

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2503 of 2023

Arising Out of PS. Case No.-187 Year-2018 Thana- CHAPRA MUFFASIL District- Saran

1. Anju Devi Wife Of Raj Kishore Singh Resident Of Village- Khalpur, Ps- Chapra, Muffasil, Distt- Saran Chapra
2. Chhotu Kumar @ Jhitu Son Of Raj Kishore Singh Resident Of Village- Khalpur, Ps- Chapra, Muffasil, Distt- Saran Chapra

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. Advocate
		Mr. Ram Binod Singh, Advocate
For the State	:	Ms. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 09-12-2024 Heard learned Senior Counsel for the appellants and learned counsel appearing on behalf of the State.

2. This appeal has been preferred for setting aside the judgment of conviction dated 23/03/2023 and sentence dated 27/03/2023 passed by Addl. District and Sessions Judge IX, Saran in Session Trial No. 385 / 2020 arising out of Chapra Mufassil P.S. Case No. 187/2018 registered under Section 302/34 of the Indian Penal Code whereby the appellants have been convicted under Section 304 Part I /34 of the Indian Penal Code.

3. The appellant No. 1 Anju Devi is sentenced to 5 (five) years of rigorous imprisonment and Rs. 25,000/- is imposed as fine and in case of default in payment of fine, she shall further undergo Simple Imprisonment of 3 months. The appellant No. 2



Chhotu Kumar @ Jhitu is sentenced to rigorous imprisonment of 10 (ten) years and fine of Rs. 50,000/- (Rupees Fifty Thousand only) is imposed, and in case of default in payment of fine, he shall further undergo Simple Imprisonment of 6 months.

4. Learned Senior Counsel for the appellants submits that the FIR of Chapra Mufassil P.S. Case No. 187/2018 was registered on 10/05/2018 on the oral statement of the informant Jagdish Singh. The allegations in the FIR is that on 25/04/2018 there was discussion between Rajesh Kumar Singh (deceased, son in law of the informant) and his brother Raj Kishore Singh for performing Shiv-charcha. Rajesh Kumar Singh said that his sister-in-law has passed away and so Shiv-charcha will not be performed. There was verbal altercation between Rajesh and Raj Kishore and Raj Kishore said that Shiv-charcha will performed on the same day. In the midst of altercation, wife of Raj Kishore Singh namely Anju Devi came out exhorting her son Chhotu @ Jhitu and ordered Chhotu to fetch an axe (*Kulhari*) and kill Rajesh. Raj Kishore, Anju and Chhotu, all three assaulted Rajesh and pushed him on the floor with slaps and fists and sticks. Chhotu assaulted Rajesh on his head with axe (*Kulhari*) and Raj Kishore assaulted with rod on the head which resulted in injury upon Rajesh and Rajesh became unconscious and fell



down. People gathered there and they pacified the fight. People took Rajesh to the Sadar Hospital, Chapra from where Rajesh was referred to CNS Hospital, Patna for better treatment and Rajesh was admitted at CNS Hospital on 26/04/2018. Rajesh died on 27/04/2018 at 11:45 O'clock during the course of treatment.

5. Learned Senior Counsel for the appellants further submits that the aforesaid oral statement of the informant was given at 8:00 AM on 28/04/2018 to the local police personnel of Patliputra police station which was sent to the Chapra Mufassil police station where FIR of Chapra Mufassil P.S. Case No. 187/2018 under Section 302/34 of the IPC was registered on 10/05/2018. The police submitted charge sheet no. 439/18 dated 31/12/2018 against the appellants under Section 302/34 of the IPC.

6. It is submitted on behalf of the appellants that the cognizance was taken on 31/01/2013 under Sections 302/34 IPC by the court learned CJM, Chapra and the case was committed to the Court of Sessions. The charges were framed against the appellants under the Section 302/34 of the IPC on 03/02/2021. The appellants pleaded innocence and they claimed to be tried.

7. Learned Senior Counsel further submits that during the



course of the trial, 5 witnesses were produced and examined by the prosecution and 6 documentary evidences were exhibited.

8. He submits that after closure of the prosecution evidence, the trial court recorded the statement of the appellant u/s 313 Cr. P. C. on 01/03/2021 in which the appellant refuted the allegations levelled against him.

9. Learned Senior Counsel for the appellants submits that on 23/03/2023, the trial court has convicted the appellants under Section 304 Part 1/34 of the Indian Penal Code and order of sentence was passed on 27/03/2023.

10. It has further been submitted by the learned Senior Counsel for the appellants that the trial court has erred in not appreciating that the FIR is lodged by delay, as the occurrence took place on 25/04/2018 in the evening, whereas the *fardbeyan* is recorded on 28/04/2018 at 08:00 A.M. and the delay is not explained. If the alleged occurrence of 25/04/2018 is correct, then it is not explained as to why local police was not informed of the alleged assault on the same day or the next day.

