IN THE HIGH COURT OF JUDICATURE AT PATNA

Rakesh Kumar @ Chandan Mandal & Anr.

vs.

The State of Bihar

Criminal Appeal (SJ) No. 34 of 2023

17 August 2023

(Hon'ble Mr. Justice Alok Kumar Pandey)

Issue for Consideration

Whether the conviction of the appellants under Section 307 read with Section 34 of the IPC is sustainable in light of the prosecution evidence?

Headnotes

Informant is not the eye-witness. Star witness is the informant's mother whose presence at the place of occurrence cannot be doubted. However, she not been examined. In this way, the presence of any of the prosecution witness at the place of occurrence is very much doubtful - Doctor has already suggested that said injuries can be caused by falling on any hard substance. (Para 28, 31)

There are several discrepancies, infirmities and contradictions in the statement of factual witnesses regarding the manner of occurrence, place of occurrence and boundary of place of occurrence. Prosecution has failed to prove its case beyond reasonable doubt. Appeal is allowed. (Para 32, 33, 34)

Case Law Cited

Habeeb Mohammad v. State of Hyderabad, AIR 1954 SC 51; Takdir Samsuddin Sheikh v. State of Gujarat, AIR 2012 SC 37; Brahm Swaroop v. State of U.P., AIR 2011 SC 280; Ranjit Singh v. State of Madhya Pradesh, AIR 2011 SC 255; Mano Dutt v. State of Uttar Pradesh, (2012) 4 SCC 79;State of U.P. v. Kishan Chand, (2004) 7 SCC 629; Sunil Kumar Shambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657; State of U.P. v. Krishna Gopal, AIR 1988 SC 2154

List of Acts

Indian Penal Code, 1860

Code of Criminal Procedure, 1973

Indian Evidence Act, 1872

List of Keywords

Section 307 IPC; Common Intention; Eye Witness Credibility; Injury Report; Benefit of Doubt; Place of Occurrence; Witness Contradictions ; Criminal Jurisprudence; Failure to Prove Case; Cross Examination

Case Arising From

Piribazar P.S. Case No. 10 of 2015

Appearances for Parties

For the Appellants: Mr. Rabi Bhushan, Ms. Rakhi Kumari, Advocates.

For the Respondent: Mr. Mukeshwar Dayal, APP

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.34 of 2023

Arising Out of PS. Case No.-10 Year-2015 Thana- PIRI BAZAR District- Lakhisarai

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1. RAKESH KUMAR @ CHANDAN MANDAL Son of Late Aghori Mandal R/V- Abhaypur Kaswa, P.S- Piri Bazar, Dist- Lakhisarai
2. Fantush Mandal @ Nirbhay Mandal Son of Late Aghori Mandal R/V- Abhaypur Kaswa, P.S- Piri Bazar, Dist- Lakhisarai

... ... Appellant/s

Versus

The State of Bihar Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Rabi Bhushan, Adv.
Ms.Rakhi Kumari, Adv.
For the Respondent/s : Mr.Mukeshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
Date : 17-08-2023

1. The present appeal has been directed against the judgment of conviction dated 02.12.2022 and order of sentence dated 03.12.2022 passed by learned Sessions Judge, Lakhisarai in Sessions Trial No. 165 of 2015 corresponding to G.R. Case No. 305 of 2015 arising out of Piribazar P.S. Case No. 10 of 2015 whereby and whereunder the appellants have been convicted for the offence punishable under Section 307 read with 34 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for ten years each along with fine of rupees ten thousand (Rs. 10,000/-) each for the said offence. In case of default in payment of fine, they will further undergo rigorous imprisonment of one year each.

2. According to written report of informant (PW-4), the occurrence is of 24.02.2015 at near about 8:30 AM whereafter FIR was registered by Ashutosh Kumar, S.H.O. of Piribazar.

3. The prosecution case, as stated by the informant, in brief, is that on the fateful day i.e. 24.02.2015 at near about 8.30 AM, appellants and other reached at the gate of informant and they are said to have threatened abusingly for settling the matter in question otherwise appellants and other would kill. It is further stated that when the abuse was protested by the informant's mother, appellants and other keeping lathi, danda and khanti in their hands assaulted upon the head of informant's mother due to which she fell down. The informant came on running on hearing the noise and saved his mother. It is said to have claimed by the informant that threatening was made again and again for settling the dispute in question otherwise all would be killed.

