

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.230 of 2023

Arising Out of PS. Case No.-97 Year-2011 Thana- UCHKAGAON District- Gopalganj

Ranjeet Kumar Son of Late Prabhudayal Singh Resident of Village-Jhirwa,
Ward No. 3, Police Station-Uchakagaon, District-Gopalganj

... .. Appellant

Versus

1. The State of Bihar
2. Arvind Yadav @ Arbind Yadav Son of Punyadev Yadav Resident of Village-Shyampur, Police Station-Uchakagaon, District-Gopalganj
3. Binod Yadav Son of Punyadev Yadav Resident of Village-Shyampur, Police Station-Uchakagaon, District-Gopalganj
4. Rajeev Yadav Son of Punyadev Yadav Resident of Village-Shyampur, Police Station-Uchakagaon, District-Gopalganj

... .. Respondents

Appearance :

For the Appellant	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Lokesh Kumar Singh, Advocate
For the Resp. Nos.2to4	:	Mr. Harsh Singh, Advocate
For the State	:	Mr. Bipin Kumar, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 02-08-2024

Heard Mr. Baxi S.R.P. Sinha, learned senior counsel assisted by Mr. Lokesh Kumar Singh, learned counsel for the appellant, Mr. Harsh Singh, learned counsel for the respondent Nos. 2 to 4 and Mr. Bipin Kumar, learned Additional Public Prosecutor for the State.

2. The instant appeal has been preferred against the judgment dated 18.11.2022 passed by learned Sessions Judge, Gopalganj in Sessions Trial No. 765 of 2016, arising out of



Uchkagaon P.S. Case No. 97 of 2011 registered for the offences punishable under Sections 341, 323, 324, 307, 379 and 504 of the Indian Penal Code (in short 'IPC') read with Section 34 of IPC whereby the respondent nos. 2 to 4 (hereinafter referred as 'respondents') have been acquitted of the charged offences.

Prosecution Story:-

3. The substance of the prosecution story is as follows:-

As per prosecution, on 21.05.2011, at about 5:00 P.M., the informant (deceased) was going to his clinic by riding on a motorcycle which was being driven by him. When he reached at Jhirua-Arna Road near a mosque, the accused/respondents namely, Arvind Yadav, Rajeev Yadav and Binod Yadav along with their 50 supporters were coming in a procession from the side of Arna Market and when they saw the informant near the mosque, they started abusing him with saying that from now he would not be able to fight election, even then the informant was proceeding ahead silently but in the meantime, the respondent, Arvind Yadav, pulled his motorcycle from behind resulting in falling down of the informant from his motorcycle. Thereafter, the respondent, Rajeev Yadav, inflicted a knife blow at the neck of the informant which hit at his cheek



just below his right eye and after that the other respondents started assaulting him by means of iron rod and he sustained serious injuries to his elbow, chest and left side of rib cage (*Panjara*) on account of that assault. The informant further alleged that during the course of occurrence, the respondent, Arvind Yadav, snatched away his mobile phone and the respondent, Binod Yadav took out Rs.1500/- from his pocket. As per the informant, two persons namely, Munnalal Singh, and Hridyanand Singh witnessed the occurrence and he was taken to government hospital at Uchkagaon, where he was treated.

4. On the basis of above written report which is said to have been filed by the informant himself, the formal FIR bearing Uchkagaon P.S. Case No. 97 of 2011 was registered under Sections 341, 323, 324, 307, 379 and 504 read with Section 34 of IPC and during investigation, the informant died, so the Section 302 of IPC was added.

5. After the completion of investigation, the respondents were chargesheeted by two different chargesheets and the Sessions Trial Case No. 765 of 2016 and 900 of 2016, arising out of the same Uchkagaon P.S. Case No. 97 of 2011 relating to the present matter were amalgamated and the trial of the respondents was started jointly.



