

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1222 of 2018**

Arising Out of PS. Case No.-372 Year-2004 Thana- PHULWARISHARIF District- Patna

1. Vinod Sharma @ Vinod Singh, Son of Late Kamla Singh
2. Prem Kumar, son of Shri Vinod Sharma Both Are Resident of Village-
Manjhouli., P.S. Phulwari Sharif, Distt.-Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anil Singh, Amicus Curiae
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 22-08-2024

Nobody has been appearing for the appellants all

this while, who are father and son respectively. We,
therefore, requested Sri Anil Singh, learned Advocate to be
the Amicus, to which he consented and has assisted us.

2. Both the appellants have been convicted under
Section 302/34 of the IPC *vide* judgment dated
26.09.2018 passed by the learned Fast Track Court-II,
Patna in S.T. No. 893/2005/199/2018, arising out of
Phulwari Sharif P.S. Case No. 372 of 2004. By order dated



28.09.2018, they have been sentenced to undergo R.I. for life.

3. One Birendra Kumar is said to have been assaulted by one Niraj Kumar, who has been declared juvenile. That led to his death.

4. The FIR was registered by the father of the deceased *viz.* Prahlad Sharma (P.W. 7). He has lodged the written report addressed to the Inspector-cum-officer-in-charge of Phulwari Sharif Police Station on 29.05.2004 alleging that while he was present near his house at about 2.00 P.M. in the day, appellant/Vinod Sharma @ Vinod Singh along with appellant no. 2 and his two other juvenile sons *viz.* Niraj Kumar and Dhiraj Kumar came and started abusing his son/Birendra Kumar (deceased). When this was protested to, the appellant/Vinod is alleged to have ordered his sons to kill Birendra Kumar. On his orders, appellant no. 2 and Niraj Kumar caught hold of the deceased and Niraj Kumar gave him a lathi blow on his head, as a result of which Birendra Kumar got seriously



injured and fell down. The accused persons thereafter started assaulting him by fists and slaps. On hulla, many persons of the neighbourhood arrived who tried to save the deceased. However, it was observed by all of them that the victim had become unconscious. He was taken to Rajeshwar Nursing Home, Patna, a private hospital, where he was admitted.

5. At the time of writing of the written report, his condition was reported to be serious.

6. With respect to the cause of occurrence, P.W. 7 has disclosed that while cutting the dried-up Sheesham Tree belonging to him, the overhead illegally drawn electric wire of the appellants was damaged and that was the reason for the appellants to come over to the house of P.W. 7 and attacked his son.

7. It appears that after the death of the deceased on 31.05.2004 at about 6.00 A.M. in Rajeshwar Hospital, another fardbeyan was lodged by P.W. 7 in which some more details were provided.



8. However, with respect to accusation against the accused persons, there was no major difference except that in the second fardbeyan, referred to above, a specific reason was assigned for the occurrence *viz.* the damage to the overhead electrical wire of the accused persons while a dried up Sheesham tree was being felled.

9. Both the fardbeyans were amalgamated in the same case *viz.* Phulwari Sharif P.S. Case No. 372 of 2004 dated 29.05.2004, which initially was registered for investigation under Sections 307, 341, 323 and 34 of the IPC. Section 302 of the IPC was added *vide* order dated 01.06.2004.

10. During the course of investigation, the police found the allegations against the appellants and two other sons of appellant no. 1 to be true. However, only the appellants have faced the Trial, as the two other sons of appellant no. 1 *viz.* Niraj, the main assailant and Dhiraj were found to be juvenile and therefore their cases were



sent to respective Juvenile Justice Board for determination of the guilt.

11. There is no reference of the outcome of such determination with respect to the two juveniles, in the judgment impugned in the present appeal.

12. At the Trial, sixteen witnesses were examined on behalf of the prosecution and one on behalf of the defence.

13. Based on the aforementioned materials, the Trial Court has convicted and sentenced the appellants as aforesaid.

14. The learned Amicus/Mr. Anil Singh, Advocate has argued that the case is absolutely false. To buttress this contention, he has drawn the attention of this Court to Ext.-1, the first fardbeyan lodged by P.W. 7/informant when his son was admitted in Rajeshwar hospital for head injury because of the assault perpetrated upon him.

