

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.328 of 2022**

Arising Out of PS. Case No.-61 Year-2020 Thana- MORKAHI District- Khagaria

AVINASH PASWAN @ AVINASH KUMAR S/o Rampratap Paswan  
Resident of Village - Mathurapur, P.S. and District - Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

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

For the Respondent/s : Mrs. Usha Kumari I, Spl. P.P.

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**  
**ORAL ORDER**

2      14-09-2022                      Heard learned counsel for the parties.

Appellant has challenged the order dated 07.12.2021 passed by the learned Additional Sessions Judge-I-cum-Special Judge, SC/ST Act, Khagaria in Morkahi P.S. Case No. 61 of 2020 whereby cognizance has been taken against the appellant for offences under Sections 147, 148, 149, 341, 302, 354 of the Indian Penal Code, Section 27 of the Arms Act as well as Sections 3(2)(V) and 3(2)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “SC/ST Act”).

Learned counsel for the appellant submits that informant alleges that she along with children and husband were going to their relatives place on their E-Rickshaw which was driven by her husband. She further alleges that near Lachka Bridge, they were intercepted by five motorcycle born criminals



and the accused stopped the E-Rickshaw. She further alleges that Avinash Paswan (appellant) gave order to kill and even shot her husband on the back side of his head and Rakesh Paswan also shot on the left side of the back as a result of which the husband of the informant died. She alleges that Manish Sharma dragged her and tore her blouse and said to kill her as she is a witness to the crime, thereafter named accused persons fired. It is alleged that she saw her elder brother-in-law coming from behind on a motorcycle and, thus, informed him and thereafter came back home and informed about the occurrence to her family members. It is alleged that she along with Pappu Paswan went to the place of occurrence and saw the accused persons in light of the motorcycle and local people informed that police has taken the dead body to the police station.

Learned counsel for the appellant submits that from bare perusal of the allegation as alleged in the FIR, it does not inspire confidence and at the same time appears to be inherently improbable and patently absurd. It is also submitted that it absolutely does not stand to reason that if the occurrence was committed in presence of the informant and the informant as alleges had already informed her elder brother-in-law who was coming from behind where was the occasion for the informant



and her brother-in-law to go back home and inform other family members about the occurrence. Learned counsel next submits that the absurdity of the allegation also appears from the fact that it is alleged that when informant along with Pappu Paswan came to the place of occurrence they saw the accused persons in light of motorcycle as if the accused persons were waiting for the arrival of the informant along with others for their further identification. Learned counsel also submits that the falsity of the allegation also manifests from the fact that the informant alleges that she went back home along with her brother-in-law and informed the family members but she was not accompanied either by her father-in-law or any other family members except Pappu Paswan. Learned counsel next submits that the informant further alleges that when she reached the place of occurrence there she was informed by the local people that police had come and had already taken the dead body to the police station which further fortifies the belief that informant was not a witness to the occurrence, further if the dead body was taken by the police, as informed by local people, then where was the occasion for the accused person to be present at the place of occurrence for further identification, as aforesaid, It is next submitted that had the occurrence taken place in presence of the informant and the



children the normal reaction of a person would have been to rush to the police station for informing the police or endeavours would have been made at the place of occurrence itself to ensure that the police is informed either by the informant or by the villagers/local people who had allegedly gathered at the place of occurrence. Learned counsel submits that no doubt prima facie the allegation is serious and the informant is claiming to be an eyewitness to the occurrence but the statement made hereinabove would clearly demonstrate that the informant was not an eyewitness to the occurrence and the allegation is full of improbability. Learned counsel next submits that even the police investigated the case threadbare but came to the considered conclusion that the allegation was false and, accordingly, final form was submitted. Learned counsel next submits that during the course of investigation nothing came which could even remotely connect the appellant or other accused persons with the offence. Learned counsel, thus, submits that when the police investigated the case submitted final form and from the allegation as alleged in the FIR, it prima facie, appears to be absurd, improbable and full of improbability but still the learned trial court differing with the police report took cognizance of the offence when there being no material on record to suggest that it



was the appellant who had committed the occurrence. Learned counsel next submits that even the FIR was instituted after a delay of one day and that too after postmortem of the deceased which further casts an aspersion about the truthfulness of the allegation but this aspect of the matter was completely not taken into consideration at the time of taking cognizance. Learned counsel next submits that the uncle of the deceased is a veteran criminal who has antecedent of twenty-four cases and even the deceased had antecedent of six cases and it may be a possibility that on account of rivalry the present occurrence might have taken place and the informant took the same as an opportunity to implicate the appellant. Learned counsel next submits that it completely defies all logic, wisdom and reasonable criminal behaviour that if the appellant and the accused persons were known to the informant then why they would commit an occurrence in her presence and thus create evidence against themselves, more so, when it is alleged in the FIR itself that Manish Sharma had said to kill her as she was a witness to the crime but still the accused persons did not kill her and let her to go so that she institutes an FIR implicating them. Learned counsel thus submits that criminal case is a serious issue and it cannot be taken in a casual manner but still the Court proceeded



to take cognizance without appreciating the facts in its correct perspective rather did not apply its judicial mind. Learned counsel next draws the attention of the Court to the FIR to submit that the informant had merely signed the FIR as the writing on the fardbeyan does not even remotely matches with the signature of the informant.

At this stage, learned counsel for the appellant seeks permission to withdraw this memo of appeal.

Permission is accorded with liberty to the appellant to raise all the issues as submitted at the time of framing of charge and the court below is directed to pass order in accordance with law after taking note of the submission as raised hereinabove.

**(Satyavrat Verma, J)**

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