6. The respondents stood charged for the offences under Sections 302/34, 307/34, 341, 323, 324/34, 379/34 and 504/34 of IPC.

7. In ocular evidence the prosecution examined the following 13 witnesses:-

P.W.-1:- Ranjeet Kumar, Son of the informant

P.W.-2:- Tara Devi

P.W.-3:- Sunita Devi, Wife of the Informant

P.W.-4:- Jiv Dhan Paswan

P.W.-5:- Dr. Sanjeev Kumar

P.W.-6:- Dr. Jahir Abbas

P.W.-7:- Dr. Sanjay Kumar Singh

P.W.-8:- Vipin Lal Ram, Investigating Officer

P.W.-9:- Dr. Ram Lakhan Prasad

P.W.-10:- Brajbhushan Singh

P.W.-11:- Munna Lal Singh

P.W.-12:- Hridaya Lal Singh

P.W.-13:- Arjun Kumar, Investigating Officer

8. In documentary evidence the prosecution proved the following documents and got them marked as exhibits which are as under:-



Ext.1:- Signature of Dr. Sanjay Kr. Singh on P.M.
Report

Ext.1/1:- Signature of Dr. Z. Abbas on P.M. Report

Ext.1/2:- P.M. Report

Ext.2:- Injury Report of Prabhu Dayal Singh
(Informant)

Ext.3 and 3/1:- Signatures of the informant and his
son on F.I.R.

Ext.3/2:- Signature of S.H.O. on F.I.R

Ext.4:- Formal F.I.R. written by S.H.O. Sunil Kumar

Ext.5:- Inquest Report of Prabhu Dayal Singh
(Informant)

9. After the completion of prosecution's evidences the statements of the respondents were recorded under Section 313 Cr.P.C. in which they denied the main circumstances appearing against them from the prosecution's evidences and they claimed themselves to be innocent. But none of them took any specific defence in their respective statement.

Findings of the Trial Court:-

10. Learned trial court observed and concluded in the judgment impugned that in between both the parties, there was rivalry due to *Mukhiya* election and the informant's wife, who



contested the election of *Mukhiya*, lost the election and after the result of election, a procession was being held by the respondents and due to this rivalry, the possibility of false implication of the respondents by the prosecution party cannot be ruled out. It was further observed that the prosecution did not remain able to produce any independent witness, while P.W.-1, P.W.-2, P.W.-3 are relatives of the deceased, P.W.-12 is a formal witness and P.W.-4 is a hearsay witness. The prosecution witness P.W.-4 did not support the case of prosecution rather supports the respondents/accused's defence as to the death of the informant having taken place due to an accident. The alleged occurrence took place at public place in day time but even then no independent person was produced by the prosecution. There is a serious contradiction with regard to taking the informant to the first hospital from the alleged place of occurrence and the written FIR purported to be of the informant, does not fall in the purview of a dying declaration. The prosecution failed to produce any document to prove informant's treatment at Sadar Hospital, Gopalganj, P.M.C.H., Patna and at a Private Hospital in Patna.



Arguments on behalf of the appellant:-

11. Mr. Baxi S.R.P. Sinha, learned senior counsel assisted by Mr. Lokesh Kumar Singh, learned counsel appearing for the appellant has argued that admittedly there was a political rivalry in between the informant/deceased and the respondents. Owing to the said rivalry, the informant was badly assaulted by the respondents when he was going to his clinic and the entire incident was witnessed by P.W.-11 who fully supported the case of prosecution but the learned trial court did not place reliance upon his evidence, without showing any reason. The instant matter is based on the informant's own statement which was recorded by him in the form of FIR and the same is only sufficient to prove the prosecution's case. The FIR has been proved by the son of the informant who was examined as P.W.-1 and the respondents used several tactics to get their trial transferred from one court to another court by filing baseless application. The medical evidence is also fully supportive to the prosecution case and the medical findings given in the postmortem report and in the injury report of the informant issued by Uchkagaon Primary Health Center are also sufficient to establish the manner of assault described in the FIR but both



have not been appreciated in proper manner by the learned trial court.

