

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.). No. 993 of 2005**

....

Laxman DeogamAppellant

Versus

1. The State of JharkhandRespondents
2. Sinu Kalondia

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. D. K. Chakraborty, Advocate

For the State : Ms. Priya Shreshtha, Spl.P.P

.....

ORAL JUDGMENT IN COURT

09/02.07.2024 This Criminal Appeal No. 993 of 2005 has been filed on behalf of the appellant by challenging the judgment of conviction dated 20.07.2005 and sentence dated 23.07.2005 passed in Session Case No. 327 of 2003 by Shri. Anil Kumar Arya, learned 4th Additional Sessions Judge, Jamshedpur, East Singhbhum by which the appellant has been convicted for the offence under Section 307 of the I.P.C. and sentenced to undergo rigorous imprisonment for 5 years and to pay the fine of Rs. 1000/-.

2. The prosecution case, in brief, is that, the informant had given fardbeyan before the Officer-in-Charge stating therein that on 29.06.2003 at about 09.30 P.M. while his son Mangu Kalondia was standing outside his house, then the appellant Laxman Deogam came there and demanded money from him and scolded him for not giving the amount and thereafter, he assaulted his son Mangu Kalondia with a chapar due to which he fell down and became unconscious due to which it caused head injury to his son and he became unconscious. Thereafter, on the alarm raised by his younger son Manoj Kalondia, who was standing outside, he came and had seen his son in injured condition on the ground.

3. Heard Mr. D. K. Chakraborty, learned counsel for the petitioner and Ms. Priya Shreshtha, Spl.P.P.

4. Learned counsel for the petitioner has submitted that impugned judgment of conviction and sentence passed by the learned Court below are legal, arbitrary and not sustainable in the eye of law. It is submitted that the judgment and sentence passed by the learned Court below are based on mere surmises and conjectures. It is submitted that the informant is not the eye witness of the occurrence and he had not seen the occurrence and he is a hearsay witness and hence, his evidence cannot be relied upon.

It is submitted that PW-1 is Manoj Kalondia, who is the son of the informant is an interested witness and he had also not seen the occurrence.

It is submitted that PW-2 is Mangu Kalondia i.e. Injured and has falsely implicated him. However, at best it can be inferred that the appellant assaulted him by single blow by chapar.

It is submitted that PW-3 is the informant of this case, who is not the eye witness of the occurrence.

It is submitted that PW-4 Mangal Bodra, PW-5 Babulal Sundi, PW-6 Asam Hansda, PW-7 Langra Halda respectively are nearby persons and they are interested witnesses and even they have also stated that the appellant had assaulted only once by chapar on the head of the injured.

It is submitted that PW-8 A.V.K. Bhakhla is a Doctor, who had found 5 injuries on the son of the informant and had stated specifically during Para-3 of the cross-examination that in one attempt 5 injuries may not be caused. Thus, there is contradiction in the F.I.R and the injury report prepared by the Doctor.

It is submitted that PW-9 Krishna Kumar Vishwakarma is the A.S.I, who has recorded the far

It is submitted that PW-10 Madhav Narayan Mishra is the I. O. of this case and has conducted perfunctory investigation in this case and has wrongly submitted the chargesheet against the appellant. However, even the dbeyan of the informant and the informal witness. I. O. has not seized any blood stain cloth or any blood stain soil from the ground on the place of occurrence and even the chapar has not been produced by the I. O. and hence, the allegation is not proved against the appellant. It is submitted that the appellant has remained in custody for a long period i.e. from 07.07.2003 to 01.09.2005 and he has remained in custody for more than two years.

5. It is alternatively submitted that the occurrence took place in the year 2003 and more than 20 years have passed and the appellant had suffered the agony of long protracted trial and hence, lenient view may be taken in favor of the appellant and he is also ready to compensate the injured i.e. PW-2 Mangu Kalondia.

6. On the other hand, learned Spl. P.P. has submitted that the impugned judgment and sentence passed by the learned Court below is proper and no interference is required. It is submitted that this is not a case of single assault and the appellant had committed several blows upon the injured. It is submitted that the F.I.R. is not encyclopedia of occurrence and there may be other information on the part of the informant for stating about the injury. The informant may not be aware of the entire occurrence at the time of lodging the F.I.R..

It is submitted that PW-2 Mangu Kalondia i.e. the injured victim and has sustained injury at the hands of the appellant on

head and he has fully supported this case. It is submitted that PW-1 Manoj Kalondia is the brother of the injured and an eye witness of the occurrence and he had seen the appellant committing injury upon the injured PW-2 namely Mangu Kalondia.