4. On the basis of written report of the informant, Piribazar P.S. Case No. 10 of 2015 dated 24.02.2015 was registered under Sections 341, 323, 325, 307/34 of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellants under Sections 341, 323, 325, 307, 447, 504, 506, 34 of the IPC. and investigation kept

pending against those accused persons who were found absconding. Thereafter, on 08.07.2015 the learned trial court took cognizance against the appellants under the aforementioned sections of IPC. On 24.07.2015 the case was committed to the court of sessions after following due procedure. The learned trial court was pleased to frame charges against the appellants under Sections 307/34 and 325/34 of the IPC. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused persons, prosecution has examined altogether six witnesses. PW-1 Polo Mandal, PW-2 Jaikant Mandal, PW-3 Poonam Kumari, PW-4 Rajiv Kumar (informant of the case), PW-5 Dr. Dhirendra Kumar, and PW-6 Manoj Kumar Singh (I.O. of the case).

Prosecution has relied upon following documentary evidence on record:-

Ext. 1- Signature of informant on written application.

Ext. 2- Injury report of injured Ahilya Devi.

Ext. 3- Charge sheet.

Ext. 3/1- Signature of O/c Piribazar on charge sheet.

Ext. 4- Signature of O/c of Piribazar P.S. Ashutosh Kumar on formal FIR.

6. Defence of the appellants as gathered from the line of cross examination of prosecution witnesses as well as from the

statement under Section 313 of the Cr.P.C. is that of total denial. However, they did not enter into defence.

7. After hearing the parties, the learned trial court was pleased to convict the appellants and to sentence them as indicated in the opening paragraph of the judgment.

8. Heard Mr. Rabi Bhushan, learned counsel appearing for the appellants at sufficient length of time. Following submissions have been made on behalf of learned counsel for the appellants:-

Learned counsel for the appellants has submitted that from the perusal of FIR, it is evident that there is no specific allegation of assault against any person and FIR is totally silent upon the said point. He has further submitted that from the perusal of FIR, the place of occurrence is gate of informant and weapon used by the appellants and other is lathi, danda and khanti and there are four assailants and from the initial version of prosecution story informant himself has stated that after being injured the informant's mother fell down and on hearing noise he came on running at the place of occurrence. This version of informant is quite evident that informant is not an eye witness of the alleged occurrence. Learned counsel has further submitted that the informant has himself stated that his mother sustained injury upon

her head but she has not been produced before the court and her evidence has not been recorded by the investigating officer by stating that she was not in a conscious position to give her evidence. He has further submitted that even from the version of investigating officer it is evident that he failed to comply his incumbent statutory duty as he has clearly stated during cross examination that he visited several occasions on place of occurrence but same was not recorded in the case diary and again he stated that victim went to her daughter's house so he could not met victim. He has further submitted that investigation of investigating officer suffers from imperfection regarding his statutory duty which is the mandate of law. He has further submitted that the investigating officer has not recorded the statement of the persons who were resident of the place of occurrence and he is unable to make clear cut statement as to whether Nawal Pandey, Polu Mandal and Jaikant Mandal are resident of place of occurrence. On the point of place of occurrence, the statement of investigating officer and statement of (PW-4) is quite inconsistent. The informant (PW-4) has stated during cross examination that in north side of place of occurrence, there is our parti land and in west side, there is vacant land. The investigating officer (PW-6) has stated that in the north side of

place of occurrence, there is house of Goli Mandal and in west side of place of occurrence, there is house of informant. In both sides of place of occurrence the statement of investigating officer (PW-6) and informant (PW-4) are quite inconsistent and contradictory to each other on the point of boundary of place of occurrence (P.O.). He has further submitted that the prosecution has specifically failed to prove the place of occurrence in the present case which makes the prosecution case doubtful. On the point of weapon, statement of PW-1 is quite inconsistent with the initial version of prosecution story as PW-1 stated that all have assaulted the informant's mother by means of paina whereas in initial story of prosecution it is stated that all have assaulted the informant's mother by means of lathi, danda and khanti. Learned counsel for the appellants has further submitted that even if whole prosecution story is found to be true, then also, on the available facts and evidence of the case, no offence is made out under Section 307 read with 34 of the IPC against the appellants. Learned counsel has further submitted that apart from that, even the story of prosecution is doubtful as none of the prosecution witness can be relied upon because they are not eye witness of the alleged occurrence as revealed from initial version of story of prosecution. Neither informant is victim nor the victim has been

produced before the court nor any prosecution witness disclosed the name of other prosecution witness who was present at the place of occurrence.

