

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.296 of 2013

Arising Out of PS. Case No.-162 Year-2008 Thana- MOTIHARI MUFASIL District- East
Champaran

Raju Mukhiya S/O Charitar Mukhiya, Resident Of Village- Hasuaha, P.S-
Muffasil (Motihari), District- East Champaran. Appellant/s

Versus

The State Of Bihar Respondent/s

Appearance :

For the Appellant/s : Mr. Madhurendra Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

Date: 12-11-2024

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 dated 08.02.2013 and order of sentence dated 12.02.2013 passed by the learned Additional Sessions Judge-VI, Motihari (East Champaran) (hereinafter referred to as the learned 'trial Court') in Sessions Trial No. 201 of 2009 arising out of Motihari (Mufassil) P.S. Case No. 162 of 2008 G.R. No. 1993 of 2008, instituted for an offence punishable under Sections 341, 324, 307 and 504 of the Indian Penal Code whereby and where under the appellant above named found guilty for the offence punishable under Section 307 of the Indian Penal Code and hereby sentenced to undergo ten years of rigorous imprisonment and fine of Rs. 5000/- (five thousand) and in default of payment of fine the appellant shall further sentence



to undergo simple imprisonment for a term of six months.

2. Heard Mr. Madhurendra Kumar, learned counsel for the appellants and Mr. Mukeshwar Dayal, learned APP for the State.

3. The brief facts leading to the filing of the present appeal is that on 01.09.2008, when the informant along with his father Bangur Mukhiya and some other persons was returning home after fishing then at about 7.30 PM near Paddy field of one Ganga Mukhiya the appellant Raju Mukhiya armed with knife came and started stabbing upon the father of the informant resulting which Bangur Mukhiya @ Lakhi Chand Mukhiya become injured. It is further stated that thereafter the appellant ran away from the place of occurrence and the informant with the help of co-villagers brought his injured father at Rahman Hospital, Motihari where the injured was treated. The cause of occurrence is said to be a dispute for catching fish. It is further stated that due to seriousness of the injured and being occupied in treatment of his father, this case was lodged after delay of three days.

4. That on the basis of the *fardbeyan* of the informant Mufassil Police station case no. 162 of 2008 was lodged on 4.9.2008 for the offences under Sections 341, 324,



307 and 504 of the Indian Penal Code against the sole appellant and after proper investigation, the Investigating Officer submitted charge sheet for the offences punishable under Sections 341, 504, and 307 of the Indian Penal Code on which the learned Chief Judicial Magistrate, Motihari took cognizance and committed this case to the Court of Sessions.

5. The prosecution examined altogether six witnesses to substantiate the charges against the appellant, out of them, PW-1 Yogi Mukhiya, PW-2 Kapildeo Mukhiya, PW-3 Paras Mukhiya, PW-4 Bangur Mukhiya @ Lakhichand Mukhiya, PW-5 Umesh Kumar Mukhiya (informant) and PW-6 Dr. Dhananjay Kumar. On behalf of the prosecution, the *fardbeyan* is marked as Ext.-1 and the injury report is marked as Ext.-2 as documentary evidences.

6. The defence also produced some documents which are exhibited as follows: -

- i. Ext-A is C.C. of order dated 19.06.2001,
- ii. Ext-B to Ext-B/2 are C.C. of F.I.R. and *fardbeyan*,
- iii. Ext-C to C/2 are C.C. of Charge sheet and
- iv. Ext-D is a C.C. of statement under section 164 of Cr.P.C.

7. It is necessary to mention here that the Investigating Officer of this case has not been examined during



course of trial.

8. PW-1, namely, Jogi Mukhiya and PW-2 Kapildeo Mukhiya are said to be present on spot with the informant and injured at the time of occurrence. From perusal of fardbeyan as well as the evidence of PW-4 and 5, it is clear that these two witnesses are also with the informant and injured.

9. PW-3, Paras Mukhiya, this witness claims to be an eye witness but from perusal of the entire evidence, it appears that this witness is a hearsay witness and saw the injured after occurrence. But from perusal of the evidence of this PW-3, it is clear that he has supported the injuries on the person of the injured.

10. PW-6 is the doctor who has examined the injured and issued the injury report. The injury report as well as the evidence of this PW-6 that the injured Bangar Mukhiya @ Lakhi Chand Mukhiya was also operated in the hospital, this PW-6 has proceed the injury report which has been marked as Ext-2.

11. From perusal of the injury report it transpires that the injured has sustained the following injuries on his persons:-



I. Aclena incised wound over (Lt.) lumber region pointing of strangulated Gut, measuring about 4" X 1" X cavity deep.

II. Multiple incised wound over abdomen measuring about 1'X 11" X 1/2" sub cut deep.

III. A clean incised wound over Lt side face from outer edge of Lt eye extending to the Lt. upper lip measuring about 4" X 1" X 4".

IV. A clean incised wound over Lt. Forearm (hand) just above the wrist joint measuring about 3" X 1" X sub cut deep.

V. A clean incised wound over Lt Foot dorsal aspect measuring about 1 " X " X sub cut deep.

12. In these injuries, injury no.1 is grievous and the same was operated. This fact has been corroborated by Ext-2 and in para- 2 of the evidence of the P.W.-6.

