

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.204 of 1995

Against the judgment and order dated 17.06.1995 passed by Sri Madhvendra Saran, 4th Additional Sessions Judge, Samastipur in Sessions Trial No. 126/89 / 118/92.

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1. Binda Rai @ Bindeshwari Pd. Rai, son of Ramrup Rai,
 2. Pramod Kumar Rai, son of Binda Rai,

Both are residents of Village Mokhtiarpur Salkhanhi, P.s. Dalsingsarai, District Samastipur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Amish Kumar, Advocate.

For the Respondent/s : Mr. Surendra Kishore Verma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 15-05-2018

It appears that initially the two appellants who are father and son respectively preferred this Criminal Appeal for setting aside the judgment dated 17.06.1995 passed by the learned 4th Additional Sessions Judge, Samastipur in Sessions Trial No. 226 of 1989 / 18 of 1992 by which they were held guilty for offences committed under Section 307/34 of the Indian Penal Code as also the offences under



Sections 323, 325/34 of the Indian Penal Code for causing hurt and grievous hurt to Haliman Khatoon and further they were found guilty under Section 342 of the Indian Penal Code for having wrongfully confined Rasoolan Khatoon and Haliman Khatoon. Both were aggrieved by their conviction aforesaid and the sentences awarded to them to undergo imprisonment for life under Sections 302/34 of the Indian Penal code, rigorous imprisonment for 10 years under Sections 307/34 of the Indian Penal Code.

2. During pendency of the Appeal, one of the appellants, namely, Pramod Kumar Rai, who was on bail since 25.09.1995, died. The appellants have preferred an application being Interlocutory Application No. 688 of 2018 under Section 394(2) of the Code of Criminal Procedure for expunging the name of Pramod Kumar Rai (appellant no. 2) from the Memo of Appeal as the appeal against him had abated finally.

3. In the circumstances Interlocutory Application No. 688 of 2018 is allowed. It is held that the appeal preferred by the appellant no. 2 Pramod Kumar Rai stands abated.

4. Now the appeal survives only with respect to Binda Rai @ Bindeshwari Prasad Rai (appellant no. 1).

5. We have heard Sri Amish Kumar, learned counsel representing the appellant and the learned Additional Public



Prosecutor for the State.

6. The prosecution case is based on the *Fard-e-beyan* of Mosmt. Haliman Khatoon (PW6), who made her statement on 07.08.1983 at 14.15 hours in Government Hospital, Dalsingsarai recorded by one Jai Shankar Paswan, the Sub Inspector, (PW9) posted at Dalsingsarai Police Station. She stated that her husband died about 14 years back leaving behind three sons, who are all Madari by profession. The informant's Fufu (father's sister) Mosmt. Rasulan Khatoon (deceased) was living with her. It is alleged that on - 7.08.1983, at about 8 A.M., accused Binda Rai @ Bindeshwari Prasad Rai, who happened to be the Sarpanch of Mokhtarpur Salkhani Gram Panchayat along with his son accused Pramod Rai came to her house and told her that as a result of tattooing carved out by her on the hand of the sister of Ram Bali Sah, the hand of the sister of Ram Bali Sah had swollen and so he demanded Rs. 1000/- failing which the informant was threatened to be forcibly taken away. It is alleged that the Bua of the informant, namely, Rasulan Khatoon (the deceased) replied that she had not done this type of work, therefore, she would not be giving Rs. 1000/-. She also allegedly stated from where she would bring this much money. According to the informant, on hearing the reply both the accused persons started assaulting her Bua Rasulan and the informant and injured them. It is also alleged that when both



of them became injured both the accused persons put them on bullock-cart and brought them to their house and there also they were beaten by lathi. The informant alleged that because of the assaults inflicted by the accused persons, her Bua Rasulan died, thereafter, the Sarpanch Binda Rai and his son Pramod Rai placed the dead body beneath the Pipal tree east to their house. It is alleged that in the meantime the co-villagers Ratan Das, Brahmdao Mahto, Chandrashekhar Singh, Jagdish Prasad Singh, Bisheshwar Mahto, Mahendra Prasad Singh and Ram Chandra Mahto assembled there, thereafter it is alleged that both the accused persons fled away. The informant claimed that the aforesaid witnesses had brought her to the hospital in injured condition where she was being treated. She alleged that the dead body of her Bua is lying near the road in front of the house of the Sarpanch Bindeshwari Prasad Rai (appellant no. 1). She also claimed that due to assault she had received injuries on the fingers of the left hand and on the whole body.

