

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.244 of 2003

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TEJ NARAYAN KAHAR SON OF RAM PRAVESH KAHAR RESIDENT
OF VILLAGE- KHIRIKLANE, P.S. AGIAON BAZAR, DISTRICT-
BHOJPUR.

... .. APPELLANT/S

VERSUS

THE STATE OF BIHAR

... .. RESPONDENT/S

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Appearance :

For the Appellant/s : Mr. Rajani Ranjan Pd. Singh, Adv.

For the Respondent/s : Smt. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 11-02-2019

1. Initially Ram Pravesh Kahar and Ten Narayan Kahar, on account of having been convicted and sentenced filed instant appeal. During course of pendency of instant appeal Ram Pravesh Kahar died whereupon, after procuring report from the Superintendent of Police, Bhojpur at Arrah vide order dated 26.09.2018 this appeal has been found to have abated against him whereupon proceeded against sole appellant Tej Narayan Singh who has been found guilty for an offence punishable under Section 304/34 of the IPC and sentenced to undergo R.I. for seven years vide judgment of conviction and order of sentence dated 29.04.2003 passed by Additional Sessions Judge-cum-Presiding Officer, Vth, Fast Track Court, Bhojpur at Arrah in connection with Sessions Trial No.95/1993.

2. Akhilesh Kumar Singh (PW.4) gave his fardbeyan on 13.09.1992 at about 11:45 Am at the Malti Hospital, Arrah Bed No.101, where his father Sheo Balak sah was admitted for treatment and during course thereof, succumbed to his injuries with an allegation that on



11.09.1992 while his father Sheo Balak Sah had blocked the channel for irrigating his field, Ram Pravesh Kahar and Tej Narayan Kahar came near his father having armed with lathi. At that very time, he was at a distance of one bigha engaged in another field. Both the accused persons just after coming near his father began to abuse and then, gave indiscriminate lathi blow. They were saying that their field will not be irrigated only his field (father) is to be irrigated. He after seeing assault over his father rushed till then, his father became unconscious and fell down. At that very time it was 06:30. There was fracture over head of his father and blood was oozing out. Any how he took his father to his house and then, he along with his brother Arvind Kumar Gupta and co-villager Kishun Ram and Bishun Ram took his father to Sonebarsa and then, on 12.09.1992 they carried to Malti Hospital where, during course of treatment his father died. It has further been disclosed that at an initial stage they were not inclined to register a case and so, no information was given to anywhere. It has also been disclosed that they have got no grievances against the accused since before. Only for the irrigation, his father has been assaulted by the accused persons.

3. After registration of Angian Bazar P.S. Case No.46/1992 investigation was taken up and after concluding the same, charge sheet has been submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.



4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced in defence.

5. In order to substantiate its case altogether five Pws have been examined on behalf of prosecution who are PW.1-Dr. Hari Narayan Pandey, PW.2-Vijay Kumar Sah, PW.3-Hira Devi, PW.4-Akhilesh Sah, PW.5-Arbind Kumar Gupta as well as has also exhibited Ext.1-the postmortem report, Ext.2-Signature of the informant over fardbeyan. As stated above, nothing has been adduced on behalf of defence.

6. While assailing the judgment of conviction and sentence, it has been submitted at the end of learned counsel for the appellant that I.O. has not been examined. On account of non-examination of the I.O. the interest of the appellant is found highly prejudiced in the background of the fact that (a) had there been examination of the I.O., the appellant would have been in a position to cross-examine him over presence /non-presence of independent witness, (b) the actual place of occurrence as, there happens to be deflection of the prosecution version during course of trial from the initial version, (c) what was reason for getting only family members cited as a witness, (d) with regard to finding having at his end during course of inspection of the P.O., (e) whether I.O. had seized relevant prescription issued by treating doctor and so, due to non-examination of the I.O. as their right has been prejudiced so, on that very score alone appellant is entitled for



acquittal. There happens to be inordinate delay in institution of case without any cogent explanation. Explaining the score of submission, it has also been argued that treating doctor has not been examined nor the injury report/prescription has been made an exhibit.

7. It has further been submitted that five witnesses have been examined out of whom PW.1 is the doctor who had conducted postmortem, PW.2 to PW.5 are own family members and further, from the evidences more particularly that of PW.4 and PW.5, they have tried to project themselves as a witness of dying declaration which is found completely inconsistent with the initial version and so, they lost their reliability. In likewise manner, it has also been submitted that in order to claim an eyewitness to occurrence the informant also shifted himself.

