

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.222 of 2013**

Arising Out of PS. Case No.-212 Year-2006 Thana- BAKHTIYARPUR District- Patna

1. Prakash Gupta @ Ram Prakash Gupta and Ors Son Of Late Kapuri Gupta Resident Of Village Akparha, P.S. Bakhtiyarpur, District - Saharsa.
2. Guriya Devi Wife Of Prakash Gupta @ Ram Prakash Gupta Resident Of Village Akparha P.S. Bakhtiyarpur District Saharsa
3. Shankar Prasad Gupta @ Shankar Gupta Son Of Late Deban Sah Resident Of Village Babu Bagicha, Rohiri P.S. Gogri At Present Maheshkhut, District Khagaria.
4. Avay Kumar Singh Son Of Lakcho Singh @ Laxmi Singh Resident Of Village Chakbharo, P.S. Bakhtiyarpur, District Saharsa.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. B. P. Singh, Advocate

For the Respondent/s : Mr. A. M. P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 10-12-2024

Heard Mr. B. P. Singh, learned counsel for the appellants and Mr. A. M. P. Mehta, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the judgment of conviction and order of sentence dated 12.03.2013 passed in Sessions Trial No. 64 of 2010 in connection with Bakhtiyarpur P.S. Case No. 212 of 2006 passed by the Adhoc Additional District and Sessions Judge-II, Saharsa, whereby and whereunder the appellants have been convicted for the offence punishable under Sections 324/34 of the Indian Penal Code and



sentenced them to undergo rigorous imprisonment for a period of two years each.

3. The brief facts leading to the filing of the present appeal are that on 19.11.2006 at about 5 AM, the informant Hira Gupta was taking his cow out of his house when Ram Prakash Gupta along with his father-in-law Shankar Prasad Gupta started abusing and declared their intent to kill him. On this the informant tried to run away but Ram Prakash Gupta's wife Gudiya Devi and Avay Kumar Singh caught the informant and Avay Kumar Singh took away a Titan watch worth Rs. 500 from the informant's hand and two thousand rupees from the informant's pocket. When the informant resisted, Ram Prakash Gupta used a sharp knife to attack the informant's neck with the intention of killing him but he ducked to save his life due to which the knife hit the left side of his back and the thumb of his right hand also got hurt. Shankar Prasad Gupta hit the informant on the left side of his butt with a stick due to which he became unconscious. On hearing the noise Shankar Prasad Gupta started strangling the informant. When Babu Saheb Jha, Bechan Sada, Shiv Shankar Gupta etc. went there, then the accused ran away. The informant was picked up in an unconscious state and taken to the Government Hospital, Bakhtiyarpur, where, after he regained consciousness, at about 7 AM, the S.H.O of the Bakhtiyarpur police station recorded the above statement of the



informant. The accused are relatives of the informant's family. They had been harassing him constantly.

4. On the basis of the aforesaid information, a formal FIR was lodged against the four accused persons/appellants of Bakhtiyarpur Police Station Case No. 212/2006, under Sections 448, 307, 324, 504 and 379/34 of the Indian Penal Code. After investigation, the Investigating Officer submitted charge-sheet no. 194 of 2008 dated 30.06.2008 against the four accused persons/appellants punishable under Sections 448, 307, 323, 324, 504 and 379/34 of the Indian Penal Code. Thereafter, the learned Chief Judicial Magistrate, Saharsa took cognizance against all the four accused persons/appellants and transferred the case before the Judicial Magistrate, Saharsa and thereafter the case has been committed to the Court of District and Sessions Judge, Saharsa on 09.03.2010.

5. The charges have been framed against all the four accused persons / appellants under Sections 307/34 of the Indian Penal Code and further the charge framed against Ram Prakash Gupta (Appellant No.1) and Shankar Prasad Gupta (Appellant No.3) under Sections 148, 342 and 504 of the Indian Penal Code and so far Avay Kumar Singh (Appellant no. 4) is concerned the charge has been framed under Section 379 of Indian Penal Code.