7. After investigation police submitted a chargesheet against both the accused persons and upon taking cognizance the case was committed to the court of session for trial. Charges were framed against both the accused under Section 302 of the Indian Penal Code for committing murder of Rasulia Khatoon @ Rasulan Khatoon. They were further stood charged under Section 307 of the Indian Penal code



for having assaulted Haliman Khatoon with an intention to commit murder and that by the said act they caused grievous hurt to Haliman Khatoon. The accused persons were also charged under Section 325 read with Section 34 of the Indian Penal Code for causing grievous hurt to Haliman Khatoon in furtherance of their common intention. Both of them further stood charged under Section 323 of the Indian Penal Code for causing hurt to Halibuan Khatoon and under Section 342 of the Indian Penal Code for having wrongfully confined Rasulan and Haliman Khatoon.

8. In course of trial, the prosecution examined as many as 13 witnesses to prove the charges against the accused persons. *Fard-e-beyan* (Ext.1) has been proved by Raghunath Singh (PW3). Endorsement on the *Fard-e-beyan* (Ext.10) has been proved by Rajeshwar Prasad Sinha (PW11). Para 85 to 104 of the Case Diary and Para 1 to 9 of the Supplementary Case Diary (Ext. 11 & 11/1) have been proved by Biswanath Mahto (PW12). Formal F.I.R. (Ext.12) has been proved by Biswanath Mahto (PW13). PW3, PW11, PW12 & PW13 are said to be the formal witnesses. PW5 is the doctor who conducted post-mortem examination on the dead body of Rasulan Khatoon and PW7 is also a doctor, who examined the injuries of Halibuan Khatoon. Jai Shankar Paswan (PW9) is the Investigating Officer of the case.



9. Post-mortem report (Ext.2), X-ray report dated 09.08.1983 of Haliman Khatoon (Ext.3) and injury report dated 07.08.1983 of Haliman Khatoon have been marked as Ext.2, Ext.3 and Ext.4 respectively. Ext.4/1 is the opinion report of the doctor in respect of the injury report of Haliman Khatoon. Ext.5 is the signature of the Officer-in-charge on the *Fard-e-beyan* (F.I.R.). Ext.6 is the injury report of the Investigating Officer on police requisition. Ext.7 is the inquest report. Ext.8 is the requisition for post-mortem report. Ext.9 is the signature of Bhagdeo Rai (PW10) on the *Fard-e-beyan* and Ext.9/1 is the signature of Shivjee Mahto on the *Fard-e-beyan*. Ext.10 is the endorsement on the *Fard-e-beyan*.

10. The defence has also brought on record many documentary evidences. Ext. A is the formal F.I.R. of Dalsingsarai P.S. Case No. 6/76, Ext. A/1 is the formal F.I.R. of Dalsingsarai P.S. Case No. 3/78, Ext. B is the signature of Md. Noor on the F.I.R. of Dalsingsarai P.S. Case No. 3/78 lodged by Md. Noor. Ext. B/1 is the signature of the Officer-in-charge of Dalsingsarai P.S. on formal F.I.R. of Dalsingsarai P.S. Case No. 211/83. Ext. C is the complaint petition of Complaint case no. 1272/83 filed by Kalia Devi against Haliman Khatoon and Rasulan Khatoon for occurrence which took place on 02.08.1983. Ext.C/1 is the *Fard-e-beyan* of Janardan Singh in connection with Dalsingsarai P.S. Case No. 3/78. Ext.C/2 is the



certified copy of the complaint petition filed by Ram Bali Singh before the Sarpanch Gram Panchayat Raj of Mokhtarpur Salkhani. Ext.C/3 is the certified copy of the complaint petition of Complaint Case no. 1309/83 filed by Ram Bali Sah against Haliman Khatoon for an occurrence which took place on 02.08.1983. Ext.D is the forwarding of Ext. C/1 by accused Bindeshwari Prasad Singh (appellant no. 1) as Sarpanch to the Police Station. Ext.B/2 to B/4 are signatures on the petition filed by Maujelal Rai and two others in T.R. No. 1870/85 pending before the Judicial Magistrate, Muzaffarpur in the year 1986.

11. PW5 Dr. P.C. Jain had performed the post-mortem on the dead body of Rasulan Khatoon and had found following ante-mortem injuries:-

- “(I) Black swelling on the left and right eyelid upper part and also from left eyebrow to temporal region size 4”x3”;
- (II) Swelling on right side of cheek black in colour size 2”x1/2”;
- (III) Black echymosis on the right side of chest near the right nipple size 2”x1/2”;
- (IV) Swelling on the right side of chest 4”x3”;
- (V) Black echymosis 2”x1” on the xyphoid sternum;
- (VI) Swelling on the left forearm fracture of radius ulna;
- (VII) Black echymosis on the right side of thigh size 6”x4”;



(VIII) Black echymosis on the right elbow size 2"x1".

