
(2012) 02 PAT CK 0126

In the Patna High Court

Case No : Criminal Revision No. 851 of 2002

Safiur Rehman and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 325, 504

Citation : (2013) 1 PLJR 481

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Dinesh Jha and Mrs. Indu Bala Pandey for the State, for the Appellant; Nadeem Seraj, for the Respondent

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.—Heard Mr. Dinesh Jha, learned counsel for the petitioners, Mr. Nadeem Seraj, learned counsel for the informant and Mrs. Indu Bala Pandey, learned A.P.P. for the State. This revision application is directed against the judgment and order dated 23.8.2002 passed in Cr. Appeal Nos. 107 of 1998/8 of 2002 passed by the Additional Sessions Judge, F.T.C.-II, Sitamarhi by which the judgment and sentence dated 17.11.1998 passed by the Judicial Magistrate, Sitamarhi in G.R. No. 1484/95, Tr. No. 168/98 convicting and sentencing the petitioners, has been upheld.

2. The Trial Court convicted the petitioner no. 1 for offences under Sections 323, 325 and 504 of the Indian Penal Code and sentenced him to undergo simple imprisonment for six months whereas petitioners no. 2 and 3 were convicted under Sections 323 and 504 of the Indian Penal Code and sentenced to undergo simple imprisonment for two months.

3. The case was admitted for hearing and lower Court records called for. The same have since been received.

4. Learned counsel for the petitioners submits that the impugned judgment is

unsustainable both on facts as well as in law. He submits that the genesis of the incident as per the allegations is doubtful which is sufficient to disbelieve the prosecution story and acquit the petitioners. The scuffle leading to abuse and assault against the petitioners as per the prosecution case is due to the fact that the paddy crops being taken by them was causing damage to the thatched roof of the informant which became the cause of the incident. It is stated that the date of the occurrence is 27.10.1995 but on the said date only station diary entry was made by the police and the same was not forwarded either to the Court or to the Superior Officer and only on 12.11.1995 the case was registered on the basis of injury report with regard, to the mother of the informant in which it was stated that there was fracture on the right hand. Accordingly, Runnisaidpur P.S. Case No. 111/95 was registered under Sections 323, 325 and 504 of the Indian Penal Code.

5. Learned counsel has gone through the evidence of the witnesses and has accordingly addressed the Court. P.W. 1, Abdul Hafiz has stated that he was deposing before the Court for the first time; P.W. 2, Md. Saleem is the neighbour; P.W. 3, Saifun Nisha is mother of the informant; P.W. 4, Md. Saleem is the younger brother of the informant; P.W. 5, Md. Kalimullah is the informant; P.W. 6, Sachida Nand Bajpayee is the investigating officer of the case; P.W. 7, Dr. Nand Kishore Rajpal is the person who has examined the informant and his mother subsequent to the incident and P.W. 8 is Vishwanath Pd. Srivastava, Advocate Clerk who is formal witness to prove the F.I.R. It is submitted that though no witnesses were examined on behalf of the defence but certain documents were brought on record.

6. Learned counsel submits that all the prosecution witnesses are interested witnesses as P.W. 3, P.W. 4 and P.W. 5 belong to the same family whereas P.W. 1 and P.W. 2 are also interested witnesses. P.W. 1 has stated in his cross-examination that he had deposed in a case in favour of Md. Hafiz and P.W. 2 is the son of Md. Hafiz who alongwith the informant are accused in a case filed by the uncle of the petitioners namely, Md. Ibrahim. It is submitted that the injury report of the informant, Exhibit-6 discloses simple injury and the injury report of the mother of the informant, that is, P.W. 3 which has been marked as Exhibit-6/1 states that there is fracture in the right hand and the injury is categorized as grievous. Learned counsel submits that there not being any X-ray report such a finding of fracture cannot be relied upon, moreso, in view of the fact that the report itself shows that the doctor had advised for getting X-ray done. The X-ray was never before the Court nor has it come during the trial as to whether the X-ray was actually done or not. Learned counsel further submits that the case was registered after 15 days only on 12.11.1995 whereas the alleged date of occurrence is 27.10.1995 and for this there is no justifiable or valid reason.