11. Learned Senior Counsel further submits that the trial court has erred in not appreciating that PW 1 and PW 2 are interested and related witness and they have cooked up the prosecution story to capture the share of the properties of the



appellant side. No independent witness has deposed in the trial which itself doubts the prosecution case. There is contradiction between the statements of PW-1, PW-2 and PW-4. There is inherent contradiction in the deposition of PW-2 in two separate trials, one being the present trial and second being Session Trial No. 22/2019.

12. It is also submitted that the trial court has failed to appreciate that the medical evidence does not corroborate the prosecution story and the nature of weapon is shown as hard and blunt substance and not sharp cutting weapon and hence the manner of occurrence becomes doubtful.

13. He argues that the trial court has failed to appreciate that the medical papers and evidence of alleged treatment at Sadar Hospital, Chapra is not produced in the trial by the prosecution and therefore the manner of occurrence and the treatment of the victim is doubtful. The trial court has also erred in not appreciating that no signs of alleged occurrence and no blood mark was found by the Investigating Officer (PW 4) on the place of occurrence and no soil / sand containing blood was recovered from the place of occurrence and thus the place of occurrence is not proved.

14. He submits that the trial court has not considered that



the alleged weapon axe (*Kulhari/Dangi*) is not recovered and not produced as exhibit in the trial.

15. Ms. Abha Singh, learned Additional Public Prosecutor has supported the judgment and has submitted that the appellants have been rightly convicted after considering the evidence of the prosecution witnesses. She has further said that P.W.-1 and P.W.- 2 are reliable though they are relatives of the deceased.

16. P.W.-1 is Payal Kumari @ Payal Singh wife of the deceased. In her deposition she has said that with regard to Shiv-charcha, the deceased i.e. Rajesh Kumar Singh, Raj Kishore Singh started quarreling over Shivcharcha thereafter Chhotu Kumar @ Jhitu brought an Axe (*Kulhari*) and thereafter the three accused persons i.e. Chotu Kumar, Anju Devi and Raj Kishore Singh started assaulting the deceased Rajesh Kumar Singh. Chhotu Kumar @ Jhitu, the appellant No. 2 assaulted the deceased with an Axe and Rajkishore Singh assaulted the deceased with an iron-rod due to which her husband fainted and thereafter he was taken for treatment to the Sadar Hospital, Chapra from where the doctor referred him to Patna. On 27.04.2018 her husband died.

17. In her cross-examination, she has said that her



husband was assaulted in her presence and he had sustained about 10 injuries on his head and there was fracture in his head. She further says that 10-20 injuries were sustained by her husband on his body. Most of the injuries were internal but there was bleeding from the head injury. She further says that after the head injury caused by the Axe (*Kulhari*) and rod, the deceased became senseless and thereafter never gained his sense. Raj Kishore Singh gave the final blow on the head of the deceased.

18. P.W.-2 is one Jagdish Singh father-in-law and father of P.W.-1, in his deposition he has said that he was present in the house of his daughter and witnessed the occurrence and the occurrence took place because of dispute over Shiv-charcha. He further says that all the accused persons assaulted the deceased. He says that Raj Kishore Singh assaulted the deceased with iron-rod. Chhotu Kumar @ Jhitu assaulted with an Axe (*Kulhari*) and the head of the deceased was crushed because of the injury given by the accused persons. The deceased was taken to the Sadar Hospital, Chapra and from there, he was referred to Patna where he was admitted in CNS Hospital and died on 27.04.2018 at 11:35 A.M.

19. The *fardbeyan* was recorded by the Assistant Sub-Inspector of Police of Patliputra Police Station. The signature of



the informant has been marked as Exhibit – ‘1’. The P.W. 2 claims to be an eye-witness and has said that the occurrence continued for about 20 minutes and because of the assault, the deceased became senseless. He further says that his son-in-law sustained 10 injuries and because of the head injury, bones of the head got crushed. He further says that 4-5 axe injuries were seen on the deceased. 5-6 injuries caused by rod were also visible and the victim was bleeding and he was taken to the Sadar Hospital Chapra from where he was referred to CNS hospital, Patna.

20. I have considered the submission of the parties.

21. The occurrence took place on 25.04.2018 at around 8:00 P.M. From the evidence of P.W.-1, it appears that the deceased was taken to Chapra Sadar Hospital for treatment from where he was taken to CNS Hospital, Patna and after the death of the deceased, the *fardbeyan* was recorded on 28.04.2018 at 8:00 P.M. and the *fardbeyan* was forwarded to the local police where the FIR has been recorded at 10.05.2018. The first point for consideration is the delay in lodging of the case and there is no plausible explanation for the delay in reporting the occurrence to the Police which would have resulted in registration of the FIR. The occurrence took place on



25.04.2018 at 8:00 PM. The deceased has been taken to the Chapra Sadar Hospital for treatment. The *fardbeyan* for the occurrence could have been given at Chapra on 25th or 26th but the police was not informed by the prosecution. The *fardbeyan* has been recorded after the deceased died in CNS Hospital, Patna. The deceased died at 11:55 A.M. on 27.04.2018 whereas the *ferdbeyan* has been recorded on 28.04.2018 at 08:00 A.M. i.e., on the next day of the death of the deceased. This is also not explained by the prosecution as to what so much time for recording the fardbeyan of the informant by the police at CNS Hospital, Patna. There is no explanation for the delay in the FIR.