(IX) Black echymosis on the left back.

On deep dissection there was blood impregnated tissue under the impaired part and fracture of left radius ulna and fracture of temporal and frontal bone. There was subdural haematoma and fracture of right 4th, 5th and 6th rib. According to the doctor the injuries were possible to be caused by hard and blunt substance may be lathi or Hurra of lathi or by pressing on the chest. The cause of death was shock and hemorrhage due to head and chest injury. The post mortem report is Ext.2"

PW7 Dr. R.N. Jha had examined Halima Khatoon and found the following injuries on her person:-

(I) Lacerated wound 1/2" x 1/4" on muscle deep on the web between ring and little finger of left hand;

(II) Bruise involving whole of left hand up to wrist including all the fingers except left thumb caused by hard and blunt weapon;

(opinion reserved advice X-ray of the hand)

(III) Bruise 3" x 3" on the upper part of right leg;

(IV) Bruise 2 1/2" x 2 1/2" on the right hand;

(V) Bruise 6" x 2" on the right arm;

(VI) Bruise 2" x 2" on the right waist;

(VII) Bruise 2" x 2" lower part of abdomen;

(VIII) Bruise 2" x 2" on the right hip;

(IX) Bruise 2" x 2" on the lower part of front chest;

(X) Bruise 3" x 3" on upper part of left arm;



(XI) Bruise 3" x 2" on middle of right side of back;

(XII) Bruise 2" x 2" on middle of left side of back;

(XIII) Bruise 3" x 2" on lower part of left thigh ;

All the above injuries except injuries no. II were simple in nature caused by hard and blunt substance. Age of injuries within 12 hours. The opinion regarding injuries no. II was given by the doctor after perusal of X-ray plate and report. The doctor opined that injury no. II has resulted in fracture of leases of 2nd, 3rd and 4th proximal phalanges of left hand and its nature was grievous. The X-ray was done vide X-ray plate dated 9.8.83 at Rasmi X-ray Kendra, Dalsingsarai. X-ray plate is material Ext. I and the X-ray report is Ext.3."

12. In course of trial the learned trial court held that admittedly there were assault on PW6 Haliman Khatoon and the deceased Rasulan. PW 4, 6, 8 & 10 have been taken as eye witnesses of the occurrence. PW 10 Bhagdeo Rai is said to have carried Haliman (injured) to the hospital. He has, however, stated that first they took Haliman to Police Station and on the advice of the Police officer they brought her to Government Hospital, Dalsingsarai.

13. It was the case of the defence that the F.I.R. is ante-dated and ante-timed. It was pointed out that the alleged occurrence took place on 07.08.1983 at 8 A.M. but the *Fard-e-beyan* of PW6 was recorded on the same day at 4.15 P.M. The distance between



Dalsingsarai and Samastipur is 25-30 Km and both the places are connected with buses and large number of trains but the F.I.R. was received in the office of the learned Chief Judicial Magistrate, Samastipur on 10.08.1983. It was pointed out that there had been a delay of three days in received of the First Information Report, further in Column No. 3 of the F.I.R. which is meant for recording the date, time and mode of despatch, there is no such mentioning which throws serious doubt on the veracity of the F.I.R.

14. The defence relied upon the judgment of the Hon'ble Supreme Court in the case of **Ishwar Singh Vs. State of U.P.**, reported in AIR 1976 SC 2423 and in the case of **Datar Singh Vs. State of Punjab**, reported in AIR 1974 SC 1193.

15. In course of cross-examination of the Investigating Officer (PW9), a suggestion was given by the defence that he had manufactured or fabricated the F.I.R.

16. The prosecution relied upon the judgment of the Hon'ble Supreme Court in the case of **Dinesh Kumar Vs. Yusuf Ali**, reported in AIR 1972 SC 2679 and in the case of **Ishwar Singh Vs. State of U.P.**, reported in AIR 1976 SC 2423 as also in the case of **Pala Singh Vs. State of Punjab**, reported in AIR 1972 SC 2679, to contend that if the F.I.R. was orally recorded without delay and the investigation started on the basis of the F.I.R. and that there is no



other infirmity, the delayed receipt of report by the magistrate concerned cannot by itself justify the conclusion that the investigation was tainted. It was submitted that merely on the ground of delay in despatch and receipt of the F.I.R. the prosecution cannot be thrown out. The learned trial court therefore refused to accept the plea of the defence.