It is submitted that PW-3 Sinu Kalondia i.e. the informant has fully supported the prosecution case as made out in the F.I.R.

It is submitted that PW-4 Mangal Bodra, PW-5 Babulal Sundi, PW-6 Asam Hansda PW-7 Langra Halda are also the eye witnesses of the occurrence and have supported the prosecution case and stated that the appellant had assaulted the injured Mangu Kalondia by Chapar on his head causing bleeding and head injury.

It is submitted that PW-8 A.V.K. Bhakhla is the Doctor who had found injury on the person of the injured and has supported the prosecution case.

It is submitted that PW-9 Krishna Kumar Vishwakarma is the A.S.I. who has recorded the fardbeyan of the informant and has corroborated the evidence of the informant.

It is submitted that PW-10 Madhav Narayan Mishra is the I. O. of this case who has submitted the chargesheet against the appellant and has found the allegations true and he has also supported and corroborated the evidence of the informant.

It is submitted that evidence of DW-1 and DW-2 namely Ganga Ram Bandra and Sailendra Boipai and also the prosecution witness are not reliable as they are interested witnesses. It has further been submitted that this is case under Section 307 I.P.C and the appellant has been given lenient punishment although, he ought to have been awarded maximum punishment and this is a case of severe assault of head injury on the vital part of the body of the injured PW-2.

It is submitted that no lenient view may be taken in view of the judgment of the Hon'ble Supreme Court and hence, this Criminal Appeal may be dismissed.

7. Perused the Lower Court Records and considered the submissions of both sides.

8. It transpires that PW-3 Sinu Kalondia has lodged the F.I.R. on 01.07.2003 for the occurrence took place on 29.06.2003 at around 9:30 P.M and this delay has not been explained by the prosecution for lodging the F.I.R. Although, it has been stated that the fardbeyan of the informant was recorded on 29.06.2003 at around 11:45 P.M at M.G.M. Hospital.

9. It further transpires that the police, after completing the investigation, had submitted chargesheet under Section 307 of the I.P.C against the appellant on 13.08.2023 before the learned C.J.M. and the learned C.J.M. has taken cognizance under Section 307 I.P.C. against the appellant.

10. After supplying the police papers to the appellant, the charges were framed against the appellant on 02.12.2003 under Section 307 of the I.P.C. by the learned Additional Sessions Judge, FTC-V, Jamshedpur and to which the appellant pleaded not guilty and claimed to be tried.

11. The prosecution in support of its case got examined 10 witnesses who are as follows:-

- (i) PW-1 is Manoj Kalondia,
- (ii) PW-2 is Mangu Kalondia,
- (iii) PW-3 is Sinu Kalondia (i.e. the informant),
- (iv) PW-4 is Mangal Bodra,
- (v) PW-5 is Babulal Sundi,
- (vi) PW-6 is Asam Hansda,
- (vii) PW-7 is Langra Halda,
- (viii) PW-8 is A.V.K. Bhakhla (Doctor M.G.M. Hospital),

- (ix) PW-9 is Krishna Kumar (A.S.I.),
- (x) PW-10 is Madhav Narayan Mishra (I. O.),

12. The prosecution in support of its case has got marked the following documents as exhibit which are as follows:-

- (i) Exhibit-1 is the signature of the informant on fardbeyan,
- (ii) Exhibit-1/1 is the fardbeyan,
- (iii) Exhibit-1/2 is the endorsement of Officer-in-Charge, Sakchi P.S,
- (iv) Exhibit-1/3 is the endorsement of Officer-in-Charge, Mango P.S,
- (v) Exhibit-2 is the injury report,
- (vi) Exhibit-2/1 is the forwarding letter to M.G.M, Hospital,
- (vii) Exhibit-3 is the formal F.I.R,

13. Thereafter, the appellant was examined under Section 313 Cr.P.C. on 22.09.2004 and to which he denied the circumstances put forth before him.

14. The defence in support of his case got examined two witnesses who are as follows:-

- (i) DW-1 is Ganga Ram Bandra,
- (ii) DW-2 is Salendra Boipai.

15. However, no document has been proved on behalf of the defence.

16. Thereafter the learned court below, after hearing both the sides had convicted the appellant for the offence under Section 307 of I.P.C and sentenced him to undergo R.I. for five years and hence, this Criminal Appeal No. 993 of 2005 has been filed.

17. On perusal of the record, it appears that the F.I.R. was lodged on 01.07.2003 for the occurrence said to have taken place on 29.06.2003 as the prosecution has failed to explain the delay in lodging the F.I.R. after the delay of 2 days.