6. The prosecution has examined altogether 7



witnesses namely, PW-1 Bhagwan Jha @ Arvind Jha, PW-2 Hira Gupta (Informant), PW-3 Bairister @ Baleshwar Jha, PW-4 Dr. Arun Kumar (Doctor), PW-5 Babu Saheb Jha, PW-6 Chandrika Prasad (Investigating Officer) and PW-7 Siyaram Singh (Investigating Officer). Document has been exhibited is marked as Ext.-1, Signature of Hira Gupta on Fardbeyan is marked as Ext.- 1/1, FIR on the basis of fardbeyan registered is marked as Ext.- 1/2 and injury report has been marked as Ext.- 2.

7. PW-1 Bhagwan Jha @ Arvind Jha in his examination-in-chief has stated that he has no knowledge about the incident and he did not even give any statement before the police. Therefore, he has been declared hostile by the prosecution.

8. PW-2 Hira Gupta (the informant), in his examination-in-chief, stated that the incident occurred on 19.11.2006, at 5 AM. He stated that while he was taking his cow out and tying it to the trough, Prakash Gupta and his father-in-law, Shankar Gupta, approached him, began abusing him, and threatened to kill him. As he tried to escape, Gudiya Devi and Avay Kumar Singh caught him. Avay Kumar Singh forcibly took Rs. 2,000 from his pocket and a Titan watch. The informant further stated that when he tried to defend himself, Ram Prakash Gupta attacked him with a knife and while he



attempted to shield his neck, the knife hits the left side of his back. Shankar Gupta also attacked him with a knife, injuring the left side of his butt. These injuries caused him to fall unconscious. Meanwhile, Avay Kumar Singh and Gudiya Devi began strangling him. Hearing the commotion, several people gathered, and the accused persons ran away. The informant was then picked up by those present people and taken to Simri Bakhtiyarpur Hospital. Upon regaining consciousness, he gave his statement to the head clerk of the police station. He verified this statement as accurate and signed it, which has been marked as Exhibit- I.

9. (i) PW-2 Hira Gupta (the informant) in his cross-examination, stated that Ram Prakash Gupta is his sibling and acknowledged that he has also filed a case against him, currently pending in Fact Track Court No. 2. He mentioned in paragraph 4 that the land where the assault occurred belongs to him. He also described the location of the occurrence, detailing the boundary between his house and that of the accused, Ram Prakash Gupta. He further stated in paragraph 5, that he left his house in the morning. He further testified that he was assaulted with a knife resulting in a severe injury to his shoulder and which caused a hole in his cloth. He clarified that he was seriously injured and unable to escape because the accused were restraining him. His clothes were torn, and he fell down on the



ground during the occurrence. He was treated at the hospital for four days and then after he went home. He further stated that his family members were present during the incident and confirmed that there was no ongoing land dispute between the accused persons and him.

10. PW-3 Barrister Jha @ Baleshwar Jha, in his examination-in-chief has stated that the incident occurred on the morning of 19.11.2006, at around 5 AM. Hearing a commotion, he rushed to Hira Gupta's house, where he witnessed Prakash Gupta, Shankar Gupta, Gudiya Devi, and Avay Kumar Singh at the scene. He further stated that Gudiya Devi was holding Hira Gupta's leg, and Avay Kumar Singh was forcibly taking money from his wrist. He further stated that Prakash Gupta and Shankar Gupta were wielding knives during the altercation. PW-3 further stated that he and others intervened to stop the fight. He further stated that he noticed that Hira Gupta had sustained injuries on his back, buttock, and finger.

10.(i) PW-3, Barrister Jha @ Baleshwar Jha in his cross-examination stated that his house is located 2-3 houses east of the place of occurrence. He rushed to the place of occurrence upon hearing the commotion while he was working at his door, where he was alone at that time. He further stated that Hira Gupta was making noise and appeared injured, having sustained knife wounds. He further stated that upon reaching the



scene, he observed that Hira Gupta was standing but being restrained by the accused/appellants. The injured person was bleeding from his butt, back and right thumb but remained conscious. He further stated in paragraph 5 provided details about the place of occurrence, and stated that the victim's clothes were stained with blood, and the blood was also on the ground. He further stated that Gudiya Devi was holding Hira Gupta's legs, while Avay Kumar Singh was taking money from his pocket while restraining the victim by his neck. He stated that approximately 6-7 people were present at the scene, and he named individuals such as Shiv Shankar Gupta and Bechan Sada, who helped Hira Gupta to the hospital on a cot. PW-3 also stated that there was an ongoing land dispute between the informant and the accused persons/ appellants.

