

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS

DISTRICT – GOPALGANJ, BIHAR

CASE NO. → G.R. No. 168/2016

(Arising Out of Hathua P.S. Case No. - 07/2016)

CIS Reg. No. → 20168/2016

TRIAL NO. – 96/2021

IN THE MATTER OF

STATE OF BIHAR (through informant Vishwakarma Singh)

..... Prosecution.

Vs.

1. Sandeep Kumar, aged about 26 years, S/O Vijay Prasad

Resident of village – Mathiya, P.S. – Hathua, District- Gopalganj.

..... Accused Person.

Police Station → Hathua

F.I.R. No. → 07/2016

U/S → 323, 324 and 504 of I.P.C.

COGNIZANCE U/S → 341, 323, 504 and 506 of I.P.C.

SUBSTANCE OF ACCUSATION → 341, 323, 504 and 506 of IPC.

DISTRICT – Gopalganj (BIHAR).

Ld. Counsel for Accused persons → Mr. Manoj Kumar, Mr. Anil Kumar Sharma, and Mr. Arvind Kumar Singh, Advocates.

Ld. Counsel for the Prosecution. → Ld. A.P.O. for the State Mr. Manjay Kumar Madhup.

DATE OF JUDGMENT → 17th day of August, 2021.



PRESENT – SHIV SHRUTIKA (शिव श्रुतिका)

Judicial Magistrate First Class, Gopalganj

JUDGEMENT

1. The above named accused person stands charged for committing the offences punishable under section 341, 323, 504 and 506 of the Indian Penal Code (hereinafter referred to as IPC) respectively.
2. The prosecution case in nutshell as per the written application of informant Vishwakarma Singh is that the informant is physically disabled person and accused Sandeep Kumar often misbehaves with him. On the day of alleged occurrence, accused Sandeep Kumar misbehaved with him and when the informant objected it, he assaulted and injured the informant with hockey and sword. The accused also threatened the informant of his life. Then he gave the written application to the police station.
3. On the basis of the written application of the informant, a Hathua P.S. Case no. 07/2016 was registered on dated 17.01.2016 under sections 323, 324 and 506 of IPC and a formal F.I.R. was drawn thereof against accused Sandeep Kumar. The investigation of the case was entrusted to A.S.I. Sri Girish Deo Singh, who after investigation submitted Charge Sheet no. 51/2016 dated 26.02.2016 under sections 341, 323, 504 and 506 of IPC against the accused Sandeep Kumar. Cognizance was taken by the Ld. Predecessor Court under section 341, 323, 504 and 506 of IPC vide order dated 01.05.2018 against the chargesheeted accused Sandeep Kumar and was accordingly summoned for trial. After the appearance of accused Sandeep Kumar in the Court and compliance of provisions of section 207 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.), substance of accusation was explained to the accused person under aforementioned sections on dated 27.08.2018 to which he denied and claimed for trial. After prosecution evidence, the statement of the accused person under section 313 of Cr.P.C. was recorded on dated 03.09.2021 in which the accused person has pleaded his innocence.
4. The defence case in brief is the denial of entire occurrence and innocence of the accused person.

POINT FOR DETERMINATION

5. The point for determination in this case is that whether the prosecution has been able to bring home the guilt of the accused person beyond the shadow of all reasonable doubts.



FINDINGS

6. EVIDENCE ADDUCED IN THIS CASE:

1) Evidence of prosecution:

i. Oral Evidence:

- a) PW-1:- Kamal Bhagat (turned hostile)
- b) PW-2:- Vishwakarma Singh (informant)
- c) PW-3:- S.I. Girish Deo Singh (Investigating Officer)

ii. Documentary Evidence:

- a) Exhibit-1:- Signature of informant Vishwakarma Singh on the written application of F.I.R.
- b) Exhibit-2:- Signature of S.H.O. Priyavrat on the written application of the F.I.R.

2) Evidence of defence/accused persons:

No evidence, either oral or documentary, has been adduced by the accused persons in defence.

APPRECIATION OF EVIDENCE

- 7. PW-1, Kamal Bhagat has turned hostile and denied the fact that he has stated anything about this case before police. No considerable point has been brought in by the prosecution while drawing his attention from his statement in case diary.
- 8. PW-2, Vishwakarma Singh, who is the informant of the case, stated in his examination-in-chief that the occurrence took place in the year 2016 at about 08:30 – 09:00 a.m. in the morning. Date was 16th but I could not recall the month. I was returning after buying newspaper when I found Sandeep Kumar's vehicle on the road. I asked him to park it in the side but he refused. Then he took out a hockey stick from his house and assaulted with it on my polio affected right leg due to which I fell down. On hue and cry, my father Sukhdev Singh and sister Reena Devi came and took me inside house. Then I went to the Hathua Government Hospital for treatment and then gave a written application in the police station. I have put my signature on the written application. The same has been marked as "Exhibit- 1" on identification. Lastly, he identifies accused Sandeep Kumar in the Court.