9. Mr. Mukeshwar Dayal, learned Additional Public Prosecutor appearing for the State has submitted that from perusal of the FIR itself, it is clear that appellants and other came at the door of informant and started abusing and they pressurized the informant's mother to withdraw the case and when informant's mother forbade to abuse, they assaulted the informant's mother by means of lathi, danda and khanti. He has further submitted that PW-4 who is informant and eye witness of the case has stated that all have assaulted by means of khanti as a result of which victim sustained injury on her head. He has further submitted that PW-1 has also stated that appellants and other assaulted upon the head of the victim by means of paina. PW-3 has also stated that appellants and other assaulted upon the head of the victim by means of khanti. PW-5 Dr. Dhirendra Kumar who has examined the victim has also supported the story of prosecution as he has found injury upon the head of the victim. Learned A.P.P. has further submitted that the investigating officer has identified the place of occurrence. In this way, all the prosecution witnesses have supported the story of the prosecution. He has further submitted that there is motive

behind the occurrence which has also been proved that the appellants and other were pressurizing the informant's mother for withdrawal of the case and the said matter has become origin point of dispute. He has further submitted that all the appellants have acted in a manner that they have shared common intention to commit the occurrence. In this way, judgment of conviction and order of sentence is based on the sound principle of law and hence, the impugned judgment does not require any interference.

10. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

11. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of the offence punishable under Section 307 read with 34 of the IPC.

12. PW-1 Polo Mandal though he is claiming to be eye witness of the alleged occurrence but he is eye witness by chance as when he went to call mason, he found that victim Ahilya Devi was concertedly assaulted by the appellants and other by means of paina as a result of which victim sustained injury on head. PW-1 has deposed that weapon used by the appellants are only paina which is totally inconsistent with the story of prosecution and he

also deposed that occurrence took place in courtyard of the victim and FIR reveals that occurrence took place at the gate of the informant which is quite contradictory and inconsistent to each other.

13. PW-2 Jaikant Mandal is not eye witness of the alleged occurrence rather he is hearsay witness.

14. PW-3 Poonam Kumari is the wife of informant (PW-4). This witness has stated that appellants and others used khanti for assaulting the victim which is totally inconsistent with the statement of PW-1 Polo Mandal. This witness has stated that the occurrence took place inside the house i.e. courtyard. On the point of place of occurrence, her statement is quite contradictory with the initial version of story of prosecution. Her statement is quite contradictory with her own statement in which she has stated that on hearing noise she came outside the house and occurrence took place inside the house. She has stated that she cannot tell who hit with lathi and how many times and she cannot tell who hit with khanti and how many times.

15. PW-4 Rajiv Kumar is informant of the case. This witness, in his initial version of FIR, states that when abusing was protested, the appellants and other are said to have assaulted his mother by means of lathi, danda and khanti but during course of

trial he has stated that on refusal of her mother to withdraw the case, the appellants and other assaulted the informant's mother by means of khanti and he has specifically developed the story of prosecution that the occurrence took place in his presence which did not find place in the initial version of story of prosecution. In this way, his version is totally contradictory regarding origin of the alleged occurrence, manner of occurrence and place of occurrence. In this way, his evidence does not inspire confidence and his evidence cannot be relied upon.

16. PW-5 Dr. Dhirendra Kumar who has examined the victim and found following injuries on her person:-

(i) Lacerated wound measuring 5" x 1/4" x bone deep on left side of head.
(ii) Complaint of pain in chest left side.
(iii) Abrasion 2" x 1" and pain in waist left side.
(iv) Abrasion 2 $^{1/2"}$ x 3/4" in back right scapular area.
(v) Complaint of bodyache and pain in left eye.
Cause of injury-By blunt and hard substances.
Time of injury-within 06 hours.
M.I.-Til on chest near right claride.

From perusal of the injury report, it is evident that all the injuries are simple in nature caused by hard and blunt substance except injury no. 1 which is lacerated wound measuring 5" x 1/4" x bone deep on left side of head. Other injuries are either abrasion or complain of pain or bodyache. The injury report also does not corroborate the manner of occurrence, as same is evident from

initial version of story of prosecution. Moreover, the contention of learned counsel for the appellants finds force that determinative facts to decide nature of offence are intention or knowledge to commit the crime and in the instant case, facts and circumstances speak for themselves that appellants had no such intention or requisite knowledge as alleged in the initial version of the story of prosecution and even if whole prosecution story is found to be correct in given facts and circumstances of the case, then also, no offence under Section 307 read with 34 of the IPC is made out against the present appellants keeping in view the nature of injury as opined by the doctor (PW-5).