15. In the aforementioned FIR, the allegation with respect to assault was written whereafter, P.W. 7 had



signed it. It was only as an appendage that another information was provided viz., the reason for the occurrence and the assault on the deceased.

16. This, according to Mr. Singh, is an interpolated information for obvious reasons. This fardbeyan was scribed by one Sanjay as admitted by P.W. 7, but Sanjay has not been examined. Later, after the death of the deceased, the other fardbeyan also was lodged on 31.05.2004.

17. The purpose of this, Mr. Singh suggests, is that there had to be a reason for the brawl.

18. It would have looked very incongruous that without any reason, a neighbour with his sons would come and start assaulting the victim/deceased. This, therefore, lends some credence to the suggestion by the defence that perhaps while the old Sheesham tree was being cut by the deceased, he fell down from the tree and hurt himself.

19. There does not appear good relationship between the neighbours, which fact also surfaced by way



of suggestion viz. the dispute over a passage in between the houses of P.W. 7 and the deceased.

20. Surprisingly, it has been argued, that despite the occurrence having been witnessed by many villagers and neighbours, none of the independent persons have been brought to the witness-stand. Their presence at the P.O. at the time of the occurrence would become obvious from a plain reading of the deposition of P.W. 7 himself, as also of the observations of the Investigating Officer viz. P.W. 15.

21. The next argument urged on behalf of the appellants is that out of the aforementioned sixteen prosecution witnesses, P.Ws. 1 to 7 including the informant, who have claimed to be eye-witnesses are closely related to the deceased and resident of the same family, living under the same roof. Except for P.W. 7, none of the witnesses viz. 1 to 6, who are the brothers, wife, aunt and cousin of the deceased had made any statement before the Investigator



during the course of investigation claiming themselves to be the eye-witnesses of the occurrence.

22. However, at the Trial, they claimed to have seen the actual part of the assault. Their attentions were drawn to their earlier statements which has been confirmed by the I.O. that none of them viz., P.Ws. 1 to 6 claimed to be the eye witnesses to the occurrence.

23. P.Ws. 8, 9, 11, 12 and 13, some of whom are official witnesses, have turned hostile.

24. Another very important and interesting fact has been stated by the defence that the appellant No. 1 himself is a Dafadar in the local Police Station.

25. This fact assumes importance in view of the late reporting of the incident.

26. The Police Station is at a distance of 7 kms. from the P.O., which is the house of P.W. 7. The occurrence took place at about 2:00 P.M. in the afternoon of 29.05.2004. The victim/deceased was taken to Rajeshwar Nursing Hospital by around 3:15 P.M. P.W. 7



remained at the hospital till about 7:00 P.M. During this period, the matter ought to have been reported to the Police.

27. It further appears from the records that information regarding the occurrence was received in the Police Station at about 8:40 P.M. on 29.05.2004. However, surprisingly, P.W. 7 has made a statement during Trial in his cross-examination, that the policemen from Phulwari Sharif Police Station came to his house at 8:00 P.M. This does not fit in with the prosecution timings and it appears that the facts are not synchronous with what must have actually happened.

28. The post-mortem examination on the deceased was conducted on 31.05.2004 by Dr. Bishnudeo Prasad (P.W. 10).

29. Admittedly, the deceased had been rendered medical treatment at Rajeshwar Hospital. It was thus very natural that P.W. 10 would have noticed stitched wounds



on the body of the deceased. One stitched wound was found on the vertex, approximately 3" above the glabella.

30. On dissection, extradural hemorrhage was evident from the inside of the brain. Rest other vitals remained untouched. The cause of death according to P.W. 10 was shock and hemorrhage due to head injury. However, P.W. 10 was candid enough to admit that the nature of violence could not be ascertained and the reason for the same was the earlier surgical interference.

31. Precisely, for this reason the nature of the injury also could not be ascertained.

32. It was therefore a must for the prosecution to have examined the treating doctors at Rajeshwar Nursing Hospital to complete the evidence with respect to the accusation against the appellants.