8. It has also been submitted that happens to be the reason behind of presence of inconsistencies with regard to manner as well as genesis of the occurrence. There happens to be consistent version that both the accused had assaulted the deceased by inflicting indiscriminate lathi blow is found completely falsified from the medical evidence as, PW.1 the doctor during course of postmortem had found single injury. So, in sum and substance neither the witnesses are an eyewitness to occurrence nor their status could be recognized as hearsay witness. As such, this case happens to be of no evidence. Moreover, having inconsistencies amongst ocular as well as medical evidence nagged the prosecution whereupon, the judgment impugned is fit to be set aside.



9. On the other hand, the learned A.P.P. while refuting the submission has submitted that death on account of sustaining ante-mortem injury caused by hard and blunt substance is found duly substantiated by way of examination of Pws corroborated by the medical evidence. Furthermore, it is also evident right from initial version that as there was no grievances nor they were on strain relationship that being so, prosecution party was not at all inclined to drag the accused persons for their sit but, as his father died on account of injuries having been inflicted by the accused persons consequent thereupon, instant case has been registered and the same happens to be sufficient to explain the delay, so far evidence is concerned, it happens to be consistent, credible clinching, hence the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

10. From the evidence available on the record, it is apparent that whoever been examined are own family members. Though I.O. has not been examined but, the defence has not cross-examined nor confronted any of the Pws including that of PW.4 that at the time of occurrence whether there was presence of any independent witness in the surrounding. Contrary to it, PW.4 had stated that at that very time only he was working in his field while his father had blocked the channel for irrigation of his field wherein he was working. The distance in between has also been explained. Apart from this, it is also evident from the evidence of PW.2, PW.3, PW.4, PW.5 that no material exaggeration nor inconsistency has been found save and except from



the evidence of PW.4 para-6 wherein he was confronted on the score that during course of his previous statement he had not disclosed that during midst of way the villagers and the family members have inquired from his father regarding his assault whereupon he disclosed with regard to the occurrence.

11. In each and every case, non-examination of the I.O. would not cast any kind of infirmity in the prosecution case rather, for that, the accused has to show that on account of non-examination of the I.O. he has been deprived of an opportunity in order to discredit the witnesses relating to their earlier statement, inconsistency with regard to the place of occurrence and in likewise manner, other circumstances which on account of non-examination of I.O. the accused is found deprived of an opportunity and for that, the accused is under obligation to explain.

12. In **Baldev Singh v. State of Haryana** reported in **2016 Cr.L.J. 154**, it has been held:

“16. Contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh-SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. Material on record would show that Chander Singh-SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects



the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case.”

13. Furthermore, unless and until there happens to be presence of independent witnesses, the non-examination of the independent witnesses would not be a deficiency in the prosecution case. On the other hand, one has to see whether from the evidences of the witnesses whoever been examined in court the prosecution has succeeded in substantiating its case or not and, in likewise manner presence of family members that too when they have got no animosity with the accused since before, having no ground, occasion for false implication and further, being family member would not be interested in implicating the others exoneration the real culprit.

14. In *Ganapati vs. State of Tamil Nadu* reported in (2018) 5 SCC 549, it has been held:

“14. 'Related' is not equivalent to 'interested'. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested' [See: State of Rajasthan Vs. Smt. Kalki and Anr. (1981) 2 SCC 752].

15. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the



evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made [See : Maranadu and Anr. Vs. State by Inspector of Police, Tamil Nadu (2008) 16 SCC 529].”

15. In the background of aforesaid settled principle now one has to see after proper scrutiny of the evidences whatever been adduced at the end of the prosecution, whether the finding recorded by the learned lower court is sustainable in the eye of law or not.

16. PW.1 is the doctor who had conducted postmortem over the dead body of Sheo Balak Sah on 13.09.1992 and found the following:

Lacerated wound on left partial region of scalp 2 ½ anteroposterially placed-Blood clot was present. No other mark of injury on the body.

Internally on opening the scalp-Frontal and left parital bone was fractured interioposterially. Internal cranial crevity was full of blood and clot-frontal of brain was lacerated and meanings were lacerated chart. Abdominal cavity stomach empty, lever, spleen, kidney normal, bladder empty.

All the above injuries are antemortum in nature, caused by hard and blunt substance such as by lathi.

Time elapsed since death within 24 hrs. of PM exam.
Cause of death due to severe brain haemorrhage. These



injuries were sufficient to cause death in ordinary course of nature.

During cross-examination nothing substantial has been elicited.

