

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.465 of 2024

Arising Out of PS. Case No.-115 Year-2023 Thana- BARUN District- Aurangabad

Durga Kumar, Son of Rajaram Prajapati, Resident of Village - Basdiha, P.S. - Narari Kala Khurd, District - Aurangabad

... .. Appellant

Versus

1. The State of Bihar
2. Anirudh Kumar, Son of Janeshwar Yadav, Resident of Village- Basdiha, P.S.- Narari Kala Khurd, District - Aurangabad
3. Santan Kumar @ Sonu, Son of Bhuwadeshwar Yadav, Resident of Village- Basdiha, P.S.- Narari Kala Khurd, District - Aurangabad
4. Dinesh Kumar, Son of Rambachan Yadav, Resident f Village- Basdiha, P.S.- Narari Kala Khurd, District - Aurangabad
5. Lutan Yadav, Son of Yogendra Yadav, Resident of Village- Basdiha, P.S.- Narari Kala Khurd, District- Aurangabad

... .. Respondents

Appearance :

For the Appellant/s : Mr. Rajesh Kumar Mishra, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, Addl PP

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

Date : 01-10-2024

Heard Mr. Rajesh Kumar Mishra, learned counsel for the appellant and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.

2. This appeal arises out of part of the judgment dated 30th Day of March, 2024 (hereinafter referred to as the ‘impugned judgment’) passed by learned Additional Sessions Judge-III, Aurangabad (Bihar) (hereinafter referred to as the ‘learned trial court’) in connection with Sessions Trial No. 428/2023/157/2024

arising out of Barun P.S. Case No. 115 of 2023 registered for the offences punishable under Sections 147, 148, 149, 302, 341, 323 and 324 of the Indian Penal Code (in short 'IPC').

Brief Facts of the Case

3. The prosecution case is based on the written application dated 11.03.2023 submitted by Durga Kumar, Son of Rajaram Prajapati who is brother of the deceased and has been examined in this case as PW-5. The informant (PW-5) has stated in the written application as under:-

On 10.03.2023 at about 03:00 PM in the afternoon, when he and Amit Kumar son of Birodhi Prajapati and Chandan Kumar Son of Rajaram Prajapati reached in between Tengra under Barun Police Station and Nawada on a motorcycle, one Rahul Kumar who was already present there forming an unlawful assembly hit Chandan Kumar with an iron rod on back side of his head due to which Chandan Kumar fell down. Thereafter, Dinesh Kumar (Respondent No. 4) hit Chandan Kumar with iron rod on his hand. Lutan Yadav (Respondent No. 5) started repeatedly assaulting Chandan Kumar with iron rod on his body. In the meanwhile, Aniruddh Kumar (Respondent No. 2), Neeraj Kumar, Guddu Kumar, Rajeshwar Yadav, Santan Kumar (Respondent No. 3), Ranvijay Kumar @ Munna Yadav, Om Prakash Yadav, Saroj Yadav @ Chhotu Yadav,

Arvind Yadav, all started repeatedly assaulting Chandan Kumar with lathi and danda until he became almost dead. On hearing hulla, the villagers came then Ranvijay Kumar @ Munna Kumar hid himself in a hardware/cement shop which is situated in Tengra. The informant further alleges that when Chandan Kumar became almost dead, the accused persons fled away. Then, the informant and Amit took Chandan to Sadar Hospital, Aurangabad for treatment where he was given primary treatment and keeping in view his critical condition, he was referred to Patna. On way to Patna, before they could reach Daudnagar, Chandan died.

The informant alleges that the reason of the incident is that on 07.03.2023 at about 10:00 PM in the night, in the house of one Kamlavati Devi, one Vikas Kumar had entered forcefully with intention to commit wrong with her and misbehaved with her. With regard to this occurrence, Kamlavati Devi had lodged a case in Narari Kala Khurd Police Station in which Chandan Kumar was a witness and due to this reason, the above-named accused persons have murdered Chandan Kumar.

4. On the basis of the aforesaid written application, a formal FIR giving rise to Barun P.S. Case No. 115 of 2023 dated 11.03.2023 was registered on the same date at 11:50 AM. After investigation of the case, police submitted a chargesheet against

five accused persons. The learned Magistrate took cognizance of the offences under Sections 147, 148, 149, 341, 323, 324 and 302 IPC. Having noticed that the offences would require to be tried by the Court of Sessions, the records were committed to the Court of Sessions where the charges were framed against all the five accused persons on 10.08.2023.

