

(2003) 10 JH CK 0004
In the Jharkhand High Court
Case No : Criminal Appeal No. 338 of 1993

Shiv Mangal Bhagat and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 14-10-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 307, 323, 326

Citation : (2004) 1 JCR 695

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : T.R. Bajaj and H. Waris, for the Appellant; Md. Hatim, APP, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—This appeal has been directed by the appellants named above against the impugned judgment and order dated 11.10.1993 and 14.10.1993 respectively passed in Sessions Case No. 50 of 1988/4 of 1991 by Sri Ajay Kumar Srivastava, 2nd Additional Sessions Judge, Godda whereby and whereunder appellant Jai Narayan Bhagat was found guilty for the offence punishable under Sections 326 323 148 of the Indian Penal Code and he was convicted and sentenced to undergo rigorous imprisonment for seven years, six months and one year respectively and also to pay a fine of Rs. 5,000/- and in default thereof to undergo rigorous imprisonment for one year and rest of the appellants named above were found guilty for the offense punishable under Sections 326/149 323 and 147 of the Indian Penal Code and each of them was convicted to undergo rigorous imprisonment for seven years, six months and one year respectively and also to pay a fine of Rs. 1,000/- and a default thereof to undergo rigorous imprisonment for six months. However, the sentences were ordered to run concurrently. All the appellants were acquitted for the offence punishable u/s 307 of the Indian Penal Code.

2. The prosecution case has arisen on the basis of the fardbeyan of PW 2

Satyanarayan Lal Srivastava, the informant, recorded on 27.10.1984 at 17.00 hours by PW 3 Madan Mohan Sharma, SI Mahagama P.S. in the paddy field of one Tribhuwan Lal Srivastava situate south of Bindi Bahiyar in village-Beldiha about the occurrence of that very day and the case was instituted against the appellants vide drawing of the formal FIR on 28.10.1984 at 6.30 hours.

3. The prosecution case, in brief, is that all the appellants, caught PW 2 Satyanarayan Lal Srivastava, the informant west of village Shahpur on 27.10.1984 in the morning and they brought him at the door of one Jagdeo Bhagat @ Budhi Bhagat where they assaulted him by lathi and kick and thereafter by garasa as a result of which he sustained severe injuries on his hand, leg, back and eye. It is alleged that appellant Jai Narayan Bhagat had caused injuries on his person by garasa and the rest of the appellants have assaulted him by lathi and thereafter they lifted him and threw him in the paddy field of Tribhuwan Lal Srivastava. It is also alleged that the appellants have assaulted him due to an incident which has taken place on 26.10.1984 at 15.30 hours in which he has ravished Parabhi Kumari, daughter of Ramdeo Bhagat in that very Paddy field.

4. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offense and that they have been falsely implicated in this case due to admitted enmity and also as they are of the caste of Parabhi Kumari aforesaid.

5. The prosecution has examined, in all, four witnesses to substantiate its case. PW 2 Satyanarayan Lal Srivastava is the informant of this case and is said to have sustained injuries on his person in course of the occurrence. PW 1 Kutubuddin, alleged to be the ocular witness of the occurrence, has turned hostile and he is not supporting the prosecution case. PW 4 Dr. Vasudeo Prasad Sinha has examined the informant and his report per his pen is Ext. 1 in this case PW 3 Madan Mohan Sharma is the IO of this case. Ext. 2 is the certified copy of the judgment passed in Sessions case No. 70 of 1991 in which informant Satyanarayan Lal Srivastava had figured as accused for the offence u/s 376(1) of the Indian Penal Code regarding the allegation against him for ravishing Parabhi Kumari, daughter of Ramdeo Bhagat though he was acquitted in the said case. No oral and documentary evidence has been brought on the record on behalf of the appellants.

6. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that the learned Court below did not meticulously consider the evidence on the record in proper perspective and has materially erred in coming to the finding of the guilt of the appellants. It has also been submitted that the solitary testimony of PW 2, the informant suffers with inherent improbabilities and material contradictions and inconsistencies and the evidence of the informant is contrary to the averments made by him in his fardbeyan and several new incidents have been introduced by him in course of his evidence and thereby the entire warp and woof of the prosecution case has