Arguments on behalf of the respondents:-

12. Mr. Harsh Singh, learned counsel appearing for the respondents has argued that the prosecution did not succeed to prove the FIR as the last statement of the deceased and all the witnesses except P.W.-4, are relatives of the informant and no independent witness was produced to prove the alleged occurrence despite the place of occurrence being a public place and the occurrence is said to have been committed in full public view. In fact, the informant sustained injuries on account of falling down from his motorcycle and the said fact gets corroboration from the evidence of informant's own wife and P.W.-4 and there is serious contradiction with regard to the allegations levelled in the FIR and the evidence of P.W.-11, who is said to be the sole eyewitness of the occurrence. Learned counsel has further submitted that the police suppressed the initial version of the prosecution party and a false case was fabricated against the respondents due to political rivalry and it is settled principle that the enmity can also be used to take revenge and there is sufficient material to show that the FIR of the present matter was lodged with the revengeful attitude. The



trial court has rightly appreciated all the evidences and made a right conclusion in acquitting the respondents.

13. In support of above submissions learned counsel for the respondents has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Raja Ram vs. State of Rajasthan** reported in **2005 (5) Supreme Court cases 272** in which it was ruled that *“if a prosecution witness is not declared hostile then defence can rely upon his evidence and the same would be binding on the prosecution”*. Learned counsel has placed reliance upon this principle mainly in respect of P.W.-4 who was not declared hostile despite having not supported the case of prosecution but supporting the respondents' defence as to the accidental injuries to the informant.

14. Learned counsel has further placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Sheikh Meheboob @ Hetak and Others vs. State of Maharashtra** reported in **(2005) 10 Supreme Court Cases 387** in which it was ruled that *“ written report made by deceased father to the police which was the first contemporaneous document putting on the record the true facts pertaining to the incident not produced by the prosecution despite direction by the Sessions Court for its production which raised a doubt*



against the prosecution case hence the accused was entitled to the benefit of doubt”.

15. Learned counsel has relied upon the above principle mainly on this ground that in the present matter, the initial versions of the son and wife of the informant were suppressed by the prosecution and the FIR which was not proved, was filed after thought.

16. Learned counsel has further argued that the investigation in the present matter remained completely faulty as the investigating officer did not make any investigation with regard to the informant's treatment at four hospitals where the informant took medical treatment as per prosecution story and also did not examine the independent persons despite the alleged place of occurrence being a public place, so the manner of investigation seriously prejudiced the respondents and the same amounts to miscarriage of justice. In support of this submission, learned counsel has placed reliance upon the Judgment of Hon'ble Apex Court passed in the case of **State Inspector of Police, Vishakhapatnam vs. Surya Sankaram Karri** reported in **2006 (7) Supreme Court Cases 172.**



Consideration:-

17. Heard both the sides at length and perused the evidences and materials available on the case record of trial court. We have also gone through the statements of the respondent nos. 2 to 4 who recorded their statements under Section 313 Cr.P.C. in the capacity of accused before the trial court.

18. Learned counsel appearing for the appellant has tried to persuade this court to believe that on account of a political rivalry, the deceased was badly assaulted by the respondents and the evidence of P.W.-11 who witnessed the entire occurrence by his own eyes, fully supported the case of prosecution and the evidence of other ocular witnesses is also corroborative to the other relevant facts such as motive of the respondents to commit the alleged occurrence and the evidence of the material witnesses of the prosecution was not appreciated in right perspective.