5. In course of trial, the prosecution examined altogether seven witnesses and got exhibited certain documents such as the written report, formal FIR, inquest report and postmortem report. The description of the prosecution witnesses and the documents exhibited on behalf of the prosecution as well as the defence are being mentioned hereunder for a ready reference:-

List of Prosecution Witnesses:

PW-1	Bhikhari Prajapati
PW-2	Jaimangal Prajapati
PW-3	Amit Kumar
PW-4	Pappu Kumar
PW-5	Durga Kumar
PW-6	Shamim Ahmad
PW-7	Dr. Subhash Singh

List of Prosecution Exhibits:

Exhibit-1	Inquest Report
Exhibit-1/1	Signature of I.O.
Exhibit-2	Written report
Exhibit-3	Formal FIR

Exhibit-3/1	Endorsement on FIR
Exhibit-4	Postmortem report

List of Defence Exhibits:

Exhibit ‘D-1’	Narari Kala P.S. Case No. 23/2023
Exhibit ‘D-2’	Charge-sheet in Narari Kala P.S. Case No. 23/2023

Findings of the Learned Trial Court

6. After analysing the evidences available on the record, the learned trial court entertained a doubt with regard to the involvement of Respondent Nos. 2 to 5 in the occurrence. The learned trial court recorded that the prosecution did not prove the common intention running among the accused within the meaning of Section 34 IPC. Relying upon the judgment of the Hon’ble Supreme Court in the case of **Lallan Rai Vs. State of Bihar** reported in **AIR 2003 SC 323**, the learned trial court observed that as per the judgment of the Hon’ble Supreme Court, there must be some evidence of prior meeting of mind on the part of the accused persons to form an opinion that there was a common intention to commit the crime.

7. The learned trial court also recorded a finding that though the accused persons and the prosecution side were at the inimical terms, therefore, tendency of the exaggerations and false implication of innocent persons cannot be ruled out. The

prosecution had also failed to prove the injuries which could have been caused by the accused persons upon the deceased. Having analyzed the entire evidences on the record, the learned trial court while convicting the co-accused Rahul Kumar for the offence punishable under Section 302 IPC, held that the charges under Sections 147, 148 and 149 IPC against the accused persons could not be proved beyond all reasonable doubts. The co-accused Rahul Kumar has also been held guilty under Sections 323 and 324 IPC. So far as Respondent Nos. 2 to 5 are concerned, they were acquitted of all the charges. It is this acquittal of the Respondent Nos. 2 to 5 which has brought the informant to this Court by way of filing an appeal against acquittal.

Submissions on behalf of the Appellant

8. Mr. Rajesh Kumar Mishra, learned counsel for the appellant submits that the learned trial court has committed gross error in appreciation of the prosecution evidences on the record. According to him, the material prosecution witnesses such as PW-3 and PW-5 were with the deceased at the time of occurrence and they are the eye witnesses of this case. Learned counsel submits that these two prosecution witnesses have supported the prosecution case and no material inconsistency much less any contradiction may be found in their oral testimonies.

Submissions on behalf of the State

9. On the other hand, Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State has defended the impugned judgment. It is submitted that in this case, from the evidence on the record, it would appear that the informant has attempted to show that he was present with the deceased at the time of occurrence together with PW-3 but in course of trial, the falsity of his statement has come on the record. The submission is that the informant has made false statements and the exaggeration on his part in implicating as many persons as possible would be evident from his deposition.

10. Learned counsel submits that in the written application which is the basis of the case, the motive of occurrence is said to be a case lodged by one Kamlavati Devi, Wife of Dharmendra Prajapati against one Vikas Kumar who had allegedly entered into her house with an intention to interfere with her dignity and had indulged in indecent acts. The informant has stated in his application that in the said case of Kamlavati, Chandan Kumar (deceased) was a witness. But, in course of his deposition, the informant (PW-5) has stated in paragraph '17' that in the case of Kamlavati, the only accused was Vikas Kumar and in the first information report, there is no mention of name of any witness.

11. Learned Additional Public Prosecutor further submits that in this case, PW-3 has stated in paragraph '19' of his deposition that on the date of occurrence, no FIR was lodged in the police station. He has further stated that he had been at Aurangabad on the date of occurrence, therefore, he had not seen whether Daroga Jee had visited the Tengra Bazar or not. The deposition of PW-3 not only shows that he was not present at the place of occurrence but it would further show that even the informant (PW-5) was not present at the place of occurrence. Attention of this Court has been drawn towards the statement of PW-3 in paragraph '9' of his deposition wherein initially, this witness has stated that he and the informant (PW-5) were present with the deceased but thereafter, he has stated that before the quarrel started, Durga Kumar (PW-5) had gone to purchase vegetable near Surya Mandir which is situated at a distance of 300 feet from the place of occurrence. He has also stated that after the quarrel was over, Durga Kumar (PW-5) met him after one-two minutes. It is submitted that PW-3 falsified himself in paragraph '19' of his cross-examination when he said that he was at Aurangabad on the date of occurrence.