17. Now coming to status of the witnesses, it is evident that PW.2-Vijay Kumar Sah, PW.3-Hira Devi, PW.5-Arvind Kumar Gupta are hearsay witness while PW.4-Arvind Kumar Sah, informant is an eye witness to occurrence. PW.2 has stated that deceased Sheo Balak Sah was his uncle. He was assaulted on 19.09.1992 at about 05:30 PM. At that very time, he was gone to Sonebarsa Bazar to sell Tisi. When he returned back therefrom, then he came to know whereupon he had gone at Badhar and had seen Akhilesh, Arvind and wife of Sheo Balak Sah carrying him. On query Akhilesh had disclosed that Ram Pravesh and his son Tej Pratap assaulted him with lathi over his head, as a result of which, Sheo Balak Sah became unconscious. He was taken to hospital where during course of treatment he died. During cross-examination at para-9 he has stated that after return, he came to know with regard to the assault whereupon he had gone to the place of occurrence and had seen the injured was being lifted. He had also assisted during course thereof. In para-10 he has stated that police chowki was not informed as, firstly treatment was to be provided.

18. PW.3, wife of deceased has stated that occurrence took place at nine years ago at 06:00 PM. Shee heard that Ram Pravesh Kahar and Ten Narayan Kahar have assaulted her husband with lathi over his head whereupon, she rushed to Badhar where she had seen her



sons Arvind and Akhilesh carrying her husband. Her husband was in pool of blood and was suffering from semi-consciousness. She inquired from husband as well as her sons whereupon they disclosed that Tej Narayan Kahar and Ram Pravesh Kahar have assaulted with lathi on the issue of irrigation. Then, her husband was taken to Sonbarsa Bazar and, on the following day, was brought to Maiti hospital Ara where during course of treatment he died. Identified the accused. During cross-examination at para-4 she has stated that before institution of this case they have got no quarrel with the accused persons on account of irrigation. They were not on strain relationship. She has further stated that after hearing murmuring, she rushed wailing followed by so many persons. When she had covered approximately sixty yard from her house then, she had seen her husband in an injured condition. On her queries he disclosed and then thereafter became unconscious. Thereafter, he had not regained sense. She is unable to disclose the names of other co-villagers who have arrived at the place of occurrence. In para-6 she has stated that she met with her sons in Badhar. Her husband was carried to her place where after staying for sometime, he was taken to Sonbarsa. She had made statement before the police. Then had denied the suggestion at para-9 that she had not talked with her husband on account of being unconscious. She also denied suggestion that no occurrence as alleged had taken place and on account thereof, deceased was not taken to the government hospital.



19. PW.5 is the another son of the PW.3 as well as deceased, full brother of informant PW.3. He has stated that on the alleged date and time of occurrence, he was at his house. After hearing uproar he rushed towards the same and during midst thereof way, he had seen his brother Akhilesh Kumar carrying his father. Head of his father was fractured. Blood was oozing out. His father had disclosed that Ram Pravesh Kahar and Tej Narayan Kahar have assaulted him with lathi and caused the injury. They took father to their house and then, to Sonebarsa on the following day, he was taken to Malti hospital where, during course of treatment, he died. Identified the accused. During course of cross-examination at para-2 he has stated that at the time of occurrence he was feeding his cow. After hearing alarm of the villagers, he rushed towards destination. The place where he met with his brother as well as his father, so many villagers were present but he is unable to disclose their names. While he met with his father he was standing. He had talked with him about a minute. At Sonebarsa his father was not treated. There happens to be police chowki, they have not informed. Blood was oozing out from the injury of his father but he is not remembering whether his cloth got strained with blood or not. He is not remembering whether blood had fallen at his shop where his father stayed for night. He had not informed the Jagdispur Police Station. He is not remembering whether they have gone to Government Hospital, Ara or not. They have come to Malti Hospital. Then has denied the



suggestion that no such kind of occurrence had taken place. Then has stated that after death of his father, his brother had informed the police.

20. PW.4 is the informant. He has stated that on the alleged date and time of occurrence (11.9.1992 at about 06:00 PM) while he was at his field, his father was engaged in getting flow of water from the channel to his field for the purpose of irrigation, Ram Pravesh Kahar, Tej Narain came, abused. He rushed near his father. He had seen his father lying unconscious. He had seen head of his father fractured, blood was oozing out. He lifted his father to his house. During midst of way he met with Vijay and mother along with other villagers whom his father had disclosed regarding the occurrence. Then, they took his father to Ara hospital where he was admitted to Malti Hospital and during course of treatment he died. Police had come to Malti hospital recorded his fardbeyan, read over the same and then he put his signature. He had further stated that both of them have had assaulted his father. Identified. During cross-examination at para-2 there happens to be disclosure with regard to presence of police station/Naka at Sone barsa as well as Jagdishpur. In para-3 he has stated that there was no dispute with the accused persons since before concerning irrigational work. He has further stated that the field of accused lies west to his field. Paddy crop was standing in his field. He has further stated that his father was sitting near the channel being at a distance of hundred yard south to his land. Water was in the channel. They pay charge for irrigation. He has not paid the charge for current year. Water was



