
(2012) 12 PAT CK 0030
In the Patna High Court
Case No : Criminal Appeal (U/S) No. 7 of 2012

Deonath Sharma

APPELLANT

Vs

The State of Bihar and Rama Shankar

RESPONDENT

Date of Decision : 17-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 378(4)
Penal Code, 1860 (IPC) — Section 323, 324, 327, 379

Citation : (2012) 12 PAT CK 0030

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Md. Aslam Ansari, for the Appellant; S.A. Ahmad, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. Heard learned counsel for the appellant and the learned counsel appearing on behalf of the State. The present appeal has been filed u/s 378(4) of the Code of Criminal Procedure in pursuance of the leave granted by this Court on 7.11.2012 in S.L.A. No. 21 of 2012. The appeal is directed against the judgment of acquittal dated 15.3.2012 passed by the learned Additional District & Sessions Judge, Fast Track Court No. -V, Siwan in Cr. Appeal No. 29 of 2010, by which, he has allowed the appeal of the appellants by setting aside the judgment and order of conviction and sentence dated 6.6.2010 passed by the learned Chief Judicial Magistrate 1st Class, Siwan in Complaint Case No. 1204 of 2001. The learned Magistrate had convicted the accused, namely, Ram Suneshwar Sharma and Sant Kumar u/s 323 of the Indian Penal Code and sentenced them to undergo for one month simple imprisonment and fine of Rs. 100/- and in default of payment of fine, they were directed to undergo further seven days simple imprisonment and the accused, namely, Ram Shankar Sharma was convicted under Sections 379 and 324 of the Indian Penal Code. He was sentenced to undergo six months

simple imprisonment and a fine of Rs. 200/- u/s 324 of the Indian Penal Code and three months simple imprisonment and a fine of Rs. 200/- u/s 379 of the Indian Penal Code. However, both the sentences were ordered to run concurrently.

2. It is pertinent to note it here that in S.L.A. No. 21 of 2012, leave to appeal against the impugned judgment of the appellate court was sought against the accused persons, namely, Ram Suneshwar Sharma, Rama Shankar Sharma and Sant Kumar Sharma. However, the appellant did not press the S.L.A. against the accused, namely, Ram Suneshwar Sharma and Sant Kumar Sharma. By order dated 16.10.2012 passed by this Court in S.L.A. No. 21 of 2012, leave to appeal was granted only against the accused, namely, Rama Shankar Sharma. The present appeal has been filed, thereafter, against respondent no. 2 Rama Shankar Sharma only.

3. The appellant had filed Complaint Case No. 1204 of 2001 on 14.9.2001 in the court of the learned Chief Judicial Magistrate, Siwan against the accused persons, alleging therein that a pucca house of the complainant is situated in Revisional Survey Plot No. 1009 under Khata No. 268 having an area of 13 1/2 Dhoores land towards the western side situated at village Paniadih P.S. Bhagwanpur District Siwan, in which, the complainant had constructed three rooms towards north and east. The complainant and the witnesses Dhrupnath Sharma had constructed a pucca stair to go on the roof in front of the northern room. On 13.9.2001 at 5.30 p.m. in the evening, the accused persons, namely, Ram Suneshwar Sharma, Rama Shankar Sharma, Sant Kumar Sharma and Nagina Devi started to demolish and destroy the stair of the complainant by means of hammer and other equipments. Such act of the accused persons was objected to by the complainant. It has further been alleged the accused Rama Shankar Sharma assaulted by means of knife, the accused Ram Suneshwar Sharma and Sant Kumar Sharma assaulted by means of lathi and Nagina Devi assaulted by piece of brick to the complainant. The complainant sustained multiple injuries on his person. The accused Rama Shankar Sharma is further alleged to have taken away Rs. 220/- from the pocket of the complainant. The complainant claims that he sustained a loss of Rs. 15000/- due to the damage caused to the stair of the house.

4. The learned Chief Judicial Magistrate, Siwan made over the case u/s 192 of the Code of Criminal Procedure to the learned Judicial Magistrate 1st Class, Siwan for inquiry and trial. After inquiry, the learned Magistrate 1st Class, Siwan found a prima facie case to be out under Sections 323, 324, 327 and 379 of the Indian Penal Code and, thus, he issued summons against the accused persons. The accused persons, thereafter, appeared before the court. The Charges were framed to which, they pleaded not guilty and, as such, the trial commenced. In course of trial, one of the accused, namely, Nagina Devi died and, as such, her name was deleted from the column of the accused.