become highly improbable and unacceptable and the entire manner of occurrence stands altered. It has also been contended that the solitary testimony of PW 2, the informant does not stand corroborated at all in material particulars by other evidence of any independent, competent and natural witness of the alleged occurrence and even PW 1 is not coming forward to corroborate his testimony, and Hanik Kazi, Akhtar, Ulfat Kazi and Most. Khotia, had come to the place of occurrence as per the evidence of PW 2, the informant, but they are also not forthcoming to support the prosecution case. It has also been submitted that the informant has given a total go by regarding the genesis and motive for the alleged occurrence in his evidence on oath and he has deposed that he has been assaulted by the appellants due to land dispute as they have illegally got his land mutated in their name. It has also been contended that the informant has given a total go by to the manner of the prosecution case in his evidence on oath thereby totally falsifying his case as averred in his fardbeyan. It has also been submitted that in this case as per the averments made in the fardbeyan, the informant is said to have been assaulted by the appellants due to anguish and hatred as the informant has ravished a fourteen years old girl of the village in broad day light in the said paddy field of Tribhuwan Lal Srivastava but the informant has give a total go by in respect thereof in his evidence on oath. Referring the finding of the learned Court below in the impugned judgment that the assault on the informant by the appellants was not with intention to commit his murder and in view of the said finding all the appellations were acquitted of the charge u/s 307, IPC and it has been submitted that in this view of the said finding, the conviction of appellant Jai Narayan Bhagat under Sections 326 323 and 418, IPC and rest of the appellants under Sections 326/149 323 and 147, IPC suffers with legal infirmity. Lastly, it has been contended that the medical evidence on the record is also not at all inconformity with the manner of occurrence as averred in the fardbeyan of the informant as well as deposed by him on oath and there is no legal evidence on the record to show that the alleged assault by garasa by appellant Jai Narayan Bhagat has caused grievous injury on his right leg as there are in all four incised wounds on his right leg and there is inkling in the evidence of the informant as to which of the appellant has caused these injuries on him and viewed thus, the impugned judgment is unsustainable.

7. Refuting the contention aforesaid it has been submitted by the learned APP that as per the averments made in the fardbeyan the assault on the informant is a result of heinous crime which he has committed a day prior to this occurrence in which he has ravished Parabhi Kumari, a minor girl aged about 14 years, and he was also prosecuted for that offence, though, acquitted therein on the ground that the medical evidence on the record could not establish the fact of ravishment of the said Parabhi Kumari but the informant in his evidence on oath has given a total go by regarding the genesis and motive of the occurrence in question and has set up altogether a different case regarding the cause on his assault by the appellants. It has also been submitted that, be the case as it may, the appellants ought not to have taken the law in their hands in assaulting the

informant due to anguish and hatred when the informant was already booked in a case u/s 376, IPC. The learned APP has very fairly submitted that the evidence of PW 2, the informant is contrary to his case as averred in his fardbeyan but in view of the injuries appearing on the informant collectively caused by all the appellants, the learned Court below has rightly found all the appellants guilty and therefore, there is no infirmity in the impugned judgment.

8. It will admit of no doubt that an occurrence has taken place on 27.10.1984 at 17.00 hours at the house of Ramdeo Bhagat as well as in the paddy field of Tribhuwan Lal Srivastava in village Beldiha in which the informant has sustained several injuries on his person. He was found by the IO thrown in the paddy field of Tribhuwan Lal Srivastava in Bindi Bahiyar south of village Beldiha where his fardbeyan was recorded by PW 3 and he was dispatched to the hospital on cot for his treatment PW 4 Dr. Vasudeo Prasad Sinha had deposed to have examined him on 28.10.1984 at 12.30 hours and he has found the following injuries on his person :--

"(i) Bruise 1/2" x 1" on the right side of socket of right orbit of the right eye, upper and lower eye lid swollen right eye complete bloody red.

(ii) Bruise 1-1/2" x 1/2" on and around of left orbit of the eye, both the eye lids upper and lower bruised, eye bloody red in colour.

(iii) Incised wound 2-1/4" x 1/2" x 1/2" on right knee joint (transverse), patella is also cut.

(iv) Incised pointed wound 1-1/2" x 1/2" x bone deep on the medial side 4" below the right knee joint.

(v) Incised wound 1/2" x 1/4" x 1/4" on the medial side of right leg 4" above ankle's Joint.

(vi) Incised rounded wound 1/3" x 1/4" on the 2" above of bit toe of the right foot (wound situated on medial side of foot).

(vii) Incised rounded wound on the right side of cheek 1/4" x 1/4" x whole of the thickness of the right cheek breach in the oral side of wall of the cheek measuring 1/4" x 1/4".

(viii) Abrasion 2-1/2" x 1/2" x 1/2" on the right side of cheek on just below the injury No. (vii).

(ix) Bruise 6" x 1/2" longitudinally extending medial to lateral side of the left forearm from left elbow.

