

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (SJ) No.8 of 2001

(Against the order and judgment of acquittal dated 12.04.2001 in connection with S.T. No. 45 of 2000/228 of 2000 passed by the 5th Addl. Sessions Judge, Gaya)

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The State of Bihar

.... Appellant

Versus

1. Bhim Prasad @ Chuha
2. Gunjan Devi

.... Respondents

---with---

Criminal Revision No. 336 of 2001

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Ganga Prasad, S/o late Ram Kishun Ram, R/o Mohalla – Dhamitola, Purani Godown, P.S. Kotwali, District - Gaya

.... Petitioner

Versus

1. The State of Bihar
2. Bhim Prasad @ Chuha, S/o late Ram Kishun Ram, R/o Mohalla – Dhamitola, Purani Godown, P.S. Kotwali, District – Gaya
3. Gunjan Devi, W/o Bhim Prasad @ Chuha, R/o Moh. Dhamitola Purani Godown, P.S. Kotwali, District - Gaya

.... Opposite parties

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Appearance:

(In G. APP. (SJ) No. 8 of 2001)

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Ravindra Kumar Sinha
Mr. Anita Kumari Singh

(In CR. REV. No. 336 of 2001)

For the Petitioner/s : Mr. Sudarshan Sharma
For the Opposite Parties : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE MANDHATA SINGH
C.A.V. JUDGMENT

Date: 7-02-2013

Mandhata Singh, J.

Prosecution case initiated on fardbeyan of one

Ganga Prasad, victim of the case, P.W.2, in brief, is that on

07.09.1999 at about 10.45 A.M. he was going to deposit Rs.8000/- cash in Punjab National Bank, Dhami Tola Branch. He was keeping some papers in his bag also in connection with case pending in Court. As he proceeded 20 yards ahead near shop of Shivchand Mahuri and Madan Mahuri, he saw his younger brother Bhim Prasad @ Chuha and his wife Gunjan Devi having in their hand Bhujali. Two unknown persons aged about 25-30 years were also accompanying them. They were holding dragger and revolver. Chuha opened a fire thereafter flung him (P.W.2). He blew his Bhujali aiming his neck but in attempt to save his wrist of left hand was hit. His wife gave three Bhujali blows which hit his face on the left side of nose, palm, right hand and abdomen above waist. Further Chuha and two other unknown persons gave dragger blow causing injury at his knee of right leg, khili of both legs and panja. For Chuha, it is alleged that he fled taking his bag containing cash and papers. He became unconscious and recovered sense in hospital. Incident is said witnessed by all the shop keepers other than his wife who was coming from behind. For Chuha @ Bhim, it is said that he is a veteran criminal and his wife was also charge-sheeted in several cases.

2. After concluding the trial, case is ended in acquittal of both the named accused persons. In all, 5 witnesses are

examined on behalf of the prosecution. They are P.W.1 Kamal Kant Pandey, P.W.2 Ganga Prasad, informant of the case, P.W.3 Dr. Mahesh Chaudhary, P.W.4 Rajiv Ranjan Singh, I.O. of the case, P.W.5 Jadunandan Prasad, a formal witness.

3. 3 more witnesses are examined as Court Witnesses. They are Court Witness No.1 Janki Devi, mother of the informant, Court Witness No.2 Pramila Devi, sister of the informant and his brother Chuha @ Bhim and Court Witness No.3 Urmila Devi, wife of the informant.

4. In all, 29 documents are exhibited in the case on behalf of the prosecution and several on behalf of defence. On behalf of prosecution they are Ext. 1 is Referral Ticket, Ext.2 Medical Certificate for leave, Ext.3 Out door ticket of A.I.M.S., Ext.4 prescription of Dr. Harish Grover, Ext. 4 series prescription of different Doctors, Ext. 5 Summary of R.B. Seth Jessa Ram & Bros. Charitable Hospital, Delhi, Ext.6 Out door ticket of same hospital, Ext.7 series pathological report and other reports, Ext.8 series Requisition of 'X'- Ray reports, Ext. 9 Injury report, Ext.10 prescription of Dr. A. Barkat, Unit of Surgery Magadh Medical College Hospital, Ext. 11 formal F.I.R. and Ext. 12 Fardbeyan of present case, Ext.13 Judgment of Sessions Trial No. 72 of 1984, Ext. 14 charge-sheet against Chuha in Kotwali P.S. Case No. 103 of

1987, Ext. 15 is order for framing charge, Ext. 16 order sheet of G.R. Case No. 2566 of 1994, Ext. 17 Order passed in Sessions Trial No. 116 of 1999, Ext.18 order passed in G.R. No. 68 of 1988, Ext. 19 Order of Kotwali P.S. Case No. 13 passed in Sessions Trial No. 210 of 1999, Ext.20 charge sheet in Kotwali P.S. Case No. 141 of 1988, Ext. 21 charge sheet in Kotwali P.S. Case No. 273 of 1984, Ext. 22 order sheet of Kotwali P.S. Case No. 246 of 1984, Ext. 23 order sheet of C.W.J.C. No. 344 of 1999, Ext. 24 Judgment in Trial No. 68 of 1998, Ext. 25 deposition of Bhim Prasad in G.R. Case No. 829 of 1989, Ext. 26 order sheet of Kotwali P.S. Case No. 146 of 1990, Ext. 27 Judgment in G.R. No. 160 of 1996, Ext. 28 Charge sheet in Kotwali P.S. Case No. 146 of 1998 and Ext. 29 letter to D.I.G. by Ganga Prasad.