5. In course of trial, on behalf of the prosecution, altogether 8 witnesses were

examined. They are P.W. 1 Ram Prasad Singh, P.W. 2 Dharm Nath Sharma, P.W. 3 Babulal Yadav, P.W. 4 Deonath Sharma (the complainant), P.W. 5 Dr. Narendra Kumar (the doctor who examined the complainant), P.W. 6 Jagdish Pathak, P.W. 7 Dhruv Nath Sharma and P.W. 8 Ram Bilash Singh. Apart from the oral testimony of the witnesses examined on behalf of the prosecution, three documents were also proved on behalf of the prosecution in course of trial. Those documents are Ext.-1, the injury report, Ext.-2, the complaint petition and Ext.-3, the deed of exchange dated 15.3.2002.

6. On behalf of the defence, one witness, namely, Jawaharlal Rai was examined, who has proved copy of the complaint petition No. 1453 of 2002 which was filed by the accused Ram Suneshwar Sharma against the complainant and others.

7. The learned Magistrate 1st class, Siwan after holding the trial convicted and sentenced the accused persons in the manner indicated hereinabove.

8. The accused persons preferred an appeal against the judgment and order of conviction and sentence. The appellate court by its judgment dated 15.3.2012 passed in Cr. Appeal No. 29 of 2010 acquitted the accused persons by setting aside the judgment and order of conviction recorded by the trial court.

9. I have heard both the sides.

10. Admittedly, both the parties are agnates and they live in the same house. There is land dispute between them. The complainant has not stated in the complaint petition as to the part of the body on which he sustained injuries due to the assault made by the accused persons. The alleged occurrence took place on 13.9.2001 at 5 p.m. The appellant after sustaining the injuries neither went to the police station nor went to any government hospital. He has instituted complaint in the court of the learned Chief Judicial Magistrate, Siwan on the next day, i.e., on 14.9.2001. He got himself examined by a private doctor on 14.9.2001. None of the witness examined on behalf of the prosecution has stated about the part of the body on which the complainant sustained injury/injuries. The witnesses examined on behalf of the prosecution are not consistent. They have contradicted each other. The doctor who examined the victim had found altogether four injuries on the person of the complainant. Out of the four injuries, three were simple in nature caused by hard and blunt substance. The injury no. 1 was also found to be simple but was caused by sharp edged weapon. The defence of the accused is that they have falsely been implicated in the case. There was no injury caused to the complainant and the medical report given by a private doctor was collusive one. Apparently, the witnesses, including the complainant, are silent regarding the part of the body on which the accused persons caused injury. It is well settled that the injury report issued by a doctor has a corroborative value in evidence. The manner of assault is to be proved by the ocular testimony of the witnesses examined on behalf of the prosecution in course of trial. When the witnesses examined on behalf of the prosecution are themselves silent on the point of manner of occurrence, the medical report is of

no consequence. The genesis of occurrence is that the accused persons were demolishing the stair. The witnesses examined on behalf of the prosecution could not prove the fact that the stair was constructed by the complainant. Under the circumstances, even the genesis of the occurrence has not been proved. Of course, there is an omnibus and general allegation in the complaint that the accused persons assaulted the complainant but, that in itself is not sufficient to prove the prosecution case beyond reasonable doubts. The appellate court has taken into consideration the fact that the matter was not reported to the police promptly and the victim did not get himself examined by the doctor on the date of occurrence. The appellate court has also taken into consideration the fact that the witnesses have failed to establish the genesis and manner of occurrence.

11. Thus, I find that the appellate court has given clear, cogent and convincing reasons for recording acquittal. The findings of the appellate court are neither erroneous nor perverse. The mere fact that view other than the one taken by the appellate court can be legitimately arrived at on re-appraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless, the entire approach of the appellate court in dealing with the evidence is found patently illegal. For the reasons assigned, hereinabove, I do not find any merit in the present appeal. It is dismissed, accordingly.