17. The learned trial court took a view that when PW10 reached the Police Station along with the informant and others till then as no case was under investigation, seeing the physical condition of the informant the police officer present at the Police Station might have advised to PW10 to take the informant at first to hospital and that is why PW9 is silent on this part of the evidence.

18. The defence also pointed out in course of argument that PW5, who did post-mortem examination has stated in Para 8 of his evidence that the injury no. III, IV & V have been caused by pressing of the chest whereas the prosecution case is that the accused persons assaulted only with Lathi or Hurra of Lathi and nowhere it is the case of the prosecution that any of them climbed on her chest and pressed the same by Lathi or Hurra of Lathi. It was thus contended that the ocular evidence and the medical evidence being inconsistent with each other the prosecution case cannot be accepted. The learned trial court rejected this contention referring to Para 3 of the statement



of PW5 wherein he stated that the injuries were possible to be caused by hard and blunt substance, may be Lathi or Hurra of Lathi or by pressing on the chest. It was the case of the defence that PW6 Haliman Khatoon and the deceased Rasulan Khatoon had kidnapped and sold Kalia, sister of Ram Bali Sah, for immoral purposes somewhere and both PW6 and the deceased returned back and as they were noticed on the bank of the river the villagers questioned them and in course of questioning the clothes of Kalia were recovered from their possession and this caused stir and the people of the village being enraged assaulted both of them. Ram Bali Sah along with others brought them to the place of the accused and filed case before the accused Binda Rai (appellant no. 2), who is the Sarpanch who sent it to the police station and on refusal by the police to register it the same was sent to the court of the learned Chief Judicial Magistrate, Samastipur. Ram Bali Sah lodged a complaint case before the Chief Judicial Magistrate, Samastipur. Kalia Devi also filed a petition of complaint before the Chief Judicial Magistrate, Samastipur which was sent to Dalsingsarai Police Station for institution and investigation. Kalia filed a protest petition and she was examined on solemn affirmation and the case proceeded.

19. According to defence, in course of evidence the prosecution did not examine Kalia Devi and Ram Bali Sah because



they were under fear of being caught in their own web, therefore, non-examination of Kalia Devi and Ram Bali Sah has not only failed the prosecution in proving the genesis of the case but is also to be taken with adverse inference in absence of any explanation coming from the prosecution.

20. The trial court found from the materials on record that Kalia Devi, sister of Ram Bali Sah, had filed a case on 14.09.1983 of kidnapping and theft against Haliman and Rasulan Khatoon and police after investigation submitted final report as mistake of law vide Ext.A/2 and 13. Similarly, on 22.09.1983 Ram Bali Sah for an occurrence dated 02.08.1983 filed Complaint Case no. 1309/83 U/S 364/366/379 of the Indian Penal Code against Haliman Khatoon and Rasulan Khatoon. This case was filed first before the Sarpanch, who vide Ext. C/3 forwarded the same (Ext.O) to the court of the Chief Judicial Magistrate, Samastipur for necessary action. The learned trial court having noticed that the cases against Haliman and Rasulan were lodged after 07.08.1983 raised a suspicion as to why the cases were not lodged before 07.08.1983.

21. The trial court was also called upon to examine the defence submission that the Investigating Officer of this case was inimical to the accused. It was submitted that the I.O. (PW9) was posted at Dalsingsarai Police Station in the year 1983 and during that



period one day D.I.G., Darbhanga Range held a surprise inspection of the Police Station and found two persons Asharfti Sah and Yadu Sah locked up in the Thana Hajat without there being any case against them. Asharfti Sah and Yadu Sah were released. Departmental proceeding was started against PW9 and during the said proceeding PW9 approached the accused Bindeshwari Prasad Rai (appellant no. 1) being the Sarpanch for supporting the story that Asharfti Sah and Yadu Sah were detained in the Hajat on his requisition. The appellant refused to oblige PW9 and invited latter's wrath when he was falsely implicated in the present case. The defence relied upon the evidence of PW9, Para 70 to 73, Ext. K/3 and J/1. Ext. K/3 is the certified copy of deposition of Awadhesh Kumar Singh, A.S.I. of Police, taken in S.T. No. 226/83 and Ext. J/1 is the certified copy of the judgment dated 31.05.1986 of Sessions Trial No. 226/83. The learned trial court, however, refused to accept the defence plea that PW9 had requested this appellant to favour him.