discharged once in a week. On that day, water was there. His field was being irrigated as, field of others have already been irrigated. At that very time the other persons have returned back to village. Then has stated that the field in which he was present was being irrigated. At that very time he was weeding. In para-4 he has stated that when he rushed towards his father, his father was already lying over the ground. His father had fallen down, in the field of Jalim Singh at western flank. There was mud. During course of lifting of his father his cloth were soaked with blood as well as mud. He lifted his father within five months. He met with his brother as well as mother in the midst of way. His house lies at a distance of hundred yard from the place. They have lifted father to house, then to Sonebarsa and then to Ara. At Sone Barsa his father was not treated nor, information was given to the police station. In para-5 he has stated that during course of treatment, his father died at Malti Hospital. He has further stated that he was not aware with the fact whether doctor had informed police or not. In para-6 he has stated that it is not a fact that during course of statement he had not disclosed that his father disclosed regarding the occurrence before his mother, brother and villagers. He has further stated that he had shown the place of occurrence to the police. Then has denied the suggestion that no such kind of occurrence had ever taken place.

21. From the evidence, as discussed herein above, it is apparent that save and except PW.4, none had claimed to be an eyewitness to occurrence. Furthermore, from the cross-examination of PW.4 it is



evident that he was not at all cross-examined at the end of the accused whether, on the alleged date there was water available in the channel, whether field of prosecution party was not being irrigated, whether the field in which PW.4 was being instigated. Apart from this, from the cross-examination of PW.4, it is evident that he was not at all cross-examined over the occurrence and in likewise manner, the doctor, PW.1. At the present moment the submission of the learned counsel for the appellant that single injury has been found over head of the deceased is not at all found relevant, to be more particularly in the background of the fact that PW.4 has not been cross-examined whether single blow was over the head and if so, by whom and in likewise manner PW.1 has not been cross-examined whether the aforesaid injury was resultant of single blow or more than that. More particularly on the pretext that there was fracture of frontal as well as parietal area which was located only after dissection. Now the facts remains how evidence of single witness be considered and for that, Section 134 of the evidence takes care of. In terms of Section 134 of the Evidence Act it is, quality not the quantity which matters and that happens to be reason behind that there happens to be consistency so far legal principle is concerned that conviction could be recorded even on the evidence of single witness if the same happens to be trustworthy. More recently in **S.P.S. Rathore v. C.B.I. and Anr.** reported in **2017 Cr.L.J. 537** it has been held:

“33) No particular number of witnesses is required for proving a certain fact. It is the quality and not the



quantity of the witnesses that matters. Evidence is weighed and not counted. Evidence of even a single eye witness, truthful, consistent and inspiring confidence is sufficient for maintaining conviction. It is not necessary that all those persons who were present at the spot must be examined by the prosecution in order to prove the guilt of the accused. Having examined all the witnesses, even if other persons present nearby not examined, the evidence of eye-witness cannot be discarded.”

22. The another chapter, at the present moment which attracts due attention is with regard to delay in institution of the case. From the evidence, it is evident that both the parties were not suffering from grudge, personal vendetta. Furthermore, there also happens to be disclosure that informant was not at all inclined to institute a case at an earlier occasion. That means to say, had there been survival of the deceased, then, in that circumstance, the case would not have been instituted. It was death of deceased whereupon, the hospital administration got the police officials informed and then, the fardbeyan was recorded. On that very score, the delay in institution of the case is found duly explained.

23. With regard to conviction and sentence it is apparent that both the parties were not at all aggrieved\ with each other. It was mere a circumstance on account of flow of water for the purpose of irrigation to the field of the prosecution party whereupon appellant and his father (since deceased) became aggrieved and for that they brandished their *lathi* which ultimately proved fatal. The lathi blow over the head, a delicate part even presuming that appellant was not carrying an intention but knowledge could be attributed on account of striking over



delicate part of body as a result of which, the deceased had died on the following day while he was under going treatment and so, the appellant including his father (since deceased) has rightly been convicted for an offence punishable under Section 304 of the IPC which the learned lower court should have distinguished as 304 Part-II/34 of the IPC. In terms thereof, instant appeal is found merit less whereupon, is dismissed. Appellant is on bail, hence his bail bond is hereby cancelled, directing him to surrender before the learned lower court to serve out remaining part of sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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