17. In the present appeal, from perusal of initial version of FIR, it is crystal clear that even the informant is not eye witness of the alleged occurrence as he arrived at the place of occurrence after hearing noise and he is not victim of the present case. The victim, who is mother of the informant, sustained injury but she has not been produced before the court for adducing evidence.

18. In the matter of ***Habeeb Mohammad vs. State of Hyderabad*** reported in ***AIR 1954 SC 51***, the Hon'ble Supreme Court has held that the witness whose evidence is essential to the "unfolding of the narrative" should be examined. The Hon'ble Supreme Court at para 14 of the said judgment held that it is true

that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the "unfolding of the narrative" should be called. This solitary principle in criminal trials has been stressed by this Court in the case of Habeeb Mohammad v. the State of Hyderabad for eliciting the truth.

19. In the present case, from perusal of initial version of story of prosecution neither informant is victim nor eye witness of the alleged occurrence as discussed in foregoing paragraphs and victim is the star witness whose presence at the place of occurrence cannot be doubted and whose evidence is essential to the unfolding of the narrative but she has not been produced before the court by the prosecution with the reason best known to prosecution. In this way, the appellants have been deprived of opportunity to cross-examine her which is fatal to the prosecution.

20. Apart from that, PW-1 who is claiming to be eye witness of the alleged occurrence but his evidence suffers from several infirmities, contradictions and inconsistencies. From perusal of FIR, it is crystal clear that none of the prosecution witness is found at the place of occurrence except informant (PW-4) who came after hearing hulla. On the point of manner of occurrence, this witness stated that the weapon of offence is paina

but in the initial version of story of prosecution the weapon of offence is lathi, danda and khanti. The place of occurrence as pointed out by PW-1 is the courtyard of Ahilya Devi (victim) but in initial version of story of prosecution, gate is the place of occurrence which is totally inconsistent on the point of place of occurrence and the boundary of place of occurrence as pointed out by the PW-1 is totally inconsistent with the boundary pointed out by the I.O. and other prosecution witnesses. In this way, version of PW-1 is quite inconsistent on the point of place of occurrence, manner of occurrence and boundary of place of occurrence and he is very inconsistent in his statement that he stayed at the place of occurrence one minute or ten seconds. Keeping in view all the statements as deposed during adducing the evidence before the court, his presence at the place of occurrence is very doubtful and his evidence does not inspire confidence and he cannot be relied upon as eye witness to the alleged occurrence.

21. PW-2 is not eye witness of the alleged occurrence. He is hearsay witness. His evidence cannot be relied upon with regard to the story of prosecution.

22. PW-3 has stated that the appellants and other concertedly assaulted by means of khanti which is totally inconsistent with the story of prosecution. She has stated that on

hearing hulla, she went outside the house and she further stated that the occurrence took place inside the house i.e. courtyard which is totally inconsistent with the initial version of story of prosecution. She cannot tell who hit lathi and how many times. She cannot tell who hit khanti and how many times. Her statement is self contradictory as when the occurrence took place inside the house and she came outside on hearing hulla. Her statement is quite contradictory on the point of manner of occurrence and place of occurrence and her presence at the place of occurrence is very much doubtful. The evidence adduced by the said witness is full of infirmities and contradictions regarding the place of occurrence and manner of occurrence and hence, her statement cannot be relied upon.

23. PW-5 Dr. Dhirendra Kumar has found following injuries on the person of the injured:-

(i) Lacerated wound measuring 5" x 1/4" x bone deep on left side of head.
(ii) Complaint of pain in chest left side.
(iii) Abrasion 2" x 1" and pain in waist left side.
(iv) Abrasion 2 $^{1/2"}$ x 3/4" in back right scapular area.
(v) Complain of bodyache and pain in left eye.
Cause of injury-By blunt and hard substances.
Time of injury-within 06 hours.
M.I.-Til on chest near right claride.