11. PW-4 Dr. Arun Kumar in his examination-in-chief, stated that on 19.11.2006, he was posted as a medical officer at the Primary Health Centre, Simri Bakhtiyarpur. On receiving a report from the police, he conducted a medical examination of the injuries sustained by Hira Gupta and Kapuri Gupta. He documented the following injuries:

i. Linear abrasion measuring 2½ inch, located 1 inch above the nose on the forehead.

ii. Incised wound measuring 3¼ inch, skin-



deep, slanting to create a loose flap on the ventral aspect of the thumb.

iii. Incised wound measuring 1¼ x 1/8", bone-deep, located behind the posterior axillary fold on the left side.

iv. Incised wound measuring 1¼ x 1/8", skin-deep, located over the left gluteus.

v. Incised wound measuring 3 ¼ x 1/8 x, skin-deep, located above injury No. 4.

He further stated that the injuries were caused by a sharp cutting weapon. The age of the injuries was estimated to be between 6 to 12 hours. All injuries were simple in nature, except for injury No. 3, which required an X-ray for further assessment. He identified and authenticated the injury report, prepared in his handwriting and bearing his signature, which was marked as Exhibit 2.

11.(i) PW-4 in his cross-examination, stated that the time of the medical examination of the injured was not recorded. He clarified that injury no. 1 could have been caused by a sharp weapon. Except for wound no. 3, all the injuries were simple in nature. He further stated that these injuries could not have been fabricated. However, he did not receive the X-ray report or the expert's examination report for wound no. 3, which required further evaluation. He further stated that the injuries



could not have been caused by falling on a bamboo. Based on his observations, he confirmed that the wounds on the body of the injured were inflicted by a sharp weapon.

12. PW-5 Babu Saheb Jha, stated in his examination-in-chief that the incident occurred early in the morning between 5 and 6 AM. At that time, he was near a chowk close to Hira Gupta's residence. He further stated that he observed Prakash Gupta was abusing the informant, when he was bringing a cow out of the courtyard. He further stated that Prakash, armed with a knife, stabbed Hira. Hira shouted that he had been stabbed, following which he was taken for treatment. PW-5 has stated that he knew Prakash Gupta and according to his testimony, only Prakash Gupta is involved in the alleged occurrence. He did not mention anything about the other three accused in his examination-in-chief.

12.(i) PW-5 in his cross-examination, stated that upon hearing the commotion, many people gathered at the place of occurrence. He further stated that he saw Prakash stabbing Hira on his waist with a knife, causing Hira fall on the road due to injury sustained by him. He further stated that he did not observe whether there was blood stained on Hira's cloth and could not recall what Hira was wearing at that time.

13. PW-6 Chandrika Prasad the Investigating Officer in the case, stated in his examination-in-chief that he



took the responsibility for the investigation on 27.10.2007, from the previous officer-in-charge, Rameshwar Prasad Singh. Upon reviewing the case diary, he assessed the evidence gathered and concluded that the allegations were substantiated. Based on the written report of senior officials and the evidence available in the case diary, he determined the case to be valid. Subsequently, he submitted Charge Sheet No. 194/2008 against all the accused persons/ appellants under the relevant Sections of the Indian Penal Code. He further identified and verified the formal FIR as Exhibit-3, prepared and signed by the then police station in-charge, Rameshwar Prasad Singh. Additionally, the recorded statement of the informant was certified as Exhibit-1/1 in Rameshwar Prasad Singh's handwriting and signature. During cross-examination, PW-6 admitted that he did not record the statement of any witnesses, nor did he personally inspect the place of occurrence.

