

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.602 of 2016

Arising Out of PS. Case No.-38 Year-2006 Thana- DAUDNAGAR District- Aurangabad

1. Mahendra Paswan S/o Late Sriram Paswan
2. Vijay Paswan S/o Late Sriram Paswan
3. Jiwan Paswan S/o Late Sriram Paswan
4. Dinesh Paswan S/o Ram Sudeshwar Paswan
5. Manoj Paswan S/o Jiwan Paswan
All R/o Vill. - Khaira Deep, P.S.- Daudnagar, District- Aurangabad

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Singh, Advocate Mr. Abhishek Kumar Singh, Advocate
For the State	:	Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 22-10-2024

The present appeal has been preferred against the impugned judgment of conviction and the order of sentence both dated 02.07.2016 whereby all the appellants have been found guilty under Sections 148 and 323 of the Indian Penal Code and the appellant Mahendra Paswan additionally under Section 307 of the Indian Penal Code. They have been sentenced to simple imprisonment for one year under Section 148 of the Indian Penal Code and simple imprisonment for 6 months under Section 323 of the Indian Penal Code. Appellant Mahendra Paswan has been further sentenced to undergo



rigorous imprisonment for 7 years and to pay a fine of Rs. 5,000/- under Section 307 of the Indian Penal Code and in case of default to pay the fine, to undergo further rigorous imprisonment for 6 months. All the sentences have been directed to run concurrently.

Prosecution case.

2. The prosecution case as emerging from the *fardbeyan* of the informant Sohrai Ram is that at 6 O'clock in the morning on 05.03.2006, the appellants started demolishing the house drainage of the informant saying that the water is flowing from the drainage in their field. When the informant prohibited them from demolishing the drainage, they started assaulting him by fists. Appellant Mahendra Ram exhorted them to shoot him dead, whereupon Mahendra Ram took out pistol from his waist and shot at the informant which hit his back and the pellet remained in the body. When Ramdahin Ram, Dharmendra Ram, Ramkebal Ram, Valdeo Ram and some others living in the same mohalla came, the appellants fled away and the informant was taken to Government hospital, Daudnagar for treatment.

Factual background.

3. On the basis of the *fardbeyan*, Daudnagar P.S. Case



No. 38 of 2006 was registered for the offence punishable under Sections 147, 148, 149, 323, 324 and 307 of the Indian Penal Code and Section 27 of the Arms Act. After investigation, charge sheet was submitted against the Appellants for the offences punishable under Sections 307, 323, 324, 147, 148 and 149 of the Indian Penal Code and Section 27 of the Arms Act. After cognizance of the offence, the case was committed to the Court of Sessions and charge was framed against the Appellants under Sections 148, 323, 307 read with Section 149 of the Indian Penal Code and against the Appellant Mahendra Paswan additional charge under Section 324 of the Indian Penal Code and Section 27 of the Arms Act were framed. The charges were read over and explained to them to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

4. During trial, altogether eight witnesses were examined. P.W.-1 is Dhaneshar Ram, who is a co-villager but he knows nothing about the case. P.W.-2 is Dilkeshwar Ram, who is uncle of the informant and he has claimed to be eye-witness. P.W.-3 is Anil Kumar Das, who is a co-villager and cousin in relation. P.W.-4 is Raj Kumari Devi, who is wife of the informant. P.W.-5 is Lakhpatiya Devi, who is daughter of the informant. P.W.-6 is Sohrai Ram, who is informant himself.



P.W.-7 is Amiruddin Khan, who is Investigating Officer of the case and P.W.-8 is Baikunth Singh, who is a formal witness and advocate clerk and injury report and formal F.I.R. have been exhibited through him.

5. The prosecution also brought on record the following documentary evidence:

- (i) Ext. 1 - Fardbeyan
- (ii) Ext. 2 - Formal F.I.R.
- (iii) Ext. 3 - Injury report
- (iv) Ext. 3/1 - Supplementary Injury report
- (v) Ext. 4 - Memo of injury

Statement under Section 313 Cr.PC

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

Findings of the Trial Court.

7. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed



the impugned judgment of conviction and the order of sentence whereby all the appellants have been found guilty and sentenced accordingly.

8. I have heard learned counsel for the appellants and learned APP for the State.

Submissions of the parties.

9. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence passed by learned Trial Court are not sustainable in the eyes of law or on facts. Learned Trial Court has failed to appreciate the evidence on record and erroneously passed the impugned judgment of conviction and the order of sentence.

10. He further submits that all the non-official witnesses are close family members of the informant and there is substantive contradictions and discrepancies going to the root of the prosecution case in their testimony. They have also improved their prosecution case giving a different story from that of the fardbeyan. He further submits that alleged injury caused by the appellant has not been proved because the doctor who examined the alleged victim, is not examined. The injury report has been exhibited by a formal witness, who was a Advocate Clerk.



11. *Per contra*, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts and they have been appropriately sentenced.

12. I have thoroughly perused the relevant materials on record and given thoughtful consideration to the submissions advanced by both the parties.

Appreciation of the evidences and finding of this Court

13. From perusal of the evidence on record, I find that altogether 8 witnesses were examined. P.W.-6 is informant himself and P.W.-2 to P.W.-5 are close relatives. All of them have claimed to be eye-witnesses, however in their testimony, they have drastically improved the prosecution case. As per the fardbeyan, the occurrence took place when the informant Sohrai Ram prohibited the appellants from demolishing his drainage, thereupon he was assaulted by the appellants and there is no mention of other family members of the informant being present on the place of occurrence. Not only informant but even the family members of the informant had developed the story deposing that in the first occurrence, there was only altercation



between the informant and the appellants and informant was assaulted by fists and arms. Thereafter, there was panchayati and matter was settled and thereafter the informant went to the house of Nagina Dubey where he was working as an employee to feed his animals. Once he came back from the house of Nagina Dubey, the informant found that there is altercation going on between his wife and Mahendra Paswan. Thereafter the informant advised his wife to go inside the house. Thereafter Dinesh Paswan exhorted Mahendra Paswan to kill him by shooting him dead and thereupon Mahendra Paswan shot at him.

14. As such, there is material contradictions between the prosecution case as emerging from the fardbeyan and that of the testimony. As such, I find that the presence of the non-family members of the informant, who were present on the place of occurrence itself become doubtful. Moreover, in view of the development of the prosecution in the testimony before the Court rendered them unreliable witnesses.

15. I further find that injury allegedly caused by the appellants has not been proved by the prosecution. The Doctor who examined the alleged victim has not been examined injury report has been brought on record only by the formal witness who was Advocate Clerk. Hence, injury did not get proved. The



appellants did not get any opportunity to cross-examine the doctor.

16. In view of the aforesaid facts and circumstances, I find reasonable doubts in the prosecution against the appellants and hence, appellants are entitled to get benefit of doubts.

17. Hence, the impugned judgment of conviction and the order of sentence are not sustainable in the eye of law.

18. Accordingly, the present appeal is allowed acquitting all the appellants of all the charges.

19. The record of the case be returned to the Trial Court forthwith.

20. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	NA
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