22. There was yet another plea of the defence that Dr. Sri Krishan Roy had kept a Muslim concubine and some years after he poisoned her to death and her dead body was stealthily buried. On initiative of accused Binda Rai, Sarpanch, a case prior to this case was instituted. The case, however, ended in acquittal as according to the defence Dr. Sri Krishan Roy managed things at investigation stage. It



is the case of the defence that PW4, 8 and 10 are the henchmen of Dr. Krishan Roy and all of them reside and cultivate the land of Dr. Krishan Roy. The learned trial court, however, refused to accept the contention of the defence that PW4, 6, 8 and 10 have deposed in this case because of enmity.

23. The defence has also examined 12 witnesses in this case, however, the learned trial court held that while it is true that there are minor contradictions in the evidence of the four witnesses but those minor discrepancies or contradictions would not take away the truthfulness of the witnesses.

24. While assailing the judgment of the learned trial court Mr. Amish Kumar, learned counsel representing the appellant has submitted that in the present case the alleged occurrence took place in the morning hour at 8 A.M. whereas the *Fard-e-beyan* of the informant was recorded by PW9 at 4.15 P.M. in the hospital. PW10 has categorically stated that he had gone to the Police Station with the informant and there he was advised by PW9 to take the informant to the hospital. Learned counsel submits that the prosecution has neither proved any Sanha entry recorded by police on receipt of information of the occurrence in the Police Station nor PW9 has explained his conduct in not recording the *Fard-e-beyan*, either of the informant or of PW10 when they had first gone to the Police Station. Learned



counsel has pointed out that the finding recorded by the learned trial court in Para 6 of the impugned judgment wherein the learned trial court has assumed on his own that when PW10 reached the Police Station along with the informant and others till then, as no case was under investigation, therefore seeing the physical condition of the informant the police officer present in the police station might have advised to PW10 to take the informant at first to the hospital and, that is why, PW9 is silent on this part of the evidence.

25. It is submitted that the trial court had no reason to assume certain facts which were not proved in course of evidence. Learned counsel has submitted that the Hon'ble Supreme Court has considered as to when a fact is said to be "proved", "disproved" and/or "not proved". Reliance in this regard has been placed on the judgment of the Hon'ble Apex Court in the case of **Kona Vs. State of Orissa**, reported in (2018) 1 SCC 296.

26. It is further submitted that the very genesis of the case is said to be the act of performing 'Godna' on the hand of the sister of Ram Bali Sah. In course of evidence neither Kalia Devi (sister of Ram Bali Sah) nor Ram Bali Sah has been examined and, therefore, the very genesis of the case has not been proved. It is further submitted that as many as 12 defence witnesses were examined on behalf of the defence. The appellant in the present case has himself come in the



dock as DW10. In Para 2 of his evidence, he has stated that on 07.08.1983, at about 8 AM, Ram Bali Sah along with co-villagers produced Haliman Khatoon and Rasuliya before him alleging that they had taken away the sister of Ram Bali Sah by alluring her. The co-villagers had recovered clothes of Kaliya Devi from the possession of Haliman Khatoon and Rasuliya. The villagers were very much agitated and they had beaten Haliman and Rasuliya. Ram Bali Sah had submitted an application before the appellant which was forwarded by one Mithilesh Kumar Pandey, who was a member of Village Protection Group. This application was forwarded by the appellant to Dalsingsarai Police Station but the Darogaji Jai Shankar Paswan (PW9) did not receive the application. He had thrown out the application and also scolded Mithilesh Kumar Pandey. In these conditions on 08.08.1983 the said application was sent to the office of the learned Chief Judicial Magistrate, Samastipur. He had submitted the acknowledgement receipt signed by the Office Clerk Sri Agrawal, who was the Peshkar of the Court. He had further stated that Haliman Khatoon had three sons, namely, Taslim, Muslim and Ajiz and her daughter's name is Aiyasha Khatoon and son-in-law is Habib, all of them are the residents of his Panchayat.