(x) Dislocation of left elbow joint.

(xi) Abrasion 1-1/2" x 1/4" on the dorson of middle of left forearm.

(xii) Bruise 3-1/3" x 1-1/2" on the vertical surface of right elbow joint and forearm.

(xiii) Bruise 1-1/2" x 1" on the lateral side of left hip.

(xiv) Bruise 2-1/2" x 1-1/2" on the back in the sacral region.

The medical witness has further deposed that all the injuries, except injury Nos. (iii), (vii) and (x), are simple in nature and injury Nos. (i), (ii), (viii), (x), (xi), (xii), (xiii) and (xiv) have been caused by hard and blunt substance whereas injury No. (iii) has been caused by sharp cutting instrument and injury Nos. (iv), (v), (vi) and (vii) have caused by sharp pointed substance. The medical witness has further deposed that injury Nos. (iii), (vii) and (x) are grievous in nature and age all the injuries aforesaid is within 24.00 hours. It is pertinent to mention here that according to the averments made in the FIR the informant is said to have been assaulted by lathi, kick and garasa. Garasa is a heavy sharp cutting oval shaped weapon and it is definitely not a sharp penetrating weapon. None of the appellants is alleged to be armed with any sharp cutting pointed weapon. Therefore, there is no explanation on the record as to who injury Nos. (iv) to (vii) have been caused on the person of the informant and in this view of the matter, the medical evidence is definitely not in conformity with the manner of assault as alleged by the prosecution.

9. The informant has criminal antecedents. PW 3, the IO has deposed that the informant is a notorious dacoit and he had in the past ravished the widow of his cousin brother as well as her daughter Manju. The IO has also deposed that he has forcibly solemnized his marriage with Manju aforesaid. The IO has further deposed that the informant has also ravished Parab-hi Kumari in the said paddy field of Tribhuwan Lal Srivastava on the day of the occurrence for which he stands prosecuted for the offence u/s 376, IPC PW 2, the informant has also admitted in his evidence that he has remained in custody in a case of dacoity. The IO has further deposed to have found trampling marks in the said paddy field and the paddy crop was found trampled and on his confession regarding the ravishment of Parabhi Kumari, the villagers had become agitated in anguish and they have assaulted the informant. Let us now advert to the evidence of PW 2, the informant in the background aforesaid. According to the fardbeyan, the informant was caught by the appellants west of village Shahpur and he was brought at the house of Jagdeo Bhaga @ Budhi Bhagat where he was assaulted by lathi, kick and garasa causing injury on his leg, hand, back and eye and appellant Jai Narayan Bhagat has assaulted him by garasa PW 2, the informant has deposed that he was caught in the north western Bahiyar of his village Beldiha by the appellants and he was thrown in a field, full of water, by appellant Vijay Bhagat and when he came out of the said water filled field aforesaid, the appellants caught him and all the appellants except Vijay Bhagat and Jai Narayan Bhagat assaulted him in the said Bahiyar and brought him to the house of Ramdas Bhagat in village-Beldiha by dragging him on the Kachcha road of the village. It is pertinent mention here that there is no averment in the fardbeyan of the informant that he was caught in the north western Bahiyar of village Beldiha, rather, it has been alleged in the fardbeyan that he was caught in the Bahiyar