14. PW-7 Siyaram Singh, the Investigating officer of this case, stated in his examination-in-chief that he was posted at Simri Bakhtiyarpur on 19.11.2006. He further stated that the endorsement for registering the case was based on the *fardbeyan* of the informant, was made by the then Police Station In-charge, R. P. Singh, and identified the endorsement as Exhibit-1/2. He stated that he was entrusted with the responsibility of the investigating the case and subsequently



initiated the investigation. He further stated that during his investigation, he recorded the informant's statement in the case diary and visited the place of occurrence. The details of his inspection were fully described in paragraph- 2 of his report. He also recorded statements from witnesses Baleshwar Jha, Bhagwan Jha, Vilas Rajak, Bechan Sada, and Babu Saheb Jha, all of whom corroborated the occurrence. He further stated that on 29.11.2006, he received and recorded a report from the Superintendent of Police in the case diary. Further, on 21.12.2006, he received the supervisory comments of the S.D.P.O. He further stated that on 30.12.2006, another report from the Superintendent of Police was received, confirming that the case against the four accused/appellants were substantiated. Further, on 20.01.2007, he received the injury report and recorded it in Paragraph-30 of the case diary. However, due to his transfer, he handed over the case to the Police Station In-charge Rameshwar Singh on 05.02.2007.

14.(i) PW-7 in his cross-examination, stated that he visited the place of occurrence accompanied by armed forces. He first visited the plaintiff's house, where the plaintiff pointed out the location of the occurrence and explained that both parties belonged to the same family. He further stated that no independent witnesses corroborated the allegations of snatching valuables articles. He also investigated Bakhtiyarpur Police



Station Case No. 213 of 2006, which had been filed by the accused, Prakash Gupta. He further stated that independent witnesses informed him that the incident involved fighting between both parties.

15. The learned counsel for the appellants has confined his arguments to challenging the sentence imposed by the trial Court in its judgment and order of sentence dated 12.03.2013. He submitted that PW-1 was declared hostile, undermining the reliability of his testimony. He further submitted that PW-2 (Hira Gupta), though supporting the prosecution's case, admitted during cross-examination that the appellant no. 1, namely Ram Prakash Gupta, is his brother and that a land dispute is ongoing between them, indicating personal bias and a plausible motive for implicating the appellants falsely. He further submitted that none of the independent witnesses corroborated the prosecution's case. He next submitted that the Investigating Officer Chandrika Prasad (PW-6) has admitted that he did not inspect the place of occurrence nor record the statements of witnesses. This creates a serious doubts upon the investigation. He submitted that PW-3 (Bairister Jha @ Baleshwar Jha) arrived at the place of occurrence, after the occurrence took place making his testimony about the occurrence speculative. He further submitted that PW-4 (Dr. Arun Kumar) stated that most of the



injuries were simple in nature, except injury no. 3, for which an X-ray report was not provided. The absence of the X-ray report weakens the claim of grievous injury. Further, the lack of mention of the time of examination casts doubt on the credibility of the medical evidence. Based on above mentioned inconsistencies in witnesses testimonies, unreliable medical evidence, and gaps in the investigation, the prosecution has failed to prove the case beyond all reasonable doubt. Further, the learned Counsel for the Appellants have submitted that the accused are first-time offenders and that all the accused persons have been held guilty of the same set of offences and hence they should be dealt with under Section 4 of Probation of Offenders Act,1958.

16. On the other hand, learned Additional Public Prosecutor has vehemently opposed this appeal and submits that there is direct allegation against the present appellants, for assaulting PW-2 Hira Gupta (informant). He further stated that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

17. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

18. In absence of X-ray report, injury report is



doubtful but in *State of Bihar Vs. Sheo Persan Ram, reported in 2013 SCC OnLine Pat 133* passed by the Co-ordinate Bench of this Court already held that;

“8. Further it is made clear that some thing can be observed by open eye by the doctor (expert) that is nature of the weapon and injury appearing prima facie. For its gravity only x-ray is necessary. X-ray report if speaks about the nature of injury grievous, its help is necessary. For being the injury simple there is no need of x-ray plate. So, the nature of the injury simple may not be doubted when abrasion and tattooing can be observed by open eye. So, further mistake has been committed by the trial court.”