12. Learned Additional Public Prosecutor has further taken this Court through the deposition of the informant (PW-5)

and the I.O. (PW-6) to submit that the informant has stated in his examination-in-chief that when he, Amit (PW-3) and the deceased reached near NH-2 in between Tengra and Nawada, there is local market where the accused persons had formed an unlawful assembly, PW-5 has attributed different weapons such as iron rod, lathi-danda in the hands of the accused persons and has stated that they had assaulted Chandan whereafter Chandan fell down. In his cross-examination, PW-5 has stated that on the date of occurrence, either during day time or in the night hours, he had not gone to Barun Police Station. It has come in evidence that Barun Police Station is situated at a distance of 9 kilometers from the place of occurrence but PW-5 who claims himself a graduate and claimed that he is an eye witness had not reported the occurrence to the police station. This witness was suggested by the defence that the deceased died in a road accident while driving motorcycle alone and because he was not wearing helmet, he suffered head injury and died. This witness was also suggested that he had not seen the alleged occurrence, rather he was himself present in Narari Kala Khurd Police Station for purpose of lodging the case of Kamlavati. PW-5 was also suggested that in the Panchayat election, his grandfather Jaimangal Prajapati was being opposed by Dinesh and

for this reason, Dinesh had been falsely implicated. The defence also drew his attention towards the delay in lodging of the FIR.

13. The learned Additional Public Prosecutor has submitted that PW-5 has given the description of the place of occurrence which is three feet below NH-2 and the I.O. (PW-6) has stated about the place of occurrence in paragraph '3' of his examination-in-chief. He has stated that at the place of occurrence, he had not found any blood and the motorcycle was not present at the place of occurrence. PW-6 has stated that in the boundary of the place of occurrence, there is shop of Raju Singh, medical store, chicken shop etc. but nobody gave any statement with regard to the occurrence. The place of occurrence is not over crowded but crowds are there. The I.O. did not find any sign of coming of the motorcycle at the place of occurrence and regarding the motorcycle, no evidence was placed before him.

14. Learned Additional Public Prosecutor has also placed before this Court the inquest report (Exhibit '1') which was prepared on 10.03.2023 itself at 23:35 Hours. It does not contain any description of the case number because on 10.03.2023 no case was registered by the informant and the informant has himself stated that he had not gone to the police station. The I.O. had

found swelling on the back of the head and towards the right side of the parietal region.

15. Learned Additional Public Prosecutor submits that in the postmortem report (Exhibit '4'), the Doctor (PW-7) had noticed only one injury. The postmortem report shows that Hematoma was present in the right side of parietal area of skull with size 4"x2" and there was a compound fracture in the right side of parietal bone of the skull. The Doctor who has been examined in this case as PW-7 has stated that a Medical Board was constituted to conduct the postmortem. In paragraph '10' of his cross-examination, he has stated that if a person is driving a motorcycle without a helmet and the motorcycle meets an accident, this kind of head injury is possible. It is submitted that the postmortem report completely falsifies the prosecution story as regards the manner of occurrence.

16. It is submitted that so far as PW-1 and PW-2 are concerned, they are the closely related family members of the deceased and they are not eye witnesses to the occurrence.

17. It is submitted that in such circumstance where the informant has lodged the FIR only on 11.03.2023 at 11:50 AM and he has not stated about the reason for not lodging the FIR within a reasonable time, the very authenticity of the FIR would be in

doubt. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **Hariprasad @ Kishan Sahu versus State of Chhattisgarh** reported in **(2024) 2 SCC 557**. Paragraph '9' thereof has been brought to the notice of this Court.