7. Learned counsel for the petitioners states and submits that there are two versions coming out with regard to the manner and mode of occurrence from the

prosecution witnesses. According to the informant when the petitioners were carrying the paddy crops it damaged the thatched roof of the informant and upon being objected to resulted in the accused abusing the informant and also assaulting him. It is further stated that upon hearing the noise, the mother of the informant came to pacify the matter but the accused assaulted her resulting in injury and fracture in her right hand. P.W. 3, who is the mother of the informant has stated that the accused had assaulted her and upon cry raised by her the informant and other family members came to save her. It is also stated that it took about one minute for them to reach her. Learned counsel submits that P.W. 6, who is the investigating officer in the case has stated that as per the version of the neighbours there was scuffle between the informant and the accused and the mother of the informant tried to intervene. It is also stated that the accused were not carrying any lathi with them. P.W. 2 has also stated that he cannot say how many lathi blows the accused had given to the injured. Learned counsel at this juncture submits that two very different versions have come with regard to the mode and manner of occurrence as well as the place of occurrence. One version is that the incident occurred firstly with the informant and his mother came later-on whereas as per the version of the mother, the incident occurred first with the mother and the informant came later-on. Thus, from the version of the mother that other family members reached later, it can be presumed that the informant and others were at some distance from the mother when she was being assaulted. This, according to learned counsel for the petitioner raises serious and genuine doubts about the incident having occurred, as alleged by the prosecution. It is further stated that two witnesses have deposed that the accused were carrying the paddy crops whereas the mother has stated that it was women labourers who were doing the same. Learned counsel for the petitioners states that another vital aspect in the matter is the fact that P.W. 6 has stated that he did not find any sign of the incident. He had visited the place of occurrence soon after the alleged date and time of the incident and had not found any sign of the occurrence and later on also after formal registration of the F.I.R. when he has visited he has not found any sign of the incident. Learned counsel further submits that P.W. 1 has stated that he was deposing for the first time before the Court and in view of the fact that his statement has also been recorded by the police in the case diary, leads to the inescapable conclusion that the trial and the investigation has not been properly conducted and the veracity of the Investigating Officer as far as it relates to the statement of witnesses becomes unbelievable and cannot be relied upon for conviction. He also draws the attention of this Court to the fact that it is stated in the F.I.R. that other villagers also came to the place of occurrence but during trial no other independent witness has been examined. P.W. 2 has also stated that he has seen the occurrence from a distance of about 2 Jaribs and there were 2-3 houses in-between. Thus, his version also becomes unbelievable since he could not have been a witness to the incident in view of 2-3 houses intervening between the place of occurrence and where he allegedly was at the relevant time. P.W. 3 had also likewise stated about 25 persons having assembled at the spot. Thus, the

prosecution has also to explain as to why only interested witnesses were examined and their testimony being solely relied upon, without being corroborated and proved by independent witnesses was improper for conviction. Learned counsel for the petitioners also draws the attention of this Court to another finer aspect of the matter which is the statement of P.W. 4 at paragraph 10 of the cross-examination that he was at his Nanihal on the date of occurrence. The fact that the other family members, including the informant, have said, both in the F.I.R. as well as in their deposition that P.W. 4 was also witness to the whole incident and he stating before the Court that he was at his Nanihal demolishes the entire prosecution story and the same cannot be relied upon or be considered to be proved so as to sustain conviction. P.W. 1 and P.W. 2 have also stated that they came after the actual incident. P.W. 5, being the informant, has deposed that he has not written about the beating of his mother or the brother. He also states that he gave a report initially at 5:30 P.M. in the police station on the date of occurrence but since the Officer-in-charge was not present he left the police station at 6:30 P.M. This deposition of the informant read together with the deposition of P.W. 6, that is, the Investigating Officer in which it is stated that informant had come to the police station at 10:30 P.M. when the first sanha was given to him, falsifies the veracity of the incident itself. It is also submitted that P.W. 6 has stated that he has filed slip regarding treatment of the informant and the mother which are Exhibits-3 and 3/1 respectively and the time is 10:30 P.M. It is thus submitted that if the incident was of about 5 P.M. and the informant initially having gone to the police station at 5:30 P.M., there was no occasion to go at 10:30 P.M. only alongwith the mother and that too without first getting medical aid. This conduct which has emerged from the statement of the witnesses also gives sufficient ground for disbelieving the prosecution story. In paragraph 9 of the cross-examination of P.W.-7 the suggestion that the said injury of P.W.-3 can be due to fall is not disputed.