19. On the other hand, referring to the several paragraphs of the testimony of the ocular witnesses particularly the testimony of P.W.-11 who is said to be the sole eye-witness of the occurrence, testimony of P.W.-6 and P.W.-7, who conducted the autopsy on the body of the deceased and gave



their opinion in the postmortem report and also the testimony of the investigating officers (P.W.-8 and P.W.-13), learned counsel appearing for the respondent nos. 2 to 4 has tried to convince this court that in actual neither P.W.-11 nor P.W.-1, P.W.-2 & P.W.-3 saw the commission of the alleged occurrence and in view of the medical findings given by the Doctors (P.W.-6 and P.W.-7) in the postmortem report after conducting the autopsy, the allegation as to causing knife injury on the cheek below the right eye of the informant, does not get corroboration from the medical expert's opinion and further, there is serious contradiction between the evidence of P.W.-11 and the facts of the FIR and also the prosecution intentionally suppressed the initial version, given by the deceased himself and an unexplained delay took place on the part of the informant in lodging the FIR.

20. In the light of the defence taken by the respondents and the grounds taken by the appellant to assail the judgment impugned acquitting the respondents, we would analyze the prosecution's evidences hereinafter.

21. In the present matter, the FIR was lodged on 21.05.2011 by the deceased (Prabhu Dayal Singh) himself and the same was lodged on the same day of occurrence just 2 hours



and 15 minutes after the occurrence. The FIR is based on a written application which has signature of one namely, Ranjeet Kumar, son of the informant and an endorsement has been made by Sunil Kumar, S.H.O. of P.S. Uchkagaon. During trial, the informant (deceased) could not have been examined as he died after he had registered the FIR but the Police In-charge (S.H.O.) of P.S. Uchkagaon who received the FIR was also not examined, though, Ranjeet Kumar, who is said to have signed the FIR and to be with the informant at the time of submitting the written FIR, was examined as P.W.-1, so in this regard, the evidence of P.W.-1 and other police officials who were examined as P.W.-8 and P.W.-13 are relevant. Learned counsel for the appellant has placed reliance upon the evidence of P.W.-1 in order to prove the written FIR as a dying declaration of the deceased.

22. P.W.-1 deposed in the examination-in-chief that the respondent Rajeev Yadav, firstly, hit the motorcycle upon which his father, informant (deceased), was riding, resulting in falling down of the informant and soon thereafter, all the respondents assaulted his father badly in his stomach, back, chest and buttock but he did not know the means/weapon which was used by them in assaulting his father. He further stated that his injured father was brought at his house by a vehicle by one, Munna Lal



Singh and at 7:30 his father was taken to Uchkagaon, Primary Hospital, from where his father was referred to Sadar Hospital, Gopalganj and as the night progressed and also they had fear of the accused/respondents, so they did not go to Gopalganj and on the next day, they went to Sadar Hospital, Gopalganj but his father's condition deteriorated so he was referred to Patna Medical College and Hospital (in short 'P.M.C.H') at Patna. He further deposed that during treatment at P.M.C.H. Patna, his father had to be taken to a Private Hospital Chanakya as all the Doctors of Bihar State went on strike on account of death of a Doctor. And his father died during the course of medical treatment at the said private hospital and thereafter, his father's dead body was brought at Gopalganj and the autopsy was conducted on 10.06.2011.

23. From the perusal of the above statements of this witness, it does not appear that the deceased, when he was in the injured condition, himself approached to the Uchkagaon police station to register the FIR of the alleged occurrence and furthermore, the prosecution failed to produce the then S.H.O. namely, Sunil Kumar of the police station Uchkagaon whose name has been shown in the formal FIR as the police officer who registered the FIR of the deceased. The police officer can



be deemed to be a competent person to prove the submission of the written FIR by the deceased himself. Furthermore, P.W.-11 who has claimed himself to have witnessed the entire occurrence and his name also finds place in the FIR as an eyewitness, stated in his evidence that after the occurrence, the informant was firstly, taken to his residential house and thereafter, the police officials of Uchkagaon police station arrived there with whom he and others brought the informant at Uchkagaon hospital at where the S.H.O. of the said police station recorded the *beyan*/statement of the informant. The said statement of this witness is completely contradictory to P.W.-1 and there is no endorsement on the written FIR by the S.H.O. regarding the factum of recording of the *fardbeyan/beyan* of the informant at Uchkagaon Hospital.