From the injury report as opined by the doctor all the injuries are simple in nature and caused by hard and blunt

substance. Except injury no. 1, other injuries are either complain of pain or abrasion and the prosecution story as narrated by the informant himself that four persons including the appellants concertedly assaulted by means of lathi, danda and khanti. Even injury report does not corroborate the story of prosecution and it is admitted by the doctor that such injuries could also be caused by falling on any hard substance. Learned counsel for the appellants has submitted that suggestion has been made from the defence side that victim sustained injury on account of falling.

24. PW-6 is investigating officer. His statement is full of infirmities as he failed to comply the statutory duty because he has himself stated that he visited the place of occurrence several times but same was not recorded in the case diary. At one place he has stated that victim was unable to speak so he has not recorded her statement and another place he has stated that victim went to her daughter's house so he could not met the victim. This witness has also not recorded the statement of residents of place of occurrence. He has stated regarding the boundary of place of occurrence which is totally inconsistent with the boundary as pointed out by the PW-4 (informant). In this way, his statutory duty is full of infirmities and his statement cannot be relied upon.

25. Main issue arising in this appeal for consideration is whether conviction of the appellants under Section 307 read with 34 of the I.P.C. is sustainable ?

26. To constitute an offence under Section 307 of the IPC, the following ingredients of the offence must be present;

(a. An intention or knowledge relating to commission of murder and

(b. Doing of an act towards it.

For the purpose of Section 307 IPC, what is the material is the intention or knowledge, and not the consequence of the actual act done for the purpose of carrying out the intention. The Section clearly contemplates an act which is done with the intention of causing death but which fails to bring intended consequence on account of initiation on account of intervening circumstances. The intention or knowledge of the cause must be such as a necessary to constitute a murder. In absence of intention or knowledge which is a necessary ingredient of Section 307 IPC, there can be no offence of attempt to murder.

27. Considering the aforementioned facts and circumstances, the following judicial decisions are pertinent to cite:-

In ***Takdir Samsuddin Sheikh v. State of Gujarat and another*** reported in ***AIR 2012 SC 37***, the Hon'ble Supreme Court observed at para 10(ii) as follows:-

> *"10 (ii). This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."*

In Brahm Swaroop and another v. State of U.P., reported in ***AIR 2011 SC 280***, the Hon'ble Supreme Court at para 22 of the judgment held as follows:

> *"22. Where a witness to the occurrence has himself been injured in the incident, the testimony of such*

a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness."

In Ranjit Singh and others v. State of Madhya Pradesh, reported in ***AIR 2011 SC 255***, the Hon'ble Supreme Court at para 17 of the judgment held as follows:-

"17. Under the Indian Evidence Act, trustworthy evidence given by a single witness would be enough to convict an accused person, whereas evidence given by half a dozen witnesses which is not trustworthy would not be enough to sustain the conviction."

In Mano Dutt and another v. State of Uttar Pradesh, reported in ***(2012) 4 SCC 79***, the Hon'ble Supreme Court at para 30 of the judgment observed as follows:-

"30... Normally, an injured witness would enjoy greater credibility because he is the sufferer himself and thus, there will be no occasion for such a person to state an incorrect version of the occurrence, or to involve anybody falsely and in the bargain, protect the real culprit."

In State of U.P. v. Kishan Chand and others reported in ***(2004) 7 SCC 629***, *a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time*

and place of occurrence lends support to his testimony that he was present during the occurrence.

28. In the present case, the factual witnesses and their version are full of infirmities and contradictions though they are claiming to be eye witness of the alleged occurrence but from perusal of initial version of story of prosecution it is quite evident that the informant makes his presence after hearing hulla. In this way, informant (PW-4) is not eye witness of the alleged occurrence and from the initial version of story of prosecution none of the prosecution witness is found at the place of occurrence except the informant (PW-4) whose presence is also doubted at the place of occurrence. It is necessary to quote a relevant judgment of Hon'ble Supreme Court reported in **(2010) 13 SCC 657** *(Sunil Kumar Shambhudayal Gupta and others vs. State of Maharashtra)* wherein the Hon'ble Supreme Court has observed as follows:-

> *"The discrepancies in the evidence of eye witnesses, if found to be not minor in nature maybe a ground for disbelieving and discrediting that evidence. In such circumstances witnesses may not inspire confidence if the evidence is found to be in conflict and contradiction with the other evidences and the statement already recorded. In such a case, it cannot be held that the prosecution proved its case beyond reasonable doubt."*

