

Abdul Khair Vs. the State of Bihar

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Court : Patna

Decided On : Sep-16-2013

Appellant : Abdul Khair

Respondent : The State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.121
of 1999

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Abdul Khair, Son of Kamaluddin Mian, resident of Village- Thakraha, P.S.- Ram
Nagar, District- West Champaran. Appellant Versus The State of Bihar
..... Respondent

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Appearance : For the Appellant : Mr. Akhileshwar Kumar Srivastava, Advocate For
the State : Mrs. Abha Singh, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA C.A.V.

JUDGMENT

Date:

16. 09-2013 The solitary appellant has preferred this appeal against his conviction
for the offence punishable under Section 307 of the Indian Penal Code and
sentence to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.

1,000/-, in default, further to undergo rigorous imprisonment for two years as awarded on 01st May, 1999 by 6th Additional Sessions Judge, West Champaran at Bettiah, in Sessions Trial No. 520 of 1993 arising out of Ramnagar P.S. Case No. 8 of 1993.

2. The prosecution has come out with the case vide Exhibit-3, the Fardbeyan, of Jamal Hussain (P.W.-6/informant) recorded at Government Hospital, Ramnagar by Assistant Sub- Patna High Court CR. APP (SJ) No.121 of 1999 dt.16-09-2013 2/7 Inspector, C.D. Baitha (P.W.-8) on 04th January, 1993 at 10.00 hours is that on the same day in morning at about 7.45 A.M. while he was coming after meeting the natural call found the appellant planted for Mango trees in his field and was irrigating the same. Then, he questioned about the location of such plantation since whenever it will grow up caused shadow in adjacent field belonging to the informant and the same shall causing loss of cultivation etc. During that protest, the appellant took out Gandassa kept concealed in his Shawl and gave one blow on his (informant) head, in spite of course of protest, causing injuries on head, chicks and both hands. Both sides are at inimical terms since before and on being alarm raised Wajid Hussain (P.W.-1), Barkat Hussain (P.W.-5) and Yakub Mian (P.W.-2) came there and brought him to hospital and they also seen the occurrence and fleeing of appellant from there.

3. The police after completion of the investigation submitted charge-sheet against the appellant for the offence punishable under Section 307 of the Indian Penal Code and in order to substantiate the charge the prosecution examined altogether 8 witnesses besides producing the following documents:- (i) Exhibit-1 : Injury Report. (ii) Exhibit-2 : Signature of Jamal Hussain on the Fardbeyan. (iii) Exhibit-3 : Fardbeyan. (iv) Exhibit-4 : F.I.R. Patna High Court CR. APP (SJ) No.121 of 1999 dt.16-09-2013 3/7 No oral or documentary evidence is adduced on behalf of the defence and on consideration of the materials the court below convicted and sentenced the appellant in the manner aforestated giving rise to present appeal.

4. It is contended by learned counsel for the appellant that he has been falsely implicated in this case due to previous enmity and neither repetition of blow nor the injuries being sustained are grievous in nature rather they are simple and in no

way offence under Section 307 of the Indian Penal code is attracted and there is also none to support the prosecution version except the informant. On the other hand, the learned Additional Public Prosecutor for the State has supported the findings of the court below on the grounds mentioned in the judgment.

5. Out of total 8 prosecution witnesses examined, P.W.- 1, Wajid Hussain and P.W.-2, Yakub Mian, were declared hostile since they did not say anything about the occurrence rather stated their ignorance. P.W.-3, Ali Raza Mian besides P.W.- 5, Barkat Hussain, were tendered for cross-examination. Virtually, there is nothing to discuss in the evidence of these four witnesses.

6. P.W.-4, Dr. Kiran Shankar Jha, is the Doctor, who examined the informant and found following marks of injuries:- (i) One cut wound 1 x x scalp deep on the right forehead. Patna High Court CR. APP (SJ) No.121 of 1999 dt.16-09-2013 4/7 (ii) One incised wound 1 x x skin deep on the middle of the right chick. (iii) One abrasion 1 x on the middle finger of the right hand. (iv) One abrasion 3/4 x on the little finger of the left hand. Cause of Injuries :- Injury no. (i) & (ii) by sharp cutting substance and (iii) and (iv) by hard blunt substance. Nature of Injuries :- Simple. Age of Injuries :- Within 24 hours. He proved his injury report (Exhibit-1) indicating two of the injuries, one might have being caused by back of the weapon and another by edging portion of the weapon.