24. P.W.-13, the Investigating Officer, started the investigation on the very day of the registration of the FIR as appears from his evidence as well as formal FIR. He stated in his evidence that he recorded the statement of the injured, Prabhu Dayal Singh (informant) and also recorded the statements of other witnesses. As the informant is said to have died after the registration of his FIR, so his statement which is said to have been recorded by P.W.-13, could have been treated



as a statement relevant under Section 32 (1) of the Evidence Act but in order to prove the said statement as a piece of evidence the prosecution did not make any effort.

25. In the FIR, two persons namely, Munna Lal Singh and Hridyanand Singh are shown as eye-witnesses of the occurrence. But the said Hridyanand Singh was not produced and examined before the trial court. P.W.-11, Munna Lal Singh, who is a star witness of the prosecution, deposed that the respondents assaulted the informant by means of *lathi* and *danda*. Whereas, in the FIR, it was alleged by the informant himself that firstly the respondent, Rajeev Yadav, assaulted him by means of a knife and thereafter, the other respondents assaulted him by means of iron rod. Regarding the type of weapon, there is a serious contradiction in between the facts of the FIR and the evidence of this witness. The witness deposed before the trial Court that the *Beyan*/statement of the informant was recorded by the S.H.O. at Uchkagaon Hospital and after that the treatment of the informant started at the said hospital. As discussed above, the said statement does not get corroboration from the FIR as when a statement of an injured is recorded at a hospital then such a statement is generally recorded in the nature of a *fardbeyan* or *beyan* by a police officer showing the position



of the injured as well as place. But in the instant matter, the written FIR is in the form of a written application addressed to the S.H.O., so the said circumstance creates a serious doubt in the credibility of the written FIR as well as the reliability of P.W.-11 as an eye-witness.

26. Here it is important to mention that the written FIR, which has been claimed by the prosecution as the first information about the commission of the occurrence, lodged by the informant himself, has the signature of P.W.-1, Ranjeet Kumar, so in this regard his evidence is very relevant. P.W.-1, Ranjeet Kumar, stated in the cross-examination that the FIR was written by one namely, Jeetendra Prasad but at the same time he subsequently stated that the informant got the FIR written by Jeetendra Prasad and in this regard the informant gave details to him. He further stated in the cross-examination that he did not know the name of the father of Jeetendra Prasad and whereabouts of his house. The statement shows that the witness intentionally tried to conceal the address of the said Jeetendra Prasad in order to evade his appearance before the trial court as according to his evidence, Jeetendra Prasad was known to him and the prosecution could not have produced him to prove the written application.



27. As per prosecution story, at the time of occurrence a procession was moving towards 'Arna Market' by the respondents and their supporters after winning *Mukhiya* election. P.W.-11 stated in the cross-examination that he had fought election against the wife of respondent Arvind Yadav and his father also fought the election of *Mukhiya* post and also contested the election of *Zila Parishad* against the father of respondent Arvind Yadav. From this statement, one thing is quite clear that there was a political rivalry between P.W.-11 and the respondents. On account of this witness and respondents being residents of the same vicinity when he was asked about the names of the persons who participated in the alleged procession, the witness told that he did not know the name of any person and also remained mum regarding the details of the shopkeepers whose shops are situated nearby the place of occurrence and the shopkeepers might be the independent persons. As there was a political rivalry between P.W.-11 and the respondents at the time of occurrence and the P.W.-11 claimed himself to be present at the place of occurrence by chance, so the witness can be deemed to be a chance witness. Hon'ble Apex Court in the case of *Bahal Singh vs. the State of Haryana* reported in *1976 (3) Supreme Court Cases 564* observed that “



if by coincidence or chance a person happened to be at the place of occurrence at the time it is taking place, he is called a chance witness. And if such a person happens to be a relative or friend of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny.”