29. In this respect, it is necessary to refer a judgment dated 03.03.2023 passed by Hon'ble Patna High Court in Cr. Appeal (DB) No. 745 of 2015 wherein it has been observed as follows:-

> *"In criminal law, the onus on the prosecution is to prove each allegation by cogent and reliable evidences. The degree of onus in criminal cases is not only to the extent of mere preponderance of probabilities, rather, the degree of standard required to be met is that of 'beyond all reasonable doubts."*

In the case of State of U.P. vs. Krishna Gopal and Anr. reported in **1988 AIR 2154**, it has been observed that:-

> *"A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt."*

30. In the light of discussion made above with regard to the judgments as cited in foregoing paragraphs, the present case and evidence can easily be tested upon the touch stone of settled legal proposition.

31. In the present case, prudently and pragmatically informant, who put the initial version of story into motion, has narrated that appellants and other concertedly assaulted the informant's mother and the reason behind the occurrence is withdrawal of the case and origin point of occurrence is that when

abusing of the appellants and other was protested, the same resulted into assaulting upon the informant's mother and the initial version of prosecution story clearly reveals that on hulla, the informant makes his presence. In this way, PW-4 (informant) was not present at the place of occurrence and presence of other prosecution witnesses like PW-1 and PW-3 was very much doubtful as same is evident from FIR as well as deposition of prosecution witnesses, though, they are factual witness and individually, they are claiming to be eye witness of the occurrence. In the initial version of story of prosecution, it has been specifically mentioned that origin point of occurrence took place when abuse was protested, same resulted into assaulting of the informant's mother. This specific assertion of said fact has not been whispered in the deposition of informant (PW-4) which makes dent in the story of prosecution even regarding origin point of occurrence. The initial version of story of prosecution reveals that PW-4 has not stated that either PW-1 or PW-3 was present at the place of occurrence. From initial version of story of prosecution itself, the presence of PW-1, PW-3 and PW-4 was very much doubtful and from the deposition of PW-1, it is clear that he has not whispered that either PW-3 or PW-4 was present at the place of occurrence. From deposition of PW-3 it is clear that it was

never whispered that PW-1 and PW-4 were present at the place of occurrence and from deposition of PW-4 it is clear that it was never whispered that either PW-1 or PW-3 was present at the place of occurrence. In the present case, the star witness is the informant's mother whose presence at the place of occurrence cannot be doubted and she has not been examined. In this way, the presence of any of the prosecution witness at the place of occurrence is very much doubtful and it is very settled principle of law that benefit of doubt goes always in favour of the accused. In that situation, prosecution has failed to prove its case beyond reasonable doubt even though the victim/informant's mother sustained injury and the doctor has already suggested that said injuries can be caused by falling on any hard substance and suggestion was also given by the defence side that she sustained injury on account of falling, though, the suggestion has been denied by the prosecution witness. In that situation, in the said facts and evidence of the case, prosecution has miserably failed to prove its case beyond reasonable doubt. Apart from that, the statement of factual witnesses i.e. PW-1, PW-3 and PW-4, though, they are claiming to be eye witness, their evidence are full of infirmities and contradictions on the point of place of occurrence, manner of occurrence and boundary of place of occurrence.

32. Keeping in view all the discussions made above in foregoing paragraphs, it is quite evident that the trial court has not appreciated the evidence of prosecution witnesses and material available on record as to whether in given facts and circumstances of the present case, the offence under Section 307 read with 34 of the IPC is made out against the present appellants wherein the victim has not been examined and none of the prosecution witness has stated the presence of other witnesses at the place of occurrence. Apart from that, there are several discrepancies, infirmities and contradictions in the statement of factual witnesses like PW-1, PW-3 and PW-4 regarding the manner of occurrence, place of occurrence and boundary of place of occurrence and it is settled law that prosecution has to prove its case beyond reasonable doubt and said settled principle is missing from the material available on record and the contention of learned counsel for the appellants finds force as from all these aspects, I find that factual witnesses like PW-1, PW-3 and PW-4 cannot be relied as eye witness to the alleged occurrence.

33. On all counts from the analysis of evidence adduced during trial, it is crystal clear that the prosecution has failed to prove its case beyond reasonable doubt and benefit of doubt goes in favour of the appellants.

34. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellants are in custody. Let them be released forthwith, if they are not warranted in any other case.

35. The interlocutory application, if any, also stands disposed of.

36. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

37. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	08.08.2023
Uploading Date	17.08.2023
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