18. It further transpires that although, when F.I.R was lodged on 01.07.2003 but it was seen by the learned C.J.M on 04.07.2003 i.e after the delay of 3 days and no explanation has been given by the

prosecution for sending the F.I.R after the delay of 3 days to the learned C.J.M.

19. So far as the evidence of prosecution witnesses is concerned, PW-3 Sinu Kalondia who is the informant in this case and who has stated during his evidence that while his son Mangu Kalondia was standing outside his house and he was also accompanied by Manoj Kalondia, Babulal Sundi, Langra Halda and Asam Hansda then the appellant Laxman Deogam came from behind and then he assaulted his son Mangu Kalondia by chapar on his head due to which his son sustained head injury and became unconscious. Thereafter, he came outside and taken the injured Mangu Kalondia to Government Hospital for his treatment and from there he was treated too and thereafter sent to Lifeline Hospital for his treatment. Thereafter, his fardbeyan was recorded in the Government Hospital and put his signature and his signature marked as Exhibit-1. However, during his cross-examination, he stated and admitted that his son had taken Chanda for repair of Tubewell but he is not aware as to whether Laxman Deogam has given Chanda or not. He further stated and admitted during Para-5 of the cross-examination that he had not seen the occurrence. He denied the suggestion that his son Laxman Deogam was not visiting the house of the appellant and he was not enmity comes with him. He also stated that the police had not seized the blood stain cloth and blood stain soil.

20. Thus, from scrutinizing the evidence of PW-3, i.e. the Informant, it is evident that he is not the eye witness on the place of occurrence and although, he had taken his son to the Hospital but he had also not explained as to why F.I.R. was lodged on 01.07.2003 when he was given fardbeyan on 29.06.2003

21. PW-1 is Manoj Kalondia, who is the son of the informant and

stated during his evidence that while he along with his brother and nearby people were watching T.V. then the appellant Laxman Deogam came from behind and assaulted his brother by Chapar due to which he fell down and became unconscious. Thereafter, he was taken to M.G.M Hospital. During his cross-examination, he admitted that his house is consisting of 6 and 7 Rooms but his house is not surrounded by the boundary wall and he was watching T.V. in the house which was kept in his room on eastern side. He was also watching C.D, T.V with several persons namely Babulal Sundi, Mangu Kalondia, Asam Hansda, Langra Halda were also watching T.V. He had also seen the appellant arriving at the P.O and assaulting his brother and went away. Then he took his brother with his neighbour Sharmajee to M.G.M Hospital at around 09:45 P.M.

22. Thus, from scrutinizing the evidence of PW-1, it would appear that he claimed to be the eye witness of the occurrence but he had also not seen the occurrence and stated that the appellant had assaulted the injured by giving single blow and the circumstances suggests that he had also not seen the appellant as he was inside the house and as per prosecution case, the injured was said to be outside the house. Hence, the evidence of PW-1 is doubtful.

23. PW-2 is the Mangu Kalondia i.e the injured who stated during his evidence that on 29.06.2003 at around 09:30 P.M. while he was watching T. V. near his house then the appellant armed with chapar came there and assaulted him due to which he sustained injury on his head, nose and ears and he fell down. Thereafter, he was taken to Hospital by his brother and neighbour Sharmajee to M.G.M. Hospital where he was treated. He admitted to have collected Chanda for repairing the tubewell and he was keeping the same which was demanded by Laxman Deogam, but he had handed over the said

money to Laxman Deogam one week prior to the occurrence.

During cross-examination, he admitted that he was on visiting terms with the appellant Laxman Deogam prior to the occurrence. He denied to be the Mukhia of his Muhalla. He also admitted that around 45 persons had deposited the money before him and some person had given Rs. 2/- and some persons had given Rs. 5/- separately.

He has denied the suggestion that he was restricted by the appellant Laxman Deogam for not visiting his house in his absence and he also denied the suggestion for not teasing the wife of the appellant Laxman Deogam. He further stated that even on the date of occurrence, he had brought T.V. on hire by collecting the money and the local people had given chanda but the appellant Laxman Deogam had not given chanda and one Ashiqui film was being seen in T.V. However, he further stated that Laxman Deogam had assaulted him thrice by chapar. He further stated that other people were 5-6 steps away from him and had also admitted that he was fully conscious in the hospital. However, police have recorded the statement and at that time his father and brother are present. He further stated that police had not seized the blood stain clothes from him and also not handed over the same to him. He further stated that T.V. was at the distance of 10 feet from his house and which was open from all the corners.