5. Documents on behalf of defence are Ext. A certified copy of F.I.R. dated 07.07.1998, Ext.A/1 certified copy of fardbeyan dated 06.07.1998, Ext. B certified copy of evidence of Archana Kumari dated 08.07.1998, Ext.C certified copy of order passed in Bail Petition no. 206 of 1998/1304 of 1998 by 1st Additional Sessions Judge dated 01.08.1998, Ext. C/1 certified copy of order sheet passed by C.J.M. dated 16.07.1998 to 23.07.1998, Ext.D certified copy of final report, Ext. D/1 certified copy of final report of S.I. Jehanabad dated 01.11.1976 and Ext.E

certified copy of charge sheet dated 31.08.1998.

6. Of prosecution witnesses, P.W. 5 is a formal witness, P.W.4 I.O. of the case and P.W.3 Dr. Mahesh Chaudhary who has issued injury report, Ext. 9. P.W.1 and P.W.2 are only material witnesses on behalf of prosecution. Of them, P.W.1 is claiming to be himself an eye witness, while P.W.2 is victim himself. Three more witnesses are examined in the case as Court Witness. They come from family of the parties but all the material witnesses either examined on behalf of prosecution or by the Court state about taking place of the incident in which victim received injuries.

7. On the point of involvement of the accused-respondents, they can be doubted or disbelieved but not on the point of taking place of incident and receiving of injuries by the victim of the case. In the F.I.R., claim is made that nearby shopkeepers witnessed the incident but none is named nor appeared to state the incident. P.W.1 is examined in the case after a period of near about two months by the I.O. can be doubted on the point of involvement of the accused-respondents. C.Ws.1, 2 and 3 are also disbelieved on the point of involvement of accused-respondents. They have not been shown eye witness of the case in the F.I.R. even. Of them C.W.1 and C.W.2 do not state about causing of

assault by accused-respondents, rather stating reported by the victim that he was assaulted by unknown criminals. This part of their evidence, being hearsay, is not admissible but wrongly has been relied to disbelieve the prosecution case on the point of involvement of accused-respondents.

8. C.W.3 in Court is stating about taking place of the incident in her presence but giving different statement and stating the same sometime true version of the incident and sometime incorrect version of the incident but initially she has not been shown eye witness may not be believed or disbelieved as eye witness of the incident.

9. Now P.W.2 remains solely to state about taking place of the incident and he is trustworthy on this point. He has named both the accused respondents as assailant by means of Bhujali and conviction can be based on statement of single trustworthy witness. He has been disbelieved due to having no corroboration. Witnessing of the incident by shopkeepers and gathering of 150-150 persons is admitted to P.W.2 also and if none is examined in no adverse circumstance can be made a ground for doubting him but in this case none of them is named in the F.I.R. and documents are filed on behalf of both the parties that accused persons as well as victim were having criminal antecedent of

several heinous cases. In such circumstance common people will always remain reluctant to give evidence against any of them. Ignoring this point same has been made one of the grounds to disbelieve prosecution case which is not justified.

10. Another vital point for disbelieving prosecution case by the trial court is shown that the Doctor, who initially examined and provided medical aid, is not examined in the case. It has not come if any injury report was prepared and issued or not by the doctor of Pilgrim hospital where first aid was given to the injured. Further P.W.3 is doubted on the ground that he examined the victim on 7.9.1999 and issued injury report on 7.11.1999 may not be a ground to disbelieve if injury was recorded and examined on the same day. Really the injury report bears the date when same was collected by the I.O. There is no mention in the injury report about bandage over all the injuries, as observed by the Trial Judge. If that could have been then also receiving of injuries cannot be disbelieved for acquittal. Injuries are there. Victim is there to state the assailant either both are one and circumstance is existing about reluctance of appearing of other eye witnesses, so there could be no acquittal. Further circumstance in favour of prosecution is that informant is examined in the case when he was admitted in hospital. Ext. 1 is referral Ticket. Ext. 4 series and Ext. 10

prescription of doctors. Ext. 3 outdoor ticket of AIIMS. By issuance of injury report nature of the injury and weapon used only can be ascertained. It is for the Court to decide the real assailant, nature of the weapon used, nature of injuries received along with intention. In any case, acquittal cannot be justified.

11. Accordingly, this Government Appeal along with Revision is allowed. The order and judgment of acquittal dated 12.04.2001 in connection with S.T. No. 45 of 2000/228 of 2000 passed by the 5th Addl. Sessions Judge, Gaya is hereby set aside and case is remanded to the trial Court to decide the same afresh in accordance with law.

(Mandhata Singh, J.)

N.A.F.R.
Shail/-