In his cross-examination, in para-5, he states that I had come from home on a motorcycle which was ridden by some other person. I can also ride bike. Para-6, he describes the boundaries of the place of occurrence as below-

- North- Ram Janaki temple
- South- House of Sandeep Kumar
- East- Imambara
- West- Informant's House

Para-7, the occurrence took place in the morning. Except the accused, there was no other person at the place of occurrence. Para- 8, I sustained injuries on my back and polio affected leg. Para- 11, I went to the police station with my father and sister on the day of occurrence only. The street in front of Sandeep's house is very narrow which I use for my way to home. Para-13, he denies the suggestion that he was riding motorcycle in speed to which Sandeep's younger brother objected therefore he filed this false case. Again he denies the suggestion that no such occurrence has taken place. Para- 14, I became unconscious due to injuries.

9. PW-3, Girish Deo Singh, who is the Investigating Officer of the case has stated that on dated 17.01.2016, he was posted as A.S.I. in the Hathua Police Station. He got the charge of the investigation by S.H.O. Priyavrat. The written application bears signature of S.H.O. Priyavrat which has been marked as "Exhibit-2" on identification. Then in para - 3, he describes the boundaries of the place of occurrence as below-

- North- Soling road to Pipara
- South- P.C.C. road
- East- Wooden and tin shop of Surendra Bhagat
- West- Road land

10. Thus the prosecution has adduced total two witness in support of its case. Accused person did not prefer to examine any witness in support of their defence.



ARGUMENT

1. The Ld. APO for the State has submitted in his argument that the prosecution has produced three witnesses and two witnesses have supported the prosecution story.

Thus, the prosecution has been successful in establishing the guilt of the accused persons before the Court and hence, the accused persons deserve conviction.

Per contra, the Ld. Counsel for the defence has submitted that the prosecution has totally failed to prove the charges against the accused person. The date of occurrence has not been mentioned in the written application. Also, the independent witness has turned hostile and not her independent witness has been examined by the prosecution. Even the Medical Officer has not been examined. The place of occurrence described by the I.O. and witnesses differ which shadows the entire prosecution story with doubt. Thus the charges against the accused person are not proved and hence he deserves acquittal.

DISCUSSION, DECISION AND REASON THEREOF

12. Heard the rival submissions at bar by the Ld. A.P.O. for the State and the Ld. Defence Counsel and perused the record. Now, on the basis of the materials and evidences available on record, the Court has to decide whether the prosecution has succeeded in establishing the charges under section 341, 323, 504 and 506 of IPC against the accused person beyond the shadow of all reasonable doubts. For the sake of convenience, all the charges against the accused persons will be dealt simultaneously under the following heads

13. Date, time and place of occurrence: From the perusal of the F.I.R., it appears that there is no mention of date and time of occurrence in the written application by the informant. But in his examination-in-chief, the informant as PW-2, has stated that the date of occurrence is 16th of the year 2016 but I cannot recall the month. The time of occurrence is 08:30 - 09:00 a.m. It creates a reasonable doubt that the informant, who is also the victim of the case and has filed an application does not recall the date of occurrence. Also, as per F.I.R., the date of receiving information and registration of F.I.R. is 17.01.2016 at 10:00 a.m. But if we take into consideration the evidence of PW-2, the date of occurrence is 16th and as per para-11 of his cross-examination, he went to hospital and police station on the same day. So as per PW-2, the date of receiving information and registration of F.I.R. must be 16th. Also, from perusal of the injury report, it appears that the informant was examined by the Medical Officer on dated 14.01.2016 i.e. 2 days prior to the occurrence. Thus, it makes the entire prosecution



story shaky. Also, there are apparent contradictions regarding the place of occurrence as the boundaries of the place of occurrence described by the informant is entirely different from that of the description of the I.O. According to the informant, in north of the place of occurrence, there is a Ram Janaki temple but as per PW-3 i.e. the I.O., in north there is a soling road towards Pipara. Again, according to PW-2, in south of the place of occurrence, there is accused person's house but as per PW-3, there is a P.C.C. road in south. Further, as per PW-2, there is Imambara and informant's house in east and west respectively but as per PW-3, there is Suresh Bhagat's wooden and tin shop and road land in east and west respectively of the place of occurrence. Thus, such apparent contradictions creates a reasonable doubt regarding date, time and place of occurrence. Thus, it can be concluded that the prosecution has failed to prove the date, time and place of occurrence beyond reasonable doubt.