24. Thus, from scrutinizing the evidence of PW-2 who is the injured person and the injured victim and the appellant is said to have been assaulted him by chapar and he supported the factum of assault made by the appellant upon him. However, he had admitted that he was fully conscious in the hospital and this contradicts that even statement of the informant (PW-3 and his brother PW-1 that the

injured had become unconscious. It further reveals that even the police had not seized the blood stain cloth from him. However, he was consistent on the point of assault made by the appellant upon him.

25. PW-4 is Mangal Bodra who is said to have been the eye witness of the appellant and stated that while he along with other persons Mangu Kalondia, Langra Halda, Babulal Sundi were watching T.V, the appellant Laxman Deogam having armed with chapar came there and initially he started talking with him and then he assaulted by chapar on his head and the injured Mangu Kalondia i.e. PW-2 had become unconscious and fell down.

During his cross-examination, he admitted that the police has not recorded his statement and he was also not one of those who were watching the T.V. He surprisingly stated that he gave evidence on the instruction of his counsel and he had not seen the occurrence.

Thus, it is evident that PW-4 is not the eye witness of the occurrence and he had not seen the occurrence and he had been setup by the informant to give evidence on the instruction of the lawyer. Hence, evidence of PW-4 is not reliable.

26. PW-5 is Babulal Sundi, who also stated that he was watching T.V. on the date of occurrence at about 09:30 P.M. along with Mangu Kalondia, Asam Hansda, Langra Bodra etc. then Laxman Deogam i.e. the appellant came from behind and assaulted Mangu Kalondia by chapar on his head and fled away. Thereafter, the injured was taken to the hospital. However, he further stated that he was not aware as to why there was assault.

During cross-examination, he stated that T.V. was hired by collecting Chanda and he was also watching T.V. and Mangu

Kalondia was ahead of him. He also stated that there is no dispute about Chanda but he had seen once for assaulting him. He also stated that the police had noticed the blood but police had not seized the blood stain soil and blood stain cloth. He admitted that Mangu Kalondia i.e. the injured is known to him.

27. Thus, from scrutinizing the evidence of PW-5, it is evident that it is also set up by the informant and injured to give evidence as he was not taken the names of even the brother and informant for arriving at the place of occurrence and for watching the T.V. at the time of occurrence and also the names of other prosecution witnesses and also the neighbours of the injured and hence, the evidence of PW-5 is not reliable.

28. PW-6 is Asam Hansda, who has also tried to support the prosecution case that the appellant had assaulted the injured Mangu Kalondia by Chapar on his head due to which bleeding was caused on his head and then he was taken to hospital and the injured Mangu Kalondia had become unconscious.

During cross-examination, he admitted that he and Mangu Kalondia lives in the same house and Mangu is his Bhagina. He further stated that during cross-examination that Mangu Kalondia had assaulted once and also stated that police arrived on the date of occurrence and at that time he was present in the house

29. Thus, from scrutinizing the evidence of PW-6, it would appear that he has claimed to be the eye witness of the occurrence and further stated that he was living in the same house and even after watching T.V. with him, he had not gone to the hospital and thus, the nature of evidence reveals that he is not the eye witness of the

occurrence and he is an interested witness and hence, evidence of PW-6 is not reliable.

30. PW-7 is Langra Halda who has tried to support the prosecution case by stating that while he was standing behind the injured Mangu Kalondia and watching film on the date of occurrence, then the appellant Laxman Deogam made cut injury by Tabla on his head and he assaulted on his head due to which the injured Mangu Kalondia had become unconscious. Thereafter, he was taken to hospital by the scooter of Mr. Sharmajee.

During cross-examination, he admitted that he is acquainted with Mangu Kalondia i.e. the injured and they make T.V show by collecting chanda by themselves. In Para-3, he stated on hearing the alarm, he went to P.O and saw that the injured had sustained injury on his head. He had also not gone to the hospital and also admitted that the police have not recorded the statement.

31. Thus, from scrutinizing the evidence of PW-7, it is evident that he is also an interested witness and he had not seen the occurrence and he himself admitted that only after hearing the alarm, he went to the place of occurrence and had seen the injured condition and hence, the evidence of PW-7 is not reliable.

32. It further transpires that PW-7 has changed the nature of weapon by mentioning Tabla instead of Chapar.

33. PW-8 is Dr. A.V.K Bakhala, who had found the following injuries on the person of the injured which are as follows:-

- (i) Incised wound 1 1/2" x 1/2" x 1/2" over left side of face in front of ear red in colour,
- (ii) Incised wound 3" x 1/2" x 1/2" over left side of temporal region red in colour,
- (iii) Incised wound 2" 1/2" x 1/2" x 1/2" over left side of nose and face, red in colour,
- (iv) Incised wound 2" X1/2" x 1/4" over left side of scalf, red in colour,

(v) Incised wound 2" 1/2"X1/2" X1/4" over left side of back of ear red in colour,

During cross-examination, he stated that in one attempt the above injuries may not be caused.