7. P.W.-6, Jamal Hussain, is the informant, who stated the prosecution case as narrated in the Fardbeyan on which he put his signature, marked as Exhibit-2. In cross-examination, he stated about the admitted disputes and litigations going on, but he never said about any repetition of blow rather in one sequence all the injuries were sustained by him. It appears that during resistance offered by this witness, the injuries being caused by hard and blunt substance, where two injuries were caused by back portion of the weapon and remaining by the edged side of the same as what stated by the Doctor (P.W.-4).

8. P.W.-7, Kalim Mian, is a relative of the informant Patna High Court CR. APP (SJ) No.121 of 1999 dt.16-09-2013 5/7 and in very examination-in-chief he said about his getting information of the occurrence from others except seeing the appellant going ahead followed by the informant in injured and bleeding state. In

this way, this witness simply corroborates the fact that the victim sustaining some injuries which was seen by him and he could know about the assailant what has come from the mouth of the informant also.

9. P.W.-8, Chatradhari Baitha, is the Investigating Officer, who recorded the Fardbeyan of the informant, proved Exhibit-3 and endorsement of Officer-in-Charge handing over the investigation to him, Exhibit-4, inspected the place of occurrence, recorded the statements of the witnesses and submitted charge-sheet. In very examination-in-chief itself he has said about the recording of counter case, but there is nothing on the record to show any further details and the defence, for the reasons best known, did not produce anything. In paragraph nos.- 11 & 12, though, he did not found any blood lying on place of occurrence, but at the same time, he says that he did not took blood stained clothes of the victim-informant in his control. This further substantiates the victim-informant sustaining some injuries and his clothes contained blood stained. It is true that the Investigating Officer has not seized the blood stained clothes of the injured, though, in cross-examination he admits that the informant was at the hospital and it is he, who did not took the blood stained Patna High Court CR. APP (SJ) No.121 of 1999 dt.16-09-2013 6/7 clothes in his control.

10. The law is clear that any deficiency in investigation shall not come in the way of the court in arriving at a finding of guilt if it is otherwise found to have been proved as held in paragraph-12 by the Honble Apex Court in a case of Mahendra Singh vs. State of M.P. reported in 2007(3) PLJR (SC) 29. The Honble Apex Court in the case aforementioned has also held in paragraph-11 that it is now a well-settled principle of law that conviction can be based on the basis of the testimony of a sole eye-witness.

11. In the instant case the informant i.e. the injured has been able to establish the factum of injures inflicted upon him by the appellant and this fact that he sustained injures stands corroborated by the testimonies of P.Ws.-7 & 8 (Kalim Mian and Chatradhari Baitha) besides medical evidence i.e. statement of P.W.-4 (Dr. Kiran Shankar Jha).

12. At the same time, it appears that though the appellant was armed with a deadly weapon concealed behind his Saul apprehending some sort of protest which may be said he was will prepared for any exigency, but at the same time, he has not repeated the blow, but caused simple injuries upon the informant, but by a deadly weapon, which validly attracts Section 324 of the Indian Penal Code, but by no means his (appellant) conviction for the offence Patna High Court CR. APP (SJ) No.121 of 1999 dt.16-09-2013 7/7 punishable under Section 307 of the Indian Penal Code can be said sustainable. Hence, it is converted into Section 324 of the Indian Penal Code and, further taking into consideration, the enmity and prolonged litigations causing physical, mental and economical sufferings besides detention of the appellant for a reasonable period, the sentence, as awarded by the court below, is reduced as he has already undergone.

13. With the above modification, this appeal is hereby dismissed. The appellant, namely, Abdul Khair, is set free from the liability of bail-bonds furnished on his behalf. (Akhilesh Chandra, J) Praveen-II/-

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