19. On deeply studied and scrutinized all the materials available on record, it is evident that the necessary intention or knowledge to constitute offence under Sections 324/34 has not been established against appellant nos. 2 and 4. As per the prosecution's case and the testimonies of witnesses, the allegations against appellant no. 2, Guriya Devi, are limited to grabbing the informant's leg. Such an act, utmost, may constitute wrongful confinement under Section 342 of the



Indian Penal Code, for which she has not been charged and convicted. There is no evidence to suggest that her actions were accompanied by the intention or knowledge to cause voluntarily hurt, as required under Section 324 of the Indian Penal Code. Similarly, the allegations against the appellant no. 4, Avay Kumar Singh, pertain to the theft of money and a watch from the informant, which falls under the purview of Section 379 of the Indian Penal Code. However, the trial Court has not convicted him under above mentioned Section. Further, the charges against appellant no. 2, Guriya Devi, and appellant no. 4, Avay Kumar Singh, cannot be sustained due to inconsistencies in the statements of the informant. In the *fardbeyan*, the informant explicitly alleged that Shankar Prasad Gupta had strangled him. However, during his examination-in-chief, he contradicted this claim by stating that it was appellant no. 2 and appellant no. 4 who had strangled him. This significant discrepancy raises serious doubts about the credibility of the informant's testimony regarding Guriya Devi and Avay Kumar Singh and creates a reasonable possibility of false implication of Guriya Devi and Avay Kumar Singh. Given the absence of evidence demonstrating any intention or knowledge to cause voluntarily hurt to the informant, this Court finds no basis to sustain the conviction under Section 324 of the Indian Penal Code against appellant nos. 2 and 4. Accordingly,



appellant nos.2 and 4 namely, Guriya Devi and Avay Kumar Singh are acquitted from the charges levelled against them.

20. This Court is of view that the conviction against appellant no. 1 Prakash Gupta @ Ram Prakash Gupta, and appellant no. 3 Shankar Prasad Gupta @ Shankar Gupta under Section 324/34 of the Indian Penal Code for causing voluntarily hurt are substantiated as they meet the essential conditions outlined in the law. Appellant No. 1 namely Prakash Gupta @ Ram Prakash Gupta, and Appellant No. 3 namely Shankar Prasad Gupta @ Shankar Gupta used a knife, which is a dangerous weapon capable of causing fatal injuries. Further, the injury report exhibited by PW-4, corroborates the severity of the attack. It highlights the gravity of the injuries inflicted, indicating a deliberate intention to cause harm that could have resulted in death. PW-4 confirmed that while most injuries were simple in nature except injury no. 3. Additionally, the testimonies of witnesses and the circumstances surrounding the occurrence corroborated with the prosecution's case that the appellants actions were deliberate and premeditated.

21. As the learned Counsel for the Appellants have submitted that the accused persons are first-time offenders and that all the accused persons have been held guilty of the same set of offences and hence they should be dealt with under Section 4 of Probation of Offenders Act,1958. Before dealing



with this submission, it would be appropriate to have a look at Section 4(1) of the Probation of Offenders Act, 1958 which provides as follows: -

“4. Power of court to release certain offenders on probation of good conduct.—

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to



*keep the peace and be of good behavior.
Provided that the court shall not direct such
release of an offender unless it is satisfied
that the offender or his surety, if any, has a
fixed place of abode or regular occupation
in the place over which the court exercises
jurisdiction or in which the offender is
likely to live during the period for which he
enters into the bond.”*

22. In view of the aforesaid facts, this Court is of the view that the trial Court's order dated 12.03.2013 is partially affirmed to the extent of finding that the conviction of appellant nos. 1 namely Prakash Gupta @ Ram Prakash Gupta and 3 namely Shankar Prasad Gupta @ Shankar Gupta under Sections 324/34 of the Indian Penal Code are firmly established, as their actions were not only intentional but also carried out with the knowledge that they were likely to cause voluntarily hurt to the informant and been proved by the ocular evidence as well as medical evidence. Therefore, the conviction of appellant no. 1 namely Prakash Gupta @ Ram Prakash Gupta and appellant no. 3 namely Shankar Prasad Gupta @ Shankar Gupta by the trial Court is upheld under Sections 324/34 of Indian Penal Code. However, it is directed that in light of Section 4 (1) of the Probation of Offenders Act, 1958 considering the circumstances



of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct instead of sentencing him at once to any punishment direct that they shall be released on entering into a bond of Rs. 5,000/- (five thousand) each without sureties for one year to appear and receive sentence when called upon during such period and in the meantime to keep the peace and be of good behavior. As the appellants are on bail, they are discharged from their liability of bail bonds.

23. Accordingly, this appeal stands partly-allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.12.2024
Transmission Date	19.12.2024