18. Learned Additional Public Prosecutor submits that in the case of **V. C. Shukla Vs. State Delhi (Administration)** reported in **AIR 1980 SC 1382**, the Hon'ble Supreme Court has held that the evidence of a witness who indulges in making false statement is liable to be rejected. In this case, PW-3 and PW-5 both have in their examination-in-chief made false statements regarding their presence, motive behind the occurrence and the manner of occurrence, therefore, they are not trustworthy witnesses and in terms of Section 134 of the Indian Evidence Act, these witnesses cannot be put in the category of wholly reliable witnesses. It has been submitted that the judgment of the learned trial court would not require any interference on the well settled principle of law as enunciated by the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581**. Paragraph '8' thereof has been relied upon to place the principles governing an appeal arising out of judgment of acquittal. It is submitted that unless the Appellate Court comes to a

categorical conclusion that the one and only one conclusion which may be reached on the basis of the evidence of the prosecution witnesses is that the accused persons have committed the offence, the Appellate Court need not interfere with the judgment of the learned trial court.

Consideration

19. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the learned trial court's records, we find much substance in the submission of learned Additional Public Prosecutor for the State. As an Appellate Court, we have also gone through the evidence of the prosecution witnesses carefully and have appreciated the same for the purpose of the present case.

20. We find from the written report (Exhibit- '2') submitted by the informant (PW-5) that the occurrence in question took place on 10.03.2023 at 03:00 P.M. According to PW-5, he along with Amit Kumar (PW-3) and his brother Chandan Kumar (deceased) were going on a motorcycle and in between Tengra and Nawada, the accused persons who had formed an unlawful assembly surrounded them and started causing assault by iron rod, *lathi* and *danda*. So far as these respondents are concerned, it is stated that Dinesh Kumar (A-4) assaulted Chandan by an iron rod

on his hand. Lutan Yadav (A-5) assaulted Chandan by an iron rod on his body and he was repeatedly assaulting him. In the meantime, Anirudh Kumar (A-2), Niraj Kumar, Guddu Kumarr, Santan Kumar @ Sonu (A-3), Ranvijay Kumar, Om Prakash, Saroj Yadav and Arvind Yadav were repeatedly assaulting Chandan Kumar until he became almost dead. In course of investigation, police submitted chargesheet only against five accused persons.

21. In the application, PW-5 disclosed the motive behind the occurrence. It is stated that in a case lodged by Kamlawati Devi against Vikas Kumar, Chandan Kumar (deceased) was a witness.

22. On perusal of the oral testimony of Amit Kumar (PW-3), we find that in his examination-in-chief and in the initial part of his cross-examination, he tried to sustain with his story that he was present at the place of occurrence but when he was being cross-examined on behalf of accused Dinesh Kumar, he could not maintain consistency in his statement and has stated in paragraph '19' of his deposition that on the day of occurrence, he was at Aurangabad, therefore, he had not seen whether Daroga Jee had gone to Tengra Bazar or not. PW-3 is the uncle of the deceased. From his deposition, it becomes crystal clear that he is not an eyewitness to the occurrence. The important part of his statement

may be found in paragraph '30' of his deposition where he has stated that the place where Chandan was lying in injured condition was about 50 feet from NH-2. He was suggested that the informant had concealed the motorcycle which had met accident and by pressurizing the police administration, after a road jam, the case was lodged against the accused persons.

23. From the deposition of PW-3, it is also evident that Durga Kumar (PW-5) was not present at the place of occurrence and he had not seen the occurrence.

24. We have noticed in this case, the inquest report was prepared by one Jitendra Kumar, Sub Inspector of Police Town P.S., Camp Sadar Hospital, Aurangabad. He has not been examined in this case on behalf of the prosecution. The inquest report was prepared on 10.03.2023 at 23:35 hours at Sadar Hospital, Aurangabad. Durga Kumar (PW-5) is a witness to the inquest report. It is evident from the inquest report that Durga Kumar was very much present at the preparation of inquest report, still he did not gave his *fardbeyan*. In his deposition, PW-5 has stated that he had not gone to police station. He has also stated that on 10.03.2023, police had come in the hospital and had inquired from him but he had not given his first statement to the police in

the night. In paragraph '76' of his deposition, he has stated that he had not given either any oral or written information to the police.

25. From the deposition of PW-5, again, it appears that he has indulged in making false statement with regard to the motive of occurrence and the manner of occurrence in this case. He has admitted in his cross-examination that in the case of Kamalwati Devi, Chandan Kumar (deceased) was not a witness. The said case was only against one Vikash Kumar who is not an accused in this, is also evident from the deposition of PW-5. The attention of this witness was drawn towards the fact that in the written application, no reason for lodging the FIR with a delay has been mentioned. This witness has admitted that no reason has been provided in the application. He has not even come forward to provide the reasons for not lodging the FIR within a reasonable period.