28. So in view of above principle, the evidence of P.W.-11 is required to be scrutinized very carefully and cautiously. Regarding the weapons which were used by the respondents in assaulting the informant (deceased) which were disclosed in the FIR, the witness made a contradictory statement which has been discussed above. He stated in the cross-examination that after occurrence, he did not inform the son of the informant and others about the commission of the occurrence. He further stated that after the occurrence, he took a pick up vehicle which was already parked near him and four persons including his nephew namely, Prem Kumar, who were also present there at their shop, arrived at the place of occurrence on hearing *hulla*. This witness's nephew, Prem Kumar, who can be deemed to be an important person to



substantiate the evidence of this witness, was not produced by the prosecution. The attention of this witness was drawn by the defence to his previous statement, which was recorded by him before the Investigating Officer, in respect of the fact of bringing the informant from the place of occurrence to the informant's house by a pick-up vehicle. But he denied to have recorded the statement that he hired the pick up vehicle to bring the informant and thereafter, brought the informant at his home and then informed the informant's wife and son about the occurrence. So the witness did not remain consistent to his stand. Further, the said statement is also contradictory to the evidence of P.W.-1, son of the informant. The witness could not have given the details of the driver of the pick-up vehicle as well as the registration number of the said vehicle when he was asked about the said details. The witness deposed in the cross-examination in paragraph '43' that he did not say the fact in his statement before the police that the *Beyan*/statement of the informant was recorded at Uchkagaon hospital by S.H.O. The statement is completely contradictory to the statement made by this witness in the examination-in-chief. Thus, the evidence of this witness does not inspire the confidence of this Court.



29. P.W.-13, Investigating Officer, stated in the cross-examination that he did not find any sign of blood at the alleged place of occurrence. He further stated that he did not recover the knife, iron rod and motorcycle. The statement shows that the weapons which were allegedly used in the alleged crime were not recovered by the I.O. As per the prosecution story, at the time of occurrence, the informant was riding a motorcycle and on account of hitting by the respondents at his motorcycle, the motorcycle fell down and as per P.W.-11, some damage were caused to the motorcycle. But the motorcycle which can be deemed a relevant material object, was not seized or recovered by the Investigating Officer.

30. As per the FIR, the informant was assaulted with a knife causing an injury below the right eye at his cheek but according to P.W.-11, he was badly assaulted by the respondents by means of a *lathi*, hence, there is a serious contradiction with regard to the weapons which were allegedly used in the commission of the crime. If the prosecution story either described in the FIR or described by P.W.-11 is taken into account then it would appear that the informant was badly assaulted by the respondents. But the evidence of P.W.-9 who is said to have treated the informant initially at P.H.C. Uchkagaon,



goes to show that on the person of the informant, there were four injuries and among them two were simple in nature and the opinion with regard to the third injury could not have been given by the doctor as X-Ray report was not available regarding the said injury at that time and the fourth injury was found as complain of pain. The witness stated in the cross-examination that the injuries of the informant were simple and superficial in nature. The evidence of this witness does not support the allegation of assaulting the informant by means of a knife. Though his evidence may be relevant to the allegation levelled by P.W.-11 with regard to the means of weapons which were allegedly used by the respondents in assaulting the informant. As per prosecution, from P.H.C. Uchkagaon, the informant was referred to Sadar Hospital, Gopalganj and from there he was referred to P.M.C.H. Patna where he was treated and final treatment was provided at a private hospital but the prosecution failed to bring any material to show the informant's treatment at Sadar Hospital, Gopalganj, P.M.C.H., Patna and at a private Hospital of Patna. The informant died on 31.05.2011 and his postmortem examination was done on 01.06.2011, which shows that the informant died ten days after the occurrence. The medical findings given in the postmortem report (Ext.1/2) by