8. In the background of the aforementioned facts, learned counsel for the petitioners submits that the genesis of the occurrence has not been proved by the prosecution, the place of occurrence has also not been proved and further there is material contradiction in the manner of occurrence in the statement of witnesses. He also submits that there has been absolutely no ground for recording the injury of P.W. 3 as grievous and no independent witnesses have deposed to prove the case. He submits that apparently there is dispute with regard to passage and thus false implication cannot be ruled out. Learned counsel sums up his argument by stating that the allegations are petty in nature and of the year 1995, that is, almost 17 years old and the petitioners are young in age and their future career is in jeopardy as all are employed and working. Further, they have been sufficiently punished by facing trial and then pursuing the appeal and the revision.

9. Learned counsel for the informant has opposed the application and countered the submissions made by learned counsel for the petitioners. He submits that the

genesis of the occurrence is not doubtful since there was use of abusive and filthy language which led to a scuffle and assault by the petitioners. He submits that it has consistently come that due to the damage being caused in carrying the paddy crops of the petitioners, this incident had occurred and even if there is minor discrepancy as to actually who was carrying the crops, the same cannot be enough to throw out the case of the prosecution. He submits that the doctor is the best person to comment on the nature of injury and since he has supported the grievous nature of the injury during the deposition also, there is no infirmity in the Court relying on the same. The plea of P.W. 1 and P.W. 2 not being independent witnesses is also disputed since they are not related to the informant.

10. Learned counsel also submits that there can be no ill-motive of the informant to falsely implicate the petitioners and in fact, according to him, the plea of there being past litigation was actually created so as to neutralise the present case. He lastly submits that in a case like the present the fact there was motive and intention to commit the offence from before, since they had come prepared and adamant to disturb the peace by damaging the thatched roof of the informant and thus they cannot be so ignorant of such a situation arising. With regard to the witnesses being interested, he submits that the law does not debar or disbelieve even the testimony of the informant, the only condition being that the Court would meticulously go through the same which has been done as would be evident from the findings recorded in paragraphs no. 19 and 20 of the trial Court judgment.

11. Learned counsel submits that because of the offence being of petty nature, light sentence has been awarded and further, no compensation has been awarded. He also submits that there has been no attempt from the side of the accused to amicably settle the matter with the informant and his family for the loss suffered by them due to the act of the petitioners. Learned counsel for the petitioners reiterated his points and tried to show that the relationship of P.Ws. 1 and P.W. 2 with the informant indicated that they can be categorized as interested witnesses. He submits that there is a small and narrow passage on three sides of the house of the informant and unless the place of occurrence is proved, which has not been done in the present case, the conviction cannot be sustained. He submits that the incident itself is concocted and that the informant had forcibly tried to block the passage of the petitioners to their house and to exert pressure upon them not to oppose in doing so this case has been filed which would be apparent from the testimony of P.W. 1, 2 and 4 who have stated that recently upon panchayati the informant has constructed the roof of his house. It is submitted that Section 504 of the Indian Penal Code is not attracted in the present case since there was no intention to insult leading to provocation to any person intending or knowing it to be likely that the same will cause him to break the public peace or to commit any other offence. He submits that the allegation of use of filthy and abusive language is the result of provocation as alleged of causing damage to the thatched roof, so the intention cannot be

proved to cause any person to commit any offence.

12. Learned A.P.P. for the State has assisted the Court and has taken the stand that the points raised by learned counsel for the petitioners are corroborated from the records of the case with regard to statement of witnesses.

13. Considering the facts and circumstances of the case, this Court feels that the prosecution has not been able to prove its case as required under law, that is, beyond any reasonable doubts. There are enough discrepancies and contradictions between the statement of the witnesses both with regard to the mode and manner of occurrence as well as the place of occurrence. The case is also very old and the petitioners have already been put to the rigors of trial, the subsequent filing of appeal as well as the present revision application.

14. Accordingly, the impugned judgment in Cr. Appeal Nos. 107 of 1998/8 of 2002 dated 23.8.2002 upholding the order of conviction dated 17.11.1998 in G.R. No. 1484/1995, Tr. No. 168/98 passed by the Judicial Magistrate, Sitamarhi against the petitioners is set aside and the petitioners are acquitted of the charges under Sections 323, 325 and 504 of the Indian Penal Code. They are discharged of their liabilities, their bail bonds and their sureties. This application stands allowed.