26. In such circumstance, this Court finds substance in the submission of learned Additional Public Prosecutor for the State on the strength of the judgment of the Hon'ble Supreme Court in the case of **Hariprasad @ Kishan Sahu** (supra). Paragraph '9' whereof reads as under:-

“**9.** It cannot be gainsaid that the first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced during the

course of the trial. The object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eyewitnesses present at the scene of occurrence³. It is also an equally settled legal position that the receipt and recording of information report by the police is not a condition precedent to set into motion a criminal investigation⁴. The first information report under Section 154CrPC, as such could not be treated as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in the court. As held by a three-Judge Bench of this Court⁵, FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.”

27. We have also noticed that the place of occurrence is said to be three feet below the NH-2. If the deceased was assaulted at the said place, there was no reason that while preparing the inquest report (Exhibit ‘1’), the motorcycle could not have been seized by police. The I.O. has stated that at the place of occurrence, the motorcycle of Chandan was not shown to him. In

3. [*Thulia Kali v. State of T.N.*, (1972) 3 SCC 393 : 1972 SCC (Cri) 543]

4. [*King Emperor v. Khwaja Nazir Ahmad*, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18]

5. [*Apren Joseph v. State of Kerala*, (1973) 3 SCC 114 : 1973 SCC (Cri) 195]

fact, in this case, there is no seizure of the motorcycle, therefore, the suggestion thrown by the defence on behalf of the private respondents that the motorcycle has been concealed from police is acceptable to this Court and non-production of motorcycle would lead to draw an adverse inference that a material object of this case has been suppressed by the prosecution.

28. This Court finds from the evidence of PW-5 that he did not make any oral or written statement before the police in the Sadar Hospital which means the prosecution case was still in embryo and the prosecution was not sure as to how this case is to be lodged. The delay in lodging of the FIR in the present case together with the untrustworthiness of the prosecution witnesses, particularly that of PW-3 and PW-5 who came forward to claim that they are eye-witnesses to the occurrence but got demolished in course of their cross-examination would prove fatal to the prosecution case.

29. The manner of occurrence further gets falsified from the evidence of the Doctor (PW-7) who has proved the postmortem report (Exhibit-P-4). In the postmortem report, the Doctor has noticed only one injury. He found that there was Hematoma in right side of parietal area of skull with size 4" x 2" compound fracture of right side parietal bone of skull. According to the

informant, a large number of accused who were armed with iron rod, *lathi* and *danda* were repeatedly assaulting the deceased Chandan but neither in the inquest report nor in the postmortem report, multiple injuries have been found on the body of the deceased. The Doctor has rather opined that if a person rides a motorcycle without helmet and the motorcycle meets an accident, head injury is possible.

30. In the evidence of the I.O. (PW-6), it has come that the place of occurrence is a place where crowd is available but in this case, there is no independent witness to support the prosecution case. The I.O. had not found any blood mark at the place of occurrence or any sign of coming of motorcycle at the place of occurrence. The I.O. has further stated in his cross-examination that the informant or his family had not produced the motorcycle, helmet and the driving license of the deceased. He has stated about the knowledge of the occurrence on 10.03.2023. He had entered this in the case diary and reached the place of occurrence. He had recorded a Sanha also, however, the copy of Sanha was not enclosed with the case diary. He has stated that when he reached the place of occurrence, he was told that the injured was taken to the Government Hospital whereafter he had gone to the Government Hospital. From the evidence of the I.O., it

is further clear that he had met the informant and he was present in the Government Hospital on 10.03.2023 but the informant had not given any statement with regard to the occurrence.

31. In the light of the aforementioned discussions, when we go through the judgment of the learned trial court, we find that in ultimate analysis, we take the same view as has been taken by the learned trial court in respect of Respondent Nos. 2 to 5. A judgment of acquittal is not to be interfered with lightly and this proposition is well-settled by the Hon'ble Supreme Court in the case of **H.D. Sundara (supra)**. Paragraph '8' of the said judgment is being reproduced hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

¹ *State of Karnataka v. H.K. Mariyappa*, 2010 SCC OnLine Kar 5591

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

32. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State at length at this stage and have gone through the entire evidence at the stage of admission itself keeping in view the entire materials on the record. No case for interference is made out.

33. Before we part with this judgment, we make it clear that the observations of this Court hereinabove are only for purpose of this case in the matter of Respondent Nos. 2 to 5 and no part of it shall cause any prejudice to the either parties in Criminal Appeal (DB) No. 504 of 2024 which has been preferred by the convict.

34. This appeal stands dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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CAV DATE	
Uploading Date	05.10.2024
Transmission Date	05.10.2024