27. On 03.09.1978 the sons and son-in-law of the informant had committed theft in the house of one Sri Janardan Prasad



Singh, Assistant Teacher, and the son-in-law of Habib had been caught with some silver articles. The Assistant Teacher had submitted a written application before this appellant and this appellant had sent the said application with the son-in-law of this appellant to Dalsingsarai Police Station. He has further stated that on the said application of Janardan Prasad Singh Dalsingsarai P.S. Case No. 3(9)/78 was registered. On 27.02.1983 Sri Jai Shankar Paswan (PW9) was posted as Officer-in-charge who had caught Asarfti Sah and Yadu Sah without there being any case against them with an intention to extract some money from them. In the meantime, on 28.02.1983 in the morning the D.I.G., Darbhanga Division Sri Tarkeshwar Prasad came on a surprise inspection at Dalsingsarai Police Station where both the said persons were confined in the lock-up without there being any case against them. On failure of Jai Shankar Paswan (PW9) to explain the reason for confining them, a departmental proceeding was initiated against him. Jai Shankar Paswan (PW9) wanted that this appellant should give a statement in his favour which this appellant did not agree. Jai Shankar Paswan (PW9) had threatened him to falsely implicate in a case. He has further stated that Mauze Lal Rai is the Ex-Mukhiya of the Panchayat. His Bhagina is Sri Krishan Roy and his uncle is Beni Rai. The informant Haliman Khatoon and Rasuliya (deceased) are residing on the land provided by Mauze Lal Rai. Dr.



Sri Krishan Roy had got some illicit relationship with the sister of Samsul Miyan. On 31.03.1976 Dr. Sri Krishan Roy had allegedly administered poison to her which was opposed by the co-villagers and this appellant. The dead body of the sister of Samsul Miyan was recovered and a case was registered against Dr. Sri Krishna Roy in Dalsingsarai Police Station being Dalsingsarai P.S. Case No. 6(4)/76. It is for this reason Dr. Sri Kirhsna Roy was inimical to the appellant. He has further stated that the witnesses Bhagdeo Rai (PW10), Jai Prakash Rai, Badan Rai, Ram Pukar Rai are all raiyats and bataidars of Dr. Sri Krishna Rai. Dewan Rai (PW1) and Ram Pukar Rai (PW4) are nephew of Bhagdeo Rai. It is, thus, his case that Dr. Sri Krishna Roy, Mauze Lal Rai along with their henchmen and the Officer-in-charge Jai Shankar Paswan conspired together and got this case lodged against him by putting Haliman Khatoon in front.

28. In course of his cross-examination this witness has stated that the dead body of Rasulan was recovered under the Pipal tree near Maharani Asthan which is situated east to his house. He has further stated that Ram Bali Singh and Kaliya Devi, both are still alive. He had not kept Rasulan and Haliman under his custody. Both of them were alive when they were brought before him by Ram Bali Sah. He has further stated that Janardan Prasad Singh had filed a case before him which was forwarded to the Police Station. The stolen



goods were recovered from a place falling within his jurisdiction. He denied the suggestion that the accused who was caught in connection with the said case was not related to the informant.

29. Learned counsel has drawn our attention towards the evidence of Jai Shankar Paswan (PW9). It has been vehemently argued that it is this witness who had, taking advantage of his position as Sub Inspector and Junior Officer-in-charge of the Police Station, got the F.I.R. lodged against the appellant. He has stated that he got OD Slip at 4.05 P.M. issued by Dr. R.N. Jha, Civil Assistant Surgeon, Dalsingsarai requesting him to record the statement of the injured Haliman Khatoon in the hospital. He had recorded the *Fard-e-beyan* of Haliman Khatoon at 4.15 P.M. he has proved the *Fard-e-beyan* (Ext.1). He had proved the formal F.I.R. He had prepared the injury report (Ext.6). PW9 had also prepared the inquest report of the dead body which was witnessed by Mahesh Singh and Bisheshwar Mahto (both not examined). In his evidence he has stated that the place of occurrence is the open door of the house of the accused (appellant). He found the wheel mark of bullock-cart near the Khaprail Verandah. Towards east of the Darwaza, at a distance of about 50 feet, there is a big Pipal tree. The dead body was lying towards east of the said Pipal tree. He has also stated that the house of Dhaneshwari Devi (not examined) is situated at a distance of 15 feet from the house of



Haliman and Rasulan. This witness has supported the statement of the prosecution witnesses and according to him those witnesses, namely, Dewan Rai (PW1) and Brahamdeo Mahto (PW2) had stated about the occurrence as alleged by the prosecution. In his cross-examination this witness has stated that in the case diary he had not recorded about taking efforts to search out the bullock-cart or the oxen. He had not recorded about any enquiry made in this regard. He had not recorded anything in the case diary showing that there was any mark indicating that the accused were dragged from the Darwaza of the accused to the Pipal tree. In the inquest report of the dead body he had not recorded any finding that there was any soil on the body or on the clothes of the deceased. In his cross-examination he had also not recorded about the mark of movement of the bullock-cart around the boundary of the house of the informant. He had also not found any mark of movement of the bullock-cart and it's wheels or Mohara or the mark of movement of oxen on the 50 feet Kachhi road between the house of the informant and the road. There was no such mark found between the house of the informant and the accused.