west of village Shah-pur. There is no averment in the fardbeyan that he was thrown in the water filled field in the said Bahiyar where he was also assaulted by some Of the appellants. According to fardbeyan, the informant is said to have been brought at the house of Jagdeo Bhagat @ Bhudi Bhagat but in his evidence on oath he has deposed that he was brought at the house of Ramdas Bhagat where he was assaulted . PW 3, the IO has deposed to have inspected the said water filled field as well as the house of Ramdas Bhagat in course of investigation but he did not find any indication of any incident having been taken place at both the places aforesaid. It, therefore, appears that the informant has introduced two new places regarding this occurrence and thereby he has contradicted his averments made in his fardbeyan regarding the place of occurrence. PW 2 has further deposed that his one leg and one hand was tied with rope at the house of Ramdas Bhagat and appellant Vijay Bhagat started assaulting on his knee by iron rod. According to the fardbeyan, there is no reference of iron rod as a weapon of assault in this case. He has further deposed that in course of assault the asked for water to drink and appellants Shiv Mangal Bhagat and Basuki Bhagat urinated in aluminum container and asked him to drink and on his protest all the appellants based him calling by the name of his mother and started assaulting him by lathi. The averments made in the fardbeyan does not corroborate this part of evidence of the informant as deposed by him. He has further deposed that when he declined to drink urine, appellant Vijay Bhagat assaulted him by a barrel of pistol causing injury on his check and appellant Ram Narayan Bhagat brought two weights of one k.g. each and one weight of one k.g. was kept under his knee and he was assaulted on the knee from above by the other weight of same description by appellant Ram Narayan Bhagat which caused fractured on his right leg and appellant Janardhan Bhagat fixed a nail in his right leg. The evidence aforesaid is contrary to the manner of the occurrence as averred in the fardbeyan of the informant and a new case regarding the manner of occurrence has been introduced in course of evidence by the informant. He has further deposed that thereafter appellants Jai Naryan Bhagat and Janardhan Bhagat dragged him from the house of Ramdas Bhagat by catching hold his leg and threw him in the paddy field of Tribhuwan Lal Srivastava where appellant Jai Narayan Bhagat assaulted on his knee by garasa and thereafter appellants Janardhan Bhagat and Basuki Bhagat caught his both legs and hands respectively and appellant Vijay Bhagat poured acid in his eyes by opening his eye lids. According to the averments made in the fardbeyan, the assault had taken place on the informant by the appellants at the door of Jagdeo Bhagat in which appellant Jai Naryan Bhagat assaulted him by garasa and rests of the appellants have assaulted him by lathi. There is no whisper in the fardbeyan of any assault perpetrated on him in the paddy field of Tribhuwan Lal Srivastava where he was allegedly thrown. The informant in his evidence on oath has given a total go by to the manner of the occurrence as alleged in the fardbeyan and has introduced totally a new case regarding the manner of assault on him.

He has also deposed that he has been assaulted by the appellants as he wanted

to get back the land which was illegally mutated by Sukhdeo Bhagat, Radhey Shyam Bhagat and appellant Vijay Bhagat and for which the appellants have assaulted him and it is not a fact that he has ravished Parabhi Kumari and due to vengeance and annoyance he was assaulted by the appellants and the IO has not read over his fardbeyan but obtained his LTI thereon. PW 3 the IO has deposed that the informant has not stated before him in his statement u/s 161, Cr PC regarding the manner of occurrence as deposed by him. PW 3 has further deposed in para 13 of his evidence that he was assaulted by the villagers in the field of Tribhuvan Lal Srivastava on the day when he had ravished Parabhi Kumari in the said paddy field. Therefore, the entire evidence of the informant is contrary to the warp and woof of the prosecution case as averred in his fardbeyan and no reliance can be placed on the testimony of the informant in respect thereof. The medical evidence is also not in conformity with the manner of assault as deposed by the informant. It appears that the learned Court below has been swayed by the existence of a large number of injuries appearing on the person of the informant and came to the finding of the guilt of the appellant without properly scanning and scrutinizing the evidence in respect thereof and the learned Court below has committed a manifest error in coming to the finding of the guilt of the appellants. The evidence of the informant is highly improbable and is replete with material inconsistencies and contradictions which speak volumes against the authenticity of the prosecution case. The informant has not only changed the manner of the occurrence as well as the genesis of the occurrence in his evidence on oath but has lied on the most material aspect of the prosecution case and therefore, his testimony is unreliable and equally untrustworthy and is fit to be brushed aside. Further more, no independent witness of the village has taken oath to support his testimony regarding the manner of his assault especially when Hanif Kazi, Akhtar, Ulfat Kazi and Most. Khotia had come to the place of occurrence and even PW 1 Kutubuddin has turned hostile and he does not support the prosecution case. Therefore, the solitary testimony of the informant uncorroborated in material particulars by any independent, natural and competent witness of the occurrence in the facts and circumstances of this case is fit to be brushed aside. At last but not the least, the learned Court below has acquitted all the appellants for the offence u/s 307 of the Indian Penal Code in view of his finding that the assault on the informant was not with intention to commit his murder and in this view of the finding of the learned Court below it cannot be said that the alleged assault on the informant by the villagers of Beldiha including the alleged appellants was with criminal intent. The false implication of the appellants in this case cannot be totally ruled out due to admitted fact that they had possessed the land of the informant by getting themselves mutated in respect thereof and the informant had attempted to take back possession of the said land. The learned Court below did not meticulously consider the evidence on the record and has erroneously come to the finding of the guilt of the appellants. Viewed thus, the impugned judgment cannot be sustained.

10. There is merit in this appeal and it succeeds. The appeal is hereby allowed. The impugned judgment is set aside. All the appellants are found not guilty of the charges levelled against them and they are, accordingly, acquitted and discharged from the liabilities of their bail bonds.