34. Thus, from scrutinizing the evidence of PW-8 i.e. the Doctor, it would appear that he had found 5 injuries on the person of the injured, whereas as per F.I.R. the evidence of several witnesses, the description of giving only single blow.

35. At this stage, it is relevant to notice here that the informant and PW-1 Manoj Kalondia have stated that the injured was firstly taken to Government Hospital and thereafter, he was taken to Lifeline Hospital. However, the name of the Government Hospital has not been mentioned neither by the informant nor even by the injured. Although, it reveals that the injured was treated at M.G.M Hospital.

36. PW-9 is Krishna Kumar Vishwakarma, who is the A.S.I and has recorded the fardbeyan of the informant in his writing and signatures marked as Exhibit-1/1.

During cross-examination, he stated that on receiving the information from M.G.M Hospital, he arrived there at around 11:45 and at that time there was no Doctor but Nurse was there. However, he had not taken the signature of Nurse in the fardbeyan. There was none else except him and Sinu Kalondia i.e. the informant. He had recorded the fardbeyan of the informant and put his signature.

37. Thus, PW-9 reveals that when the fardbeyan of the informant was being recorded then even the Doctor was not present at around 11.45 P.M in the night, although, PW-8 reveals that he had examined the injured on 29.06.2003 at around 10:10 P.M.

38. PW-10 is Madhav Narayan Mishra i.e. the I.O of this case. He has proved the fardbeyan marked as Exhibit-1/1. He has further proved his signature on fardbeyan marked as Exhibit-1/2 and also

proved the signature of the Officer-in-Charge of Mango P.S. marked as Exhibit-1/3 of fardbeyan. He further proved the formal F.I.R marked as Exhibit-3. He has further proved the forwarding letter of M.G.M Hospital marked as Exhibit-2/1 for the injury report of the injured. He stated during his evidence, that after arriving at the place of occurrence he had recorded the statement of the informant and has described the P.O and had seen some blood like substance at the P.O and further stated that he had recorded the statement of witnesses. However, he had not taken the name of any witnesses during his evidence which is said to have been recorded. He stated that the accused had surrendered before the Court below. Thereafter, he had obtained the injury report and had submitted the chargesheet.

During cross-examination, he admitted that the fardbeyan and formal F.I.R was not recorded during his presence, even he had not recorded the fardbeyan of PW-9 i.e Krishan Kumar Vishwakarma and he had not made PW-9 as chargesheet witness. Though, he has taken investigation on 01.04.2003 but has not mentioned in a case diary. He had not taken any person with him at the time of arriving at P.O and had recorded the beyan of the informant at the place of occurrence. He further admitted that he has lost his material from the place of occurrence and had not taken even the blood stain soil and has not even mentioned this even in the case diary. He also admitted that he had not seized the blood stain clothes of the injured and further submitted that he had recorded the beyan of the informant on 01.07.2003 after the delay of three days. He also admitted to have not made independent person as witness in this case.

39. Thus, from scrutinizing the evidence of PW-10 i.e. this I.O of this case, it is evident that he had made perfunctory investigation in this case and even he had not recorded the statement of person

regarding fardbeyan of the informant. He had not seized even the blood stain clothes and blood stain soil to support the prosecution case.

40. It has not on record as to how many days the informant was treated at the hospital and although, it is evident from the evidence of PW-2 i.e. the injured that he was conscious at the time of admission in the hospital. On the evidence of Doctor, it is evident that he could not say as to when the injured PW-2 was discharged.

41. In view of the several inconsistencies and contradictions in the evidence of prosecution witness, this Court is of the view that prosecution has failed to prove charges under Section 307 of I.P.C.

42. Accordingly, in view of the discussion made above and in view of the facts and in the circumstances of this case, the conviction of the appellant under Section 307 of the I.P.C is altered from Section 307 I.P.C to Section 324 I.P.C and at best, this is a case under Section 324 of the I.P.C.

43. So far as the sentence is concerned, the custody undergone by the appellant shall be period of sentence and also in view of the fact that he has faced long protracted trial for around 20 years.

44. However, the appellant is directed to pay a sum of Rs. 20,000/- to the injured PW-2 by demand draft/cash and same may be disbursed to the injured PW-2 by the learned Court below.

45. Thus, Criminal Appeal No. 993 of 2005 is allowed in part.

46. Let the original Lower Court Records be sent to the learned Court below by the office at once.

(Sanjay Prasad, J.)

Avinash/

A.F.R