22. Learned Senior Counsel for the appellants has relied on the judgment of the Hon'ble Supreme Court in the case of ***Meharaj Singh v. State of U.P.*** reported in **(1994) 5 SCC 188**. Relevant paragraphs are quoted herinbelow:-

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the



parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution



story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.

23. Learned Senior Counsel for the appellants has further relied on the judgment of the Hon'ble Supreme Court in the case of ***State of Andhra Pradesh Vs. Madhusudan Rao*** reported in ***(2008) 15 SCC 582***. Paragraphs No. 30 and 31 are quoted for ready reference:-

“30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity.



Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.

31. In the present case, as noted supra, the first information report in a regard to the alleged occurrence on 19-4-1996 was lodged on 22-5-1996. Admittedly, after her discharge from the hospital on 22-4-1996, the complainant went to her parents' house and resided there. In her testimony, the complainant has deposed that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the first information report. No explanation worth the name for delay in filing the complaint with b the police has come on record. We are of the opinion that this circumstance raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW 1) and her father (PW 3), rendering it unsafe to base the conviction of the respondent upon it. Resultantly, when the substratum of the evidence given by the complainant (PW 1) is found to be unreliable, the prosecution case has to be rejected in its entirety.”

24. Learned Senior Counsel for the appellants has also relied on the judgment of the Hon'ble Supreme Court in the case of **Satpal Singh Vs. State of Haryana** reported in (2010) 8 SCC 714. Paragraph No. 10 of the aforesaid judgment is quoted below:-

“15. This Court has consistently



highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.

25. The delay in registration of the case by the prosecution and the fact that the *fardbeyan* has been given by the father-in-law of the deceased whose presence has been doubted by the defence at the place of occurrence and at the hospital. In her statement before the police, P.W.-1 has not taken the name of P.W.-2 as having accompanied the victim deceased to the hospital and to Patna whereas in her deposition she has said that her father had accompanied her. The I.O. in his cross-examination in paragraph no. 10 has said that P.W.-1 had not stated before him that her father P.W.-2 had taken the victim to



the hospital at Chapra and at Patna. Payal Kumari @ Payal Singh had named the persons who had taken the victim to the hospital in which Jagdish Singh has not been mentioned by Payal Kumari before the police.

26. From the aforesaid facts and the delay in lodging the FIR, the presence of P.W.-2 becomes doubtful as it appears that the prosecution side waited for P.W.-2 to come and register the case. There may have been some explanation for not registering the case at Chapra at the very first instance but the delay in registering the case for almost a day is fatal to the prosecution. From the evidence of P.W.-1 Payal Kumari it appears that she was informed by her *Nandoshi* Santosh Singh about the death of her husband but it is not Santosh Singh who was present in CNS hospital, Patna who has given the fardbeyan. The informant in my opinion is not an eye witness to the occurrence though he has claimed that he is an eye witness and he had accompanied the deceased in injured condition to Sadar Hospital, Chapra and CNS Hospital, Patna.

27. The participation of the appellant in the occurrence is concerned, P.W.-3 is one Shri Shiv Ranjan Kumar who has conducted the postmortem. He has found external injuries caused by hard and blunt substance. There is no injury found



on the deceased which can be accused by an Axe and it is the specific case of the prosecution that the appellant No. 2 Chhotu Kumar @ Jhitu had assaulted the deceased with an Axe. Moreover, considering the fact that the P.W.-2 the informant was not present on the spot and the prosecution might have concocted the story about the occurrence, the participation of the appellant No. 1 (Anju Devi), the lady of the house also becomes doubtful.

28. It appears that the prosecution waited for P.W.-2 to come and give *Fardbeyan* making the entire family an accused though he was not an eye-witness.

29. In my opinion, the prosecution has not been able to prove the case beyond reasonable doubt and therefore the judgment of conviction and sentence is set aside.

30. The appellants are acquitted of all the charges. The appeal is allowed.

31. The present appeal against the judgment of conviction dated 23.03.2023 and sentence dated 27.03.2023 passed by the Additional District and Sessions Judge-IX, Saran in Sessions Trial Case No. 385 of 2020 (Arising out of Chapra Mufassil P.S. Case No. 187 of 2018) is set aside.

32. The appellant no. 2 (Chhotu Kumar @ Jhitu), who is



in jail custody should be released forthwith, if not wanted in any other case.

33. The records of the case be returned to the trial court forthwith. Interlocutory application if any shall also stand disposed of accordingly.

34. The appellants shall be discharged from the liabilities of the bail bonds.

(Sandeep Kumar, J)

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