P.W.-7 with regard to the external examination, do not corroborate the manner in which the informant is said to have been assaulted by the respondents. Furthermore, as per prosecution story, the informant died in Patna, at a private hospital Chanakya during the course of treatment and the postmortem examination over the dead body was conducted at Sadar Hospital, Gopalganj but no death certificate of the deceased was produced by the prosecution nor any medical document showing the last treatment of the deceased at the said Chanakya Hospital was produced. So the prosecution failed to establish the death of the deceased at Chanakya Hospital in Patna. Here, it is relevant to mention that the findings given in the postmortem report by the Medical Board after the external examination do not sufficiently establish the direct connection between the death of the deceased and the injuries which were initially found on the person of the deceased at the Uchkagaon Primary Hospital and in this regard, the facts stated by P.W.-7 in his cross-examination are relevant. He stated in the cross-examination that he could not state where the deceased died, the blunt trauma, can occur by an accident or a motor accident and he did not see the death certificate. He further stated that no injury found by knife (wrongly typed as 'Life' in the deposition)



over the body of the deceased. He further stated that he could not say whether the requisition for postmortem examination, was of Patna or Gopalganj Police. Regarding the said requisition the prosecution did not give any evidence.

31. P.W.-9, Dr. Ram Lakhan Prasad, who initially treated the informant at P.H.C. Uchkagaon, stated in the cross-examination that informant's death was not possible by such injuries which were found on his person. He further stated that the injuries found on the person of the informant are possible by an accident and the said injuries are simple and superficial in nature. This witness has proved the injury report of the deceased as Exhibit-2 which is being extracted hereunder for a ready reference:-

“ 1. Lacerated wound 3 cms x 1/4 cms x 1/4 cms deep on Rt. Side face below Rt. Eye red colour.

2. Bruise blackish colour 6 cms x 4 cms on lt. Elbow lt. hand.

3. Swelling and Pain 20 cms x 10 cms on Rt. Side middle of back sub coastal region.

4. Complain of pain lt. Side chest.

M.I.:- Multiple moles on lt. Shoulder.

Age:- Within 6 hrs.

Nature and Cause:-

All above injuries are caused by hard and blunt object. Injuries no. (1) , (2) are simple in nature but opinion of no. (3) is kept reserved till X-Ray and report comes from Sadar Hospital Gopalganj.”



Thus, Exhibit-2 does not show any injury by knife.

32. P.W.-3, wife of the deceased stated in the cross-examination that an accident had taken place with her husband for which he remained under treatment for 9-10 days and she spoke to her husband before he was referred to Patna after the accident. The respondents took the defence that the deceased sustained injuries in an accident. In respect of said defence, the medical findings with regard to the injuries of the informant given by P.W.-9 and the evidence of P.W.-3 and P.W.-4 are relevant.

33. As per the evidence of P.W.-3, wife of the deceased, the deceased remained under treatment at Gopalganj Sadar Hospital and as per P.W.-1, son of the informant, the deceased remained under treatment at Gopalganj for six days. But the Investigating Officer (P.W.-8) did not make any investigation with regard to the said treatment. He deposed that he did not inspect any record of Gopalganj, Sadar Hospital with regard to the medical treatment of the informant and also not made any investigation with regard to the period of treatment and regarding the hospitals at where the informant remained under treatment. When one is said to have died of some injuries, after some days of the occurrence of assault then it is the duty of



the prosecution to prove that such injuries are direct reason of the death of the deceased. But in the present matter, no such evidence has been given by the prosecution to establish a direct connection between the reason of death of the informant and the injuries which were found on the person of the deceased nine days before his death and most of these injuries were opined simple and superficial.