30. Learned counsel has strenuously argued with reference to Para 53 of the evidence of the I.O. (PW9) wherein he has stated to have / had recorded the statements of the neighbours of the informant. He has named Laddu Sah, Chalittar Sah, Bihari Sah, Fuliya Devi,



Dhaneshwari Devi, Abdul Mannan, Kamrul Hoda, etc. but neither their statements recorded by the I.O. were proved in course of evidence nor those witnesses were brought on behalf of the prosecution. The I.O. has not stated about the statements of those witnesses. He has stated that he had gone to the house of Kaliya Devi to find out whether there was any Godna mark on her body but she was not found there. On the question put by the court, PW9 stated that he had met Akli Devi, wife of Kisuni Sah, who was the mother of Kaliya Devi and she had stated that Kaliya Devi is mentally disordered and sometimes she goes outside without telling anybody. PW9 had not issued any notice U/S 160 Cr.P.C. to record the statement of Kaliya Devi.

31. The learned counsel has pointed out from Para 65 of the cross-examination that the Dy. Superintendent of Police had in course of supervision recorded the statements of the witnesses and had found them highly contradictory. In Para 75 of the case diary the Superintendent of Police has recorded his opinion contradictory to the opinion of the Dy. Superintendent of Police. It has also come in Para 76 of the case diary that the Dy. Superintendent of Police, in his Supervision Note, had written that on the application of Ram Bali Sah regarding abduction of his sister Kaliya Devi, which was forwarded by the Sarpanch, why no action was taken. The I.O. has tried to



explain with reference to Para 72 of the Case Diary that he had gone to the house of the appellant on many occasions but had not obtained any paper showing innocence of the appellant. He did not remember that any departmental proceeding bearing no. 25/83 was initiated against him and he denied that a proceeding was initiated against him and on finding him guilty he was awarded a 'Black Mark'.

32. Learned counsel has, therefore, attempted to show from the prosecution evidence that the whole manner of occurrence as alleged has not been proved, the prosecution witnesses are not independent witnesses and they all have been inimical to the appellant.

33. On the other hand, learned Additional Public Prosecutor has supported the impugned judgment and has submitted that the witnesses have supported the case of the prosecution and moreover the death of Rasulan and the injuries on the body of the informant are admitted in the present case. It is stated that the evidence of the injured witness has to be attached much importance and should not be easily thrown out.

34. Having heard learned counsel for the appellant and learned Additional Public Prosecutor and upon going through the materials available on the record we find that in the present case the alleged occurrence is said to have taken place on 07.08.1983 at about



8 A.M. According to PW10 he had gone to the Police Station with the informant but there is no evidence on the record to show that the information furnished by PW10 or the informant at the Police Station was recorded either as Sanha entry or *Fard-e-beyan*. The *Fard-e-beyan* of the informant was recorded by PW9 only when he received OD Slip at 4.05 PM from Dr. R.N. Jha (PW7). There is no explanation in the evidence of PW9 as to why the *Fard-e-beyan* of the informant or PW10 was not recorded when they reached the Police Station at first instance.

35. In Para 3 of the evidence of PW10 he has stated that because Haliman had suffered severe assaults, therefore, he had called a rickshaw and he along with Jai Prakash Rai (PW8) took Haliman to the police station. On way they met Shivji mahto (not examined) and they had taken him also to the police station. It is categorically stated by PW10 that they had gone to the police station where they were told by Darogaji (name not disclosed) that they should take the informant to the hospital. Any prudent person while considering the evidence of PW10 would easily come to a conclusion that when PW8 and PW10 were taking the informant to the police station they were very conscious of the fact that a case is required to be registered at first instance, they were also believing that the condition of the informant was such that she could have made the statement before the police.



There is no explanation in the prosecution evidence as to why despite the informant and the two prosecution witnesses going to the police station, their statements were not recorded and no F.I.R. was lodged there. Further, it appears that Haliman Khatoon (informant) is an illiterate lady. Her thumb impression was taken on the *Fard-e-beyan* and Bhagdeo Rai (PW10) has been shown as a witness thereon. From the endorsement made on the *Fard-e-beyan* (Ext.1) it appears that the I.O. (PW9) had neither taken any certificate regarding the condition of the informant so as to give her statement nor the doctor examining the informant was present in course of recording her *Fard-e-beyan*. No hospital attendant was present at the time of recording of the *Fard-e-beyan* by PW9. PW10 has stated that the *Fard-e-beyan* was recorded in his presence as well as in presence of Shivji Mahto (not examined). He has not stated about presence of any doctor or any hospital staff. Considering the fact that initially the F.I.R. was not recorded when the informant along with PW10 had gone to the police station and only later on after about 8 hours PW9 is said to have recorded her *Fard-e-beyan* in the hospital but in absence of the doctor it gives rise to a doubt in the mind of a prudent person that some sort of planning were going on prior to registering the F.I.R. The fact that the F.I.R. was received in the court of the learned Chief Judicial Magistrate, Samastipur three days after the occurrence only on