In para 7 of his cross examination his P.W.-6 has stated that "the injury no.1 was sufficient to caused of death". So the Ex-2 and the evidence of P.W.-6 is fully corroborates the injuries as sustained.

13. Learned counsel for the appellant Mr. Madhurendra Kumar, at the outset, submits that the trial Court erred in convicting the appellant for the charges, in spite of having no material available on record, except for the oral evidence of six prosecution witnesses. He next submits that the learned trial Court has rejected the evidences produced by the defence and illegally relied upon the evidences of the



prosecution witnesses which are almost relative witnesses and not trust worthy. The learned trial Court also not considered the fact that the prior to the present occurrence, the brother of the injured one Kishori Mukhiya has kidnapped the sister of the appellant for whom the appellant filed a case and only to take revenge the prosecution has brought this false and fabricated case with a concocted story. It is also relevant to state here that the evidences of the prosecution witnesses are self-contradictory and discrepant. He further submits that the learned trial Court illegally relied upon PW-1, PW-2, PW-3, PW-4 and PW-5 which are not come with fair hands and the prosecution brought the witnesses only to take revenge with the appellant family. He, lastly, submits that there is unexplained delay of three days in reporting the occurrence to the Police and learned trial Court also illegally relied upon the explanation of the prosecution party for the delay in lodging the F.I.R. which is a material issue. The Investigating Officer has also not been examined during the course of trial.

14. On the other hand, learned Additional Public Prosecutor Mr. Mukeshwar Dayal has vehemently opposed the appeal and submits that there is direct allegation against the present appellant for assaulting the informant. 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.

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

16. After reading and perusal of the entire case record as well as fardbeyan, it is clear that this occurrence is of 01.09.2008 whereas this case was lodged on 04.09.2008 after three days delay. But in last para of the *fardbeyan* the informant has explained the delay that due to seriousness of his father (injured) he could not informed the police. This statement is also corroborated by Ext-2, which shows that the injured Bangur Mukhiya was admitted in Rahman Hospital Motihari on 01.09.2008 at about 10 PM and he was also operated by the doctor. So, the explanation regarding delay is natural and genuine.

17. On perusal of the entire evidences available on record, it appears that the injured persons has altogether five injuries sustained by him and the same has been examined by the doctor, out of which, the first injury was of grievous nature and the same injury stated to be sufficient to cause death. This



has been stated by the doctor during the examination of the injured. Such injuries stated by the doctor cannot be an injury caused by one self and the same cannot be a doctored injury. From perusal of the Ext-A, B & C, it transpires that the injured Bangur Mukhiya @ Lakhi Chand Mukhiya is an accused of one of the murder case and the informant of the case is one Jai Lal Mukhiya who has no concern with the accused. Likewise, Ext-B/1, C/1 shows that the father of the appellant Charittar Mukhiya has filed a case against one Kishori Mukhiya and one other for kidnapping of his daughter. So, the documents as filed by the defence are not helpful for the appellant. The Ext-B/2 and C/2, which are the fardbeyan, FIR and chargesheet of Mufassil P.S. Case No. 163 of 2008, show that this appellant has filed a case against the injured Bangur Mukhiya and witness Yogi Mukhiya and others for causing hurt to him.

18. Further the Investigating Officer has not been examined in this case. This court has gone through entire records and FIR and it appears that the defence while cross-examining the prosecution witness under Section 145 of the Indian Evidence Act has not drawn attention with regard to the any contradiction of Investigation done by the IO and Thus, Non-examination of IO does not prejudice the trial. Therefore,



the case has been proved beyond reasonable doubt. Further, PW-5, who is the informant namely Umesh Mukhiya has proved the *fardbeyan* in Para 3, and there is no material contradiction due to non-examination of the Investigating Officer. The defence did not cross examine the prosecution witness/informant with this regard.

19. It is pertinent to note here that the appellant can not be falsely implicated as independent witnesses have supported the prosecution story and corroborated by PW-6 an independent source who is the doctor, who prepared the injury report of the victim as in such condition they all are natural and trustworthy witnesses.

20. The **Hon'ble Apex Court**, in the case of **State of U.P. vs Tribhuwan, (2018) 1 SCC 90** has laid down that, time spent in custody by a convicted person, both as an under-trial and as a convicted person, may be considered as jail sentence awarded to him and he may get the advantage of set-off under Section 428 of Cr.P.C.

21. From perusal of trial record, it is evident that the appellant has got sufficient judicial custody since 06.08.2008 till 18.06.2013. There is no adverse report against the appellant about his conduct otherwise the same would have



been brought to our notice by learned counsel for the State. Thus, accordingly, the judgment of conviction dated 08.02.2013 passed by the learned Additional Sessions Judge- VI, Motihari (East Champaran) in Sessions Trial No. 201 of 2009 arising out of Motihari (Mufassil) P.S. Case No. 162 of 2008 is upheld and affirmed. Since the appellant has already served approximately five years of custody, the sentence of the appellant is reduced to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.

22. Accordingly, the appeal is partly allowed.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	NAFR
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