14. **Manner of occurrence:** On perusal of the F.I.R., it appears that the main contention of the informant is that the accused Sandeep Kumar often misbehaves with him and when he objected it, the accused assaulted him with hockey stick and sword and threatened him of life. However, in his examination-in-chief, the informant as PW-2, has narrated an entirely different story and said that when he asked the accused to park his bike in side he refused and took a hockey stick from his house and assaulted on his polio affected leg. Here, he has not mentioned anything about assault with sword. On hue and cry, his father and sister came. No such narration has been made in the F.I.R. Thus, here the prosecution story is entirely different from that of the F.I.R. and creates a reasonable doubt in favour of the accused person.

Injury and injured: From the perusal of the F.I.R., we find that the informant was assaulted with hockey stick and sword due to which he got injured. In F.I.R., he has not stated specifically as to where he sustained injuries. However, as PW-2, in his examination-in-chief, the informant has stated that accused Sandeep Kumar assaulted him with hockey stick on his polio affected leg due to which he fell down. Here he has not stated anything regarding injury by sword. Again in para-8 of his cross-examination, he has stated that he sustained injuries on his back and polio affected leg and he did not sustain any cut injury. In para-14 he has stated that he became unconscious due to assault. Thus, there are apparent contradictions regarding injuries of the informant. Further, the prosecution has failed to examine the Medical Officer of



the case and hence the injury report has not been proved. Even though the prosecution has failed to prove the injury report which is on record, if we take it into consideration, we find that injuries described are abrasion on the left elbow and swelling on scalp and right knee. Also, as per injury report, the informant was examined by the Medical Officer on dated 14.01.2016 and found that the age of injuries was 6 hours old. However, as per F.I.R. and statement of PW-2, the occurrence took place on 16th though no specific month has been mentioned. Thus, there are apparent contradictions regarding injuries of the informant and non-examination of the Medical Officer makes entire prosecution case shaky and raises a reasonable doubt in favour of the accused person.

15. Credibility of witnesses and enmity between the parties: PW-1, Kamal Bhagat has turned hostile and denied the fact that he has stated anything about this case before police. No considerable point has been brought in by the prosecution while drawing his attention from his statement in case diary. PW-2 is the informant of the case and PW-3 is the Investigating Officer. The prosecution has failed to examine any independent witness. As per PW-2 in para-5, , he was sitting on the motorcycle and someone else was riding it. But again in para-7 he says that except accused persons, no one was present at the place of occurrence. Also on hue and cry, his father and sister came out. But all these persons have not been examined. The evidence of PW-2 bears apparent contradictions from the F.I.R. and hence could not be relied upon without any corroboration of independent witness. Therefore again a reasonable doubt arises in favour of the accused person.

16. Reason for occurrence: According to the F.I.R., the reason for occurrence is that the accused Sandeep Kumar often misbehaves with the informant and when informant objected it, accused assaulted him with hockey stick and sword. However, in his evidence before the Court, the informant narrates a different reason that when he asked the accused to park his vehicle in side he assaulted him.



Thus, in the light of the aforesaid discussion and having regards to the facts and circumstances discussed, it can be said that there are apparent contradictions in the evidence of prosecution relating to date, place and time of occurrence, manner of occurrence and injury. Therefore, this Court is of view that there are many lacunae in

the prosecution case and prosecution has failed to prove the guilt of the accused persons beyond the shadow of all reasonable doubts and therefore the accused person is entitled to get the benefit of bonafide doubt.

ORDER

18. Hence, it is therefore ordered that accused Sandeep Kumar is found and held not guilty and is accordingly acquitted from the charges of section 341, 323, 504 and 506 of IPC. Since the accused person is already on bail, he is also discharged from the liabilities of his bail bond and his sureties are also discharged accordingly.

The judgement is pronounced in the open court under the seal of this Court on this 17th day of August, 2021.

This case is hence disposed of on contest

Shiv Shrutika
17/08/2021

Shiv Shrutika

(शिव श्रुतिका)

Judicial Magistrate First Class

Gopalganj.

Typed & Corrected by me

Shiv Shrutika
17/08/2021

Shiv Shrutika

Judicial Magistrate First Class

Gopalganj

