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IN THE COURT OF ADDITIONAL SESSIONS JUDGE V, HILSA

Criminal Appeal No. 4/2023

(arising out of Cr. Complaint Case No. 231C/2016)

Present: Sanjeev Kumar Rai

5th Additional Sessions Judge, Hilsa

Dated: Hilsa, the 30th day of June, 2026

Harish Bharati S/o Late Umesh Pd. Sharma R/o Muzaffra, P.S.- Islampur, Distt.- Nalanda
..... Appellant

Vs.

1) State of Bihar

2) Vijay Kumar S/o Late Umashankar Mistri R/o Muzaffra, P.S.- Islampur, Distt.- Nalanda
..... Respondents.

For the Appellant	:	Sri Anil Kumar, Advocate
For the State	:	Sri Ajaz Ahmad, A.P.P.
For Resp No. 2	:	Sh. Uday Kumar Siinha, Advocate

J U D G M E N T

1. The above named complainant / appellant preferred this criminal appeal being aggrieved and dissatisfied by Judgment and order dated 29.04.2023 passed by Sri Manish Rai, Ld. J.M., 1st Class, Hilsa in Complaint Case No.- 231/2016, Rd. No.- 702/2016. Respondent no. 2

2. Prosecution case commenced on the basis of complaint petition No.- 231/2014 filed by appellant Harish Bharati against the respondent no. 2. After Inquiry Id. Magistrate summoned present accused to face trial u/s 341, 323, 379, 326, 504 of Indian Penal Code (referred to as I.P.C. hereinafter).



After appearance of the accused, evidence before charge was recorded and charge u/s 341, 323, 379, 326, 504 of I.P.C. was framed on 28.03.2023 against the accused / respondent no. 2. During trial all the four witnesses produced before charge were produced for cross-examination after chagre. The complaint petition was marked Ext. 1.

4. Now the point for determination is whether the prosecution has been able to prove its case against the accused/respondent no. 2 beyond all reasonable doubts or not and whether the Judgment of acquittal is sustainable or not ?

5. The case of prosecution as per complaint petition is that on 08.03.2016 at 1 PM the complainant was going to Islampur market with his brother Manish on a motorcycle. When they reached near 'ghoghra' bridge, Vijay Kumar with his 3-4

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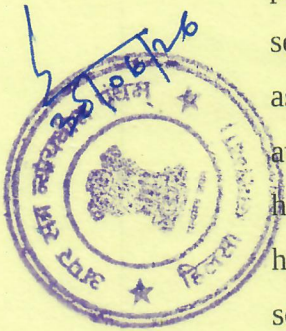
associates stopped him and started abusing. When he protested, Vijay Kumar struck him on head with butt of pistol. When complainant's brother protested, Vijay tried to assault him too. Vijay Kumar snatched his gold-chain worth Rs. 2,500/- and Rs. 4,000/- cash. Complainant's mother who was returning from Islampur, started crying on which passerby assembled, Vijay Kumar and others fled away.- Accused had assaulted him on 16.11.2015 also. The cause of the incident was complainant's family in a criminal case filed by mother of accused and a compromise between the parties in a civil suit.

Evidence

6. P.W-1 Manish Bharati said that on 08.03.2016 at 1 PM, he and his brother Harish Bharati were going to Islampur. When they reached near 'ghoghra' bridge, Vijay Kumar and three others assaulted them and snatched gold-chain worth Rs. 28,000/- and Rs. 4,000/- cash. Treatment was done at Patna hospital. In cross-examination he said that Vijay lives in Patna. He is 'gotiya'. 'Goghra' bridge is 1-2 kilometer from his house and what is happening at the bridge can not be seen from my house. My mother was coming from Islampur. Mother of accused had filed a complaint case in 2005 against my mother and brother. I do not know how that case was disposed. This case was filed after a month. The place of occurrence is a 'chauraha'. His brother had kept cash in pocket near waist. Accused Vijay had found service in police department.

7. P.W-2 Viranj Devi, examined on 14.11.2019, said that the occurrence took place four years ago. She was at home. She was coming from Islampur market and her sons were going to Islampur. When they reached 'ghaghra' bridge, Sanjay Kumar assaulted them. She raised 'hulla' on which Sanjay Kumar took out pistol and fled away firing. In cross-examination she said that the occurrence took place in front of her. She saw from home. Her house is short of half a 'kos' from 'ghoghra' bridge. She had seen the occurrence. Many people gathered but she did not know any of them. Her son got unconscious. She sprinkled water on his face. She can not see any occurrence at 'ghoghra' bridge from her house. Accused's parents had filed a case against her and her son.

8. P.W-3 Amit Kumar, examined on 12.02.2020, said that the occurrence took place 3-4 years ago at 1 PM. He was going to Islampur. Near 'ghaghra' bridge he saw Manish and Santosh Bharati taking motorcycle to Islampur. Vijay stopped their motorcycle and assaulted them. When mother of Manish and Santosh raised 'hulla', Vijay fled away firing. In cross-examination he said that he had good relation with complainant and goes to his house 2-3 times a week. He knew them for 14-15 years. He



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had seen the occurrence. He had seen the accused snatching cash from the complainant. Cash was in his shirt's pocket. Santosh Kumar fell there unconscious. His mother sprinkled water on his face. Santosh kumar was treated at Patna.

