
(2007) 05 PAT CK 0011
In the Patna High Court
Case No : Criminal Appeal No. 303 of 1992

Sabhachand Chaudhry and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 307, 323, 325, 34

Citation : (2007) PLJR 604

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : K.P. Yadav, Suresh Kumar and Avinash Kumar, for the Appellant;
Jharkhandi Upadhaya, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—This appeal at the instance of the six appellants herein has been preferred against the judgment and order dated the 28th November, 1992 passed by Sri Madhusudan Singh, the then 6th Additional Sessions Judge, Rohtas at Sasaram, in Sessions Trial No. 57 of 1984 arising out of Dawath P.S. Case No. 61 of 1982. By the impugned judgment and order whereas all the six appellants have been found guilty for the commission of offences punishable under Sections 147 and 323 I.P.C. and each of them have been sentenced to suffer simple imprisonment for six months on each count, appellants Munna Chaudhry and Birender Chaudhry have further been convicted for commission of offence punishable u/s 379 I.P.C. and each of them have further been sentenced to undergo rigorous imprisonment for a term of one year. All the sentences were directed to run concurrently. The prosecution case is based on the written report (Ext. 2) submitted on 18th May, 1982, by one Dhanraj Chaudhry (P.W. 3), inter alia, alleging therein, that earlier that day while he was returning home from Koath bazaar after purchasing clothes and other articles for marriage purposes and enroute when he reached near the Padri Saheb's bridge near village Kusanda, all the six F.I.R named accused surrounded and assaulted him and in

course thereof Birendra Chaudhry and Sabhachand Chaudhry jointly took away Rs. 3700/- kept in the upper pocket of his shirt and Munna Chaudhry and the son of Rajaram Chaudhry (Chittaranjan Chaudhry) snatched his wrist watch and Anil Kumar Chaudhry and son of Raghunath Chaudhry (Sheodas Chaudhry) assaulted him with danda as a result whereof he started bleeding from the mouth and sustained injuries on his hands and back. It is said that he raised alarm but in the meanwhile a bus of the Tiwary Bus Service which was passing by picked him up and brought him to the Police Station. It has been alleged that the accused had caught his neck and were pressing it. The cause for the occurrence is said to be the fact that on 17.5.1982, a fight had taken place between his nephew Hemant and Birbal on one hand and Anil Kumar and son of Rajaram Chaudhry (Chittaranjan Chaudhry) on the other which had been intervened by his elder brother. It was also alleged that Anil Chaudhry and son of Raghunath Chaudhry (Sheodas Chaudhry) had taken away his cycle.

2. On the basis of the aforesaid written report Dawath (S. Case No. 61 of 1982 was registered under Sections 147, 323, 379, 307 I.P.C. and after due investigation a charge sheet under the aforesaid Sections as also Section 325 I.P.C. was submitted against all the six F.I.R. named accused persons.

3. At the trial in the Court of Sessions charges under Sections 147 and 307 read with Section 34 of the Penal Code was framed against all the six accused. That apart Sabhachand Chaudhry and Birendra Chaudhry were further charged u/s 379 I.P.C. for alleged theft of Rs. 3700/- from the informant and Chittaranjan Chaudhry and Munna Chaudhry were also charged u/s 379 I.P.C. for theft of informant's wrist watch whereas Sheodas Chaudhry and Munna Chaudhry were also charged under Sections 307 and 325 I.P.C. All the accused persons pleaded not guilty of the respective charges framed against them and claimed to be tried. The defence plea was one of innocence and denial of the allegations attributed to them. However, no evidence, either oral or documentary, has been adduced in support of their stance. As a matter of fact the defence has not cross-examined P.W. 3, the informant, although sufficient opportunity was given to them to comply with the conditional order of the High Court. In this connection it may be stated that the High Court had permitted cross examination of P.W. 3 by the defence provided a cost of Rs. 300/- was deposited and in the light of the aforesaid order several indulgence were given to the defence to deposit the cost which was not availed of by them.

4. In support of its case the prosecution sought to examine only four witnesses of whom P.W. 1 (Keshwar Thakur) in not supporting the prosecution case has been declared to be hostile. The injured informant has been examined as P.W. 3 and Dr. Bal Krishna Mishra who examined him has figured as P.W. 4. The Investigating Officer has not been examined and no explanation has been offered for his non-examination. However, requisite documentary evidence has been adduced in support of the prosecution case.

5. The learned Trial Court on consideration of the materials on record and the

submissions advanced by the parties recorded a verdict of conviction and sentenced them in terms enunciated in the first paragraph of this judgment.

6. Assailing the impugned judgment the learned counsel for the appellants at the very first instance sought to raise the plea that the learned Trial Court had based his findings on the evidence of a solitary witness, namely, the informant, and no independent witness had come forward to lend support to the prosecution case.

7. It is by now well settled and has repeatedly been observed by the Apex Court that on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the Court finds it is safe to pass a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the equality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of single witness.

