who was standing nearby, accused Firoj caught her and threw her on Chowki and tried to commit rape with her. The informant and her daughter opposed the same. The informant and her daughter snatched the pistol from the hand of the accused Firoj and raised alarm on which Salauddin, Shamim and Mandan Prasad came there and accused persons fled away. People of *mohalla* identified them and they informed the police station by



telephone. The police came there and in presence of people of *mohalla*, the informant gave pistol loaded with six round cartridges. The informant filed a written application to Bikramganj Police Station and police registered the case against the accused persons as Bikramganj P.S. Case No.73 of 2002.

4. The police after investigation submitted charge sheet against the appellants and after cognizance, the case was committed to the Court of Sessions where charges were framed.

5. In order to establish the charge, the prosecution has examined five witnesses. PW-1 is Taramuni Kuer (informant), PW-2 is Kanchan Devi, PW-3 is Jamuna Prasad (I.O.), PW-4 is Shashi Kumar Singh and PW-5 is Shamim Ahmad.

6. On behalf of prosecution, four documents were exhibited. Ext.1 is formal F.I.R., Ext.2 is seizure list, Ext.3 is report of Sergeant Major and Ext.4 is a sanction report.

7. The statements of the accused persons under Section 313 of the Cr.P.C. were recorded to which they denied the allegation and pleaded not guilty.

8. On the basis of the evidence, the learned trial Court has convicted the appellants as stated above.

9. Learned Amicus Curiae appearing for the appellants submits that PWs-1, 2, 4 and 5, who are witnesses on the point



of occurrence including the informant and the victim were declared hostile and they have not supported the prosecution case. There is no material against the appellants. There are major contradictions in the statements of the prosecution witnesses. No independent witness has been examined. She further submits that the seizure list witnesses have not been examined in this case. She also submits that when the informant and her daughter, who were the alleged eye witnesses of the occurrence, have not supported the prosecution case. The prosecution has miserably failed to prove its case. She states that the I.O. in his deposition has found that the house of the victim, which is the place of occurrence, had no door and the case of the prosecution is that both of the accused entered the house of after knocking the door and thus the prosecution failed to even prove the place of occurrence. She next submits that even during the examination of the appellants under Section 313 of Cr.P.C., the appellants have denied the allegation and with respect to possession of the firearms, no question was put to accused Firoj Alam (appellant no.2). She also states that the seized materials i.e. pistol and cartridges were never brought before the Court for identification as such this fact also demolishes the prosecution case.



10. On the other hand, learned A.P.P. for the State submits that the prosecution has been able to prove its case and the instant appeal is liable to be dismissed.

11. I have carefully perused the record and considered the submissions advanced by the learned counsel for the parties. Before proceeding to notice the rival submissions, it would be apposite to notice the testimony of the prosecution witnesses.

12. PW-1 Taramuni Kuer is the informant, who has been declared hostile on the request of the State. In her examination-in-chief, she has stated that when her door was knocked, she opened the door then two persons entered her house and started assaulting her and she snatched pistol from them and when she raised *hulla* then both accused persons fled away. She has not recognized them. She handed over the pistol to Daroga Ji. She stated that she has not given the written report to Daroga Ji and Daroga Ji has only taken her signature on a plain paper. In her cross-examination, she has stated that the appellants belong to her *mohalla*.

13. PW-2, Kanchan Devi in her deposition stated that at the time of occurrence she was sleeping with her mother and younger sister. She further stated that when her mother opened the door, pistol was pointed on her and one person started



scuffling (*hatha-pai*) and on hearing *hulla*, both the accused persons fled away and she and her mother snatched the pistol. She has not recognized the accused persons. She was also declared hostile.

14. PW-3, Jamuna Prasad is the I.O. of the case, who has deposed that he got information from the telephone that two culprits entered the house of the informant and showed pistol and tried to commit rape and the pistol of the culprits was snatched. For verification of the said information, he went to the place of occurrence where the informant produced one pistol and told that she and her daughter snatched the loaded pistol from the accused Firoj Alam and on *hulla* both accused persons fled away. He further deposed that on the basis of written application of the informant, he lodged the case and F.I.R. has been marked as Ext. 1. He further deposed that he prepared production-cum-seizure list of the pistol and obtained signature of the witnesses. The same has been marked as Ext. 2. He further deposed that the place of occurrence is house where the informant resides as tenant. He recorded the statements of informant and witnesses and inspected the place of occurrence. He proved the report of Sergeant Major as Ext. 3 and sanction report of D.M. as Ext. 4.



15. PW-4, Shashi Kumar Singh and PW-5, Shamim Ahmad deposed that they do not know about the occurrence and they have been declared hostile by the prosecution.

16. In the present case, the informant (PW-1) and the victim (PW-2) both have not supported the case of prosecution and have been declared hostile. The informant in her deposition deposed that she had not given any written report to the I.O. and the I.O. had taken her signature on a plain paper and she further deposed that the I.O. had not taken her statement and thus she has demolished the prosecution case. The victim also deposed that the I.O. had not taken her statement with respect to the occurrence. She had not identified both the accused persons due to darkness. She had even not deposed with respect to any attempt of rape on her.

17. Moreso, nearby people who were assembled after hearing *hulla* have not been examined. The prosecution failed to examine the persons who have informed the Police Station on telephone and on whose information the police came at the place of occurrence. The independent witnesses, who have made signatures on the seizure list, have not been examined in this case to prove the seizure which creates doubt in the prosecution case. The I.O. in his deposition stated that he inspected the place



of occurrence and found that the informant was staying in a rented house which is without door and, however, as per the prosecution case, the place of occurrence is the house of the informant who opened the door on knocking by the appellants and thus the prosecution failed to establish the place of occurrence. The seized pistol has not been brought before the Court for identification.

18. Learned Amicus Curiae rightly submits that failure to put material circumstances with respect to evidence against the appellant no.2 with respect to possession of firearm (loaded pistol) amounts to serious irregularity. Non-questioning of an accused on 'incriminating circumstances' and depriving him an opportunity to explain the circumstances under Section 313 of Cr.P.C. is against the fundamental principle of fairness.

19. Considering the entire materials available on record, it is not possible to conclude that the appellants/convicts before this Court had committed the subject crime.

20. In the light of the above discussions, the appellants/convicts are certainly entitled for benefit of doubt as the prosecution has failed to establish their guilt by adducing clear, cogent, trustworthy and clinching evidence.

21. In the result, the appeal deserves to be allowed and is,



accordingly, allowed. The impugned judgment of conviction dated 01.02.2006 and order of sentence dated 04.02.2006 passed by learned Additional Sessions Judge, F.T.C. 2, Rohtas at Sasaram in Sessions Trial No.436 of 2002 (arising out of Bikramganj P.S. Case No.73 of 2002) are accordingly set-aside. The appellants are acquitted of the charges leveled against them.

22. It appears from the record that vide order dated 04.04.2006, this Court had granted bail to the appellants on furnishing bail bonds during the pendency of this appeal. Since the appellants are already on bail, they are discharged from the liability of their bail bonds.

23. Before parting with the appeal, this Court records the appreciation for assistance rendered by Ms. Soni Kumari, learned Amicus Curiae. Patna High Court Legal Services Committee is hereby directed to pay Rs.7,000/- (Rupees Seven Thousand only) to Ms. Soni Kumari, learned Amicus Curiae in this case as a consolidated fee for the services rendered by her.

(Sunil Dutta Mishra, J)

Harish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.11.2024
Transmission Date	18.11.2024