9. PW 4 Harish Bharati is the complainant of this case who said that the occurrence took place on 08.03.2016 at 1 PM. He was going to Islampur market with his brother Manish on a motorcycle. Vijay Kumar and 3-4 others stopped them at 'ghoghra' bridge. They beat her with fist and butt of pistol. They snatched gold-chain worth Rs. 28,000/- and Rs. 4,000/- cash from him. His mother was returning from market who raised a 'hulla' at which people gathered and pacified the incident. In cross-examination he said that accused Vijay is his brother in 'gotiya'. Witness Amit Kumar is his old acquaintance and came to his house regularly. The cash stolen was in his waist. The gold-chain was purchased from Islampur but he could not say when. He could not produce purchase receipt of the same. His mother also got hurt in the incident but none except him received treatment. He had gone to police station after one hour and had given in writing but case was not registered. His brother and mother had gone to police station with him. He did not recognize anyone who gathered on 'hulla'. There was land dispute with the accused. Accused has secured service in police (fire brigade) as a driver. This witness had given petition in the department for ending his service as this case was pending against him.

10. The complaint petition was marked Ext. 1.

FINDING

11. Prosecution case is that the complainant and his brother Manish Bharati were going to Islampur market. Accused stopped him on the way near 'ghoghra' bridge and assaulted him and snatched his gold-chain and cash.

Learned trial court observed that the complaint was filed after one month and four days and there was no explanation for the delay. Ld. court observed the contradictions in the version of the complaint petition and the evidence of witnesses and found the case not proved.

13. In the complaint petition (Ext. 1), the reason for the occurrence is given as the acquittal of complainant and his family in a case instituted by the mother of the accused and a civil case being disposed off on compromise. When a case is compromised why somebody would do something is not understandable. Witnesses accept that the mother of accused had filed a case against complainant and his mother but PW1 (brother of the complainant) he did not know about disposal of that case (Para 6 of PW1). The witnesses did not say anything about the reason in their evidence.

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Hence the reason for the occurrence or the motive for the occurrence as put forth in Ext. 1 could not be proved by the complainant.

14. The complainant said that he did not recognize anybody who gathered at 'hulla' (Para 25 of PW4) but only outsider witness Amit Kumar (PW3) said that he was there and saw the occurrence (Para 5 of PW3). Moreover such description of his presence is not mentioned in Ext. 1.
15. Charge of theft is for snatching gold-chain and cash from the complainant. About the gold-chain; its value as given in Ext. 1 is two and half thousand and in oral evidence as twenty eight thousand. The complainant said that he purchased it from Islampur but could not say when did he purchase it and could not produce purchase receipt (Para 12, 13 of PW4). About the cash PW1 said that the complainant had kept the cash in the right pocket near waist (Para 7 of PW1), PW3 said that he had kept it in the pocket of shirt (Para 6 of PW3). Complainant said that the cash was in his waist (Para 9 of PW4). All the witnesses claim to be eye witnesses but they have different places to say from where the cash was taken away.
16. About causing hurt Ext. 1 states that the accused beat him with hand and butt of pistol. PW1, PW2 and PW3 said that the complainant was assaulted, nothing specific (Para 1 of PW1, Para 1 of PW2, Para 2 of PW3). PW2 said that after 'hulla' when people gathered, the accused took out pistol and fled away firing (Para 2 of PW2) and PW3 also said the same (Para 2 of PW3). PW4 said that accused beat him with fist and butt of pistol (Para 2 of PW4). PW2 and PW3 said that the complainant fell down unconscious (para 6 of PW2, Para 7 of PW3) but PW1 and PW4 did not say so rather the complainant said that he went to police station after the occurrence (Para 3 of PW4). All the witnesses said that the complainant was treated at Patna but no any document is there to show the same. The complainant said that his mother was also assaulted (Para 15 of PW4) but no other said so, infact PW3 said that nothing happened to his mother (para 6 of PW3).
17. PW2 who is mother of the complainant and aunt of the accused who repeatedly said that Sanjay Kumar was the person who stooped the complainant and assaulted him. As mentioned in impugned judgment that Sanjay Kumar is brother of accused of this case, Vijay Kumar. Be what it may, PW2 who claimed to be eye witness, despite being aunt and neighbor of the accused, named another as accused. She also told that she saw the occurrence from near her house (Para 4 of PW2) but all the witnesses said that it was not possible to see the place of occurrence from her house due to distance (Para 4 of PW1, Para 6 of PW2, Para 5 of PW3).

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18. Learned trial court has observed the unexplained delay in filing this complaint and the inconsistencies in the version of prosecution witnesses and has acquitted the accused. As held by Hon'ble Supreme Court in **Bhupatbhai Bachubhai Chavda & Ors. Vs. State of Gujrat 2024 INSC 295** "Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the Accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible." In the present case as discussed above the contradictions in the version of prosecution witnesses can not be overlooked and it can not be said that based on the the evidences the only possibility is the guilt of the accused.
19. In the result, this Criminal Appeal is dismissed and judgemnt and order dated 29.04.2023 passed by Sri Manish Rai, J.M., 1st Class, Hilsa in Complaint case no. 231C/2016 is confirmed.

Dictated & corrected by me

Sanjeev
30/06/26
Addl. Sessions Judge V
Hilsa



Sanjeev K. Rai
30.06.26
Addl. Sessions Judge V
Hilsa.