10.08.1983 strengthens doubt in the mind of this Court that the prosecution had delayed the sending of the F.I.R. because of the fact that they were indulged in making a case against a private person targeted for this purpose.

36. We further find from the evidence of PW9 that he had in course of investigation examined the neighbours of the informant whose names have been disclosed by him in his evidence but their statements have not been disclosed. The neighbours who were the most competent and independent witnesses of the alleged occurrence which took place in the house of the informant have not been examined in course of trial. The prosecution witnesses have not claimed that they had seen the appellant in the house of the informant and committing assault.

37. The view taken by the learned trial court that all the eye witnesses are not required to be brought in course of evidence is not based on a correct appreciation of the evidence brought by the prosecution in the present case. While there is no quarrel with the proposition discussed by the learned trial court, in the nature of the accusations and the defence raised in this case, the evidence of the informant (PW6) and the prosecution witnesses were required to be examined with more circumspection and care. While it is true that the evidence of an injured witness must be given due credence and cannot



be easily thrown out but at the same time it is to be kept in mind that where the defence has been able to bring sufficient evidence to discredit the injured witness, the trial court would have to evaluate the evidence of the injured witness with all precautions and care. In the present case, according to the prosecution witness, the genesis of the occurrence was the act of “Godna” allegedly performed on the body of Kaliya Devi (not examined). Ram Bali Sah, the brother of Kaliya Devi had lodged an application with the Sarpanch (appellant) regarding the missing of Kaliya Devi and taking her away by alluring making allegations against Haliman and Rasuliya has also not been examined. The appellant has himself come in the dock as a witness and placed himself for purpose of cross-examination. He has stated that no act of ‘Godna’ was performed on the body of Kaliya Devi and she did not bear any mark of ‘Godna’ on her body. The prosecution has not been able to prove that because of the act of ‘Godna’ the appellant and his son had gone to the house of the informant and had demanded a sum of Rs. 1000/- but denial to pay the same by Rasulan the appellant and his son had assaulted them by Lathi or Hurra of Lathi. These facts are in the category of “not proved”. The I.O. did not find any sign of movement of wheels of bullock-cart or the sign of movement of oxen around the boundary of the house of the informant. The allegation is that Haliman and Rasulan were put on the bullock



cart and then they were taken by the appellant and his son for about two miles to their house but the I.O. did not find any sign of the movement of oxen or the mark of wheels of bullock-cart, he did not enquire about the alleged bullock cart to find whether there was any blood fallen on the bullock cart, therefore, the prosecution story as alleged cannot be said to have been proved beyond all reasonable doubts.

38. We have also seen that at one stage Dy. Superintendent of Police had recorded about the highly contradictory statements of the prosecution witnesses. The appellant has himself led the evidence and has prima facie shown by bringing the copy of the complaint of Janardan Prasad Singh, the Assistant Teacher, as also the other documentary evidences that because of the nature of his job as a Sarpanch there were some people inimical to him and the I.O. (PW9) had also been acting in connivance with them for those reasons.

39. Having gone through the evidences available on the record we are of the view that the prosecution has failed to raise its evidence beyond all reasonable doubts. The words 'reasonable doubt' are to be understood as one which occurs to a prudent person. When the prosecution fails to maintain a standard of proof, a reasonable doubt occurs. We are of the view that the defence has brought oral as well as documentary evidences on the record to create a dent in the



prosecution story. The defence plea of anti-dating of F.I.R. is based on certain reasons appearing from the evidence of P.W.10 itself. No independent witness or no neighbour of the informant has come forward claiming to have seen the appellant visiting the house of the informant. In the kind of the materials brought on behalf of the defence, in absence of examination of reliable and independent witnesses, considering the entirety of the circumstances we are of the view that the appellant would be entitled to get the benefit of doubt.

40. In result the impugned judgment is set aside. The appeal is allowed, the appellant no. 1 stands acquitted and is discharged from the liability of his bail bond.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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