34. In the present matter, P.W.-11, is said to be the sole eye-witness of the alleged occurrence and he is a cousin brother of the informant and he is said to have brought the informant in injured condition at his house by a pick up vehicle after the occurring of the occurrence. But P.W.-3, wife of the informant, stated that someone brought her husband by a pick up vehicle after the occurrence and according to her, the details of the occurrence was given by the informant himself to her. The witness did not reveal the name of P.W.-11 as the person who brought the informant in injured condition by a pick up vehicle. So in the light of this evidence of P.W.-3, the presence of P.W.-11 at the place of occurrence during relevant time is completely suspicious.

35. In the present matter, P.W.-1, P.W.-2, P.W.-3 and P.W.-11 are the witnesses of facts and all of them are relatives of



the deceased. Accordingly, the prosecution could not have been able to produce any independent person to substantiate the allegations despite the alleged occurrence being committed at a public place and admittedly, there was enmity between the informant and respondents at the time of occurrence. Though, enmity cuts both the ends and it may be a reason for taking revenge but also may be the reason for false implication and in the present matter, the evidences available on the record persuaded us to make a view against the prosecution on the basis of the said enmity and other evidences.

36. Though P.W.-4 is not a relative of the informant but his evidence also does not support the prosecution. He stated in the examination-in-chief that he heard from the villagers about the informant's falling down from his motorcycle. But he showed his inability to say anything about other things of the alleged occurrence. The witness was not declared hostile, so the facts stated by him in the cross-examination can be taken into consideration against both the sides. He deposed in his cross-examination that the factum of falling down of the informant was heard by him during election period and the informant fell down on the day of election. He further stated that he used to make conversation with the informant and the informant himself



told to him about his falling down. Accordingly, the evidence of this witness goes against the prosecution.

Conclusion:-

37. After having discussed and analyzing the evidences available on the case record of the trial court, we find that the prosecution tried to set up its case mainly on the basis of deceased's own statement which is said to have been recorded by him in the form of written FIR and also on the basis of the evidence of P.W.-11, showing him the sole eye-witness of the occurrence. It is a settled principle of law that when a dying declaration of one is recorded by some other person then for proving the dying declaration, the evidence of such person who has recorded the statement of the deceased, must be given. In the present matter, as per informant's own son, examined as P.W.-1, the written report (FIR) was scribed by one namely, Jeetendra Prasad, at the direction of the informant and informant's son, P.W.-1, stated in his cross-examination that he could produce the said Jeetendra Prasad as a witness. But the prosecution did not produce him and further, the S.H.O. of police station Uchkagaon, namely Sunil Kmar, who registered the formal FIR on the basis of written report of the informant, was also not produced by the prosecution, so the prosecution failed to prove the written report (FIR) as a



dying declaration of the informant and accordingly, the case of the prosecution run without any foundation and furthermore, the prosecution failed to prove the credibility of the evidence of P.W.-11 as an eyewitness of the occurrence and in this regard, sufficient discussion has been made in the preceding paragraphs. The prosecution has also not succeeded to prove the direct connection in between the injuries which were opined in the postmortem report as external injuries and the alleged assault and also did not succeed to prove the place where the deceased died and further, there is a serious contradiction in between the weapons which have been shown in the FIR as having been used by the respondents in assaulting the informant and the weapons shown by the sole eyewitness (P.W.-11) and the evidence of informant's wife and P.W.-4 supports the respondent's defence that the deceased sustained injuries on account of falling down from his motorcycle. So, in the light of these facts, we are not persuaded to take a different view from that which has been taken by the trial court. We find no infirmity and perversity in the judgment impugned by which the respondents have been acquitted. As such, there is no merit in this appeal so it stands dismissed.

38. Let the judgment's copy be sent immediately to the trial court concerned for information and needful.



39. Let the LCR be sent back forthwith to the trial court
concerned.

(Shailendra Singh, J)

I agree.

(Rajeev Ranjan Prasad, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	25.07.2024
Uploading Date	02.08.2024
Transmission Date	02.08.2024