8. In course of his testimony in Court the informant figuring as P.W. 3 has fully supported the story of his fard beyan. He stated of having purchased clothes and other articles for marriage purposes and keeping the balance amount of Rs. 3700/- in his upper pocket and of being surrounded and assaulted by the F.I.R. named accused on reaching the bridge near village Kosanda enroute to his home. He also stated of Chittranjan and Munna taking away his wrist watch and of Sabhachand and Birendra snatching Rs. 3700/- from his pocket. He has also stated of the assault by danda as a result whereof blood percolated into his mouth and of having sustained injury on his hand and back. He did not forget to mention of the accused pressing his neck and of being rescued by the bus of Tiwary Bus Service, which was passing by. He has given account of the cash amount in his pocket stating that on 18.5.1982 he had sold wheat and had received the money, therefore. He has proved his written report (Ext. 2).

9. As stated earlier the informant has not been cross examined by the defence as they had failed to carry out the conditional order passed by the High Court notwithstanding the fact that sufficient indulgence was given to them over a period of 4 months. In these circumstances the evidence of P.W. 3 remains unchallenged.

10. I am not in a position to accept the submissions advanced by the learned counsel for the appellants that the conviction is based on the solitary evidence of the informant since Badri Nath Gupta (P.W. 2) and Dr. Bal Krishna Mishra (P.W. 4) have corroborated the fardbeyan story in material particulars.

11. Badri Nath Gupta (P.W. 2) deposed in Court to the effect that he is the Munim of the Gola where grains are sold and purchased. He stated that on 17.5.1982 Maharaj Choubey, the brother of the informant had sold wheat to the tune of Rs. 4616.80 but the proceeds of the sale could not be paid to him on that day and on

18.5.1982 when the informant had come to him a sum of Rs. 3000/- had been handed over to him towards the sale proceeds of the wheat sold on the previous day. P.W. 2 stated that the amount had been handed over to the informant at about 11 A.M. and has proved Ext. 1 which is a receipt of the Krishi Utpadan Bazar Samiti. The witness further stated that some time later informant Dhanraj Choubey had come to him and informed him of his having been assaulted and of the money having been stolen away. There is even a slightest corroboration from P.W. 1 (Keshwar Thakur) who though being declared hostile has stated in his deposition in Court that while going to village Jogani when he reached near the bridge he saw the informant lying injured and was bleeding. Nothing substantial has been extracted from these two witnesses by the defence so as to impeaching their credibility.

12. The doctor (P.W. 4) claims to have examined informant Dhanraj Choubey at around 2.30 P.M. on a requisition (Ext. 3) sent by the I.O. The injury report which has been marked as Ext. 4 reveals of the informant having sustained as many as 6 injuries which are as follows:--

- (i) dislocation of first upper right incisor tooth
- (ii) one lacerated wound 1/2 " X 1/4" X mucosa deep upper lip right side
- (iii) three abrasions each measuring 1" X 1/2 " over right side of neck
- (iv) one abrasion 2 "X 1/2 over left side of neck
- (v) one abrasion 3" X 5" over right forearm posterior about 3" below right elbow,
- (vi) one abrasion 2" X 1/2" over right elbow.
- (vii) one swelling 3" X 1/2" over left scapular area of back.

In the opinion of the doctor injury No. (i) was grievous and caused by hard blunt substance whereas the remaining injuries were simple and caused by hard blunt substance. According to doctor injury Nos. (iii) and (iv) were possible by pressing neck by hand or any other hard substance and the other injury were possible by lathi. In the cross examination by the defence the doctor stated that the tooth had merely been dislocated but was in its position.

13. It would thus appear that apart from solitary testimony of the informant which finds ample support from the testimony of P.Ws. 1, 2 and 4 the evidence of P.W. 3 appears to be of an quality which stands to reason and is free from blemish or suspicion.

14. It was next submitted on behalf of the appellants that the non-examination of the I.O. had caused serious prejudice to the defence. The argument that non-examination of the I.O. invariably results in causing prejudice to the accused and should be held to be fatal as an absolute proposition is fallacious. The well settled law in this regard is that non-examination of the I.O. can result in failure of the prosecution case only in such cases where the defence wants to prove some

material contradictions in the deposition of the witnesses by reference to their statements made during the investigation to undo their credibility or in the like manner when some other material evidence cannot be brought on the record except by examining the I.O. In the present case nothing of this nature has been brought to my notice which can be said to have resulted in any prejudice to the appellant on account of non-examination of the I.O. I do not find any merit in this submission of the learned counsel for the appellants more so when nothing has been brought on record including any animosity or any other matter which could have been put in question form to the I.O. The defence have themselves defaulted by failing to cross examine the informant notwithstanding the conditional order of the High Court and the indulgence given to them by the learned Trial Judge.

15. Looked at from every angle the judgment of the learned Trial Court appears to be well founded and there is no occasion or reason to set aside the same. Accordingly I uphold the conviction recorded by the Trial Court.

16. Admittedly, the Session Trial is of the year 1984 and arises out of the Dawath P.S. Case No. 61 of 1982 which means that case was registered some 25 years back and for all these long years the appellants have suffered the ordeal and trauma of criminal prosecution which may have had its adverse effect not only on their mind and physique but also on the financial field.

17. Due regard being had to the facts and circumstances of the case and the ordeal, harassment and hardship suffered by the appellants herein, while maintaining the conviction aforesaid, I am of the opinion that the interest of justice will be served if the sentence pronounced by the trial Judge is modified to the period already undergone. In the result the appeal is dismissed with modification in sentence as referred to above. The appellants are already on bail. They are accordingly discharged from the liabilities of their respective bail bonds.