33. That not having been done, Mr. Singh, has rightly commented that there could be a possibility of the deceased having fallen from the tree while cutting the branches and in the process, he died. However, such



suggestion has its own pitfall. The Investigator, on inspection of the P.O., did not find any Sheesham tree or the stump of the tree, said to have been felled which resulted in damage to the overhead electrical wire.

34. Nonetheless, for ascertaining the injuries on the person of the deceased, specially when it could not be gathered during the post-mortem examination, it would have been profitable for the prosecution to have examined the treating doctor at Rajeshwar Hospital. That would have cleared all confusion with regard to the nature of injuries.

35. Additionally, if such evidence would have been brought, it would also have thrown light on the actual state of affairs as also when the victim was admitted in the hospital. Some information must have been received at the hospital before admitting the patient as to the cause of the injuries.

36. In cases of violence and resulting injury, the private hospital authorities are also very careful in informing the Police.



37. Is it that the patient was admitted as having received injuries on a fall from a tree?

38. We do not know.

39. This gap in the prosecution version makes the case doubtful in the first instance.

40. This takes us to the evidence of the Investigator/Arun Kumar (P.W. 15). He had visited the place of occurrence, but did not find any blood or signs of any old tree having been felled. He did not bother to seize the blood soaked clothes of the victim/deceased. Some part of the investigation was done when the deceased was still alive and struggling for his life in the private hospital.

41. These lapses have rendered the investigation to be lop-sided, which, in ultimate analysis, destroys the very fabric of the prosecution, specially in the background facts of enmity and the parties being neighbours.

42. On a careful analysis of the evidence on record, we find that P.Ws. 1 to 6 have not come out with



true version of the occurrence. They have falsely claimed to be the eye witnesses to the occurrence.

43. The evidence of P.W. 7 is also full of inconsistencies. The effort of P.W. 7 to project a false case against the appellants gets very evident with the extrapolation in the first of the fardbeyans.

44. Where was the necessity of filing the second fardbeyan, even on death of the deceased, when the FIR had already been registered.

45. This, therefore, makes the late endorsement of the Chief Judicial Magistrate on the FIR very important. The FIR had been registered on 29.5.2004 only, but saw the light of the day on 31.5.2004.

46. Such delay only makes the prosecution doubtful.

47. It is trite by now that in all cases, related witnesses are not to be distrusted but in the present set of facts, when the Investigator denies that any one of them had made any claim of their having seen the occurrence



during course of investigation, they have been rendered untrustworthy.

48. Since the evidence suggests that many persons were present at the P.O., at least some of them ought to have come to the witness-stand to lend credence to the prosecution version about the genesis and the manner of the occurrence.

49. That not having been done, the prosecution has failed to prove its case beyond all reasonable doubts.

50. To tie the strings together, (i) the delayed lodging of the FIR; (ii) the interpolation in the fardbeyan; (iii) non-examination of the independent witnesses; (iv) most of the related witnesses having been rendered untrustworthy because of exaggerations made by them at the Trial; (v) the doctor not in a position to ascertain and conclusively hold about the nature of injury/violence and (vi) the possibility of false implication of the entire family of the appellants including the minor sons of P.W. 1 are some of the grounds, which make us rather hesitant to put



our imprimatur on the opinion rendered by the Trial Court, holding the appellants guilty under Section 302/34 of the IPC.

51. Thus, giving benefit of doubt to the appellants, we acquit them.

52. The appeal is allowed.

53. The Appellant no. 1/Vinod Sharma @ Vinod Singh is in jail since the date of the judgment. He is directed to be released forthwith, if not required in any other case.

54. The Appellant No. 2/Prem Kumar is on bail. He is discharged of the liabilities of his bail bonds.

55. Before parting, we must express our appreciation for the efforts put in by Sri Anil Singh, learned Amicus.

56. The Bihar State Legal Services Authority is directed to pay an amount of Rs. 15000/- towards the professional fee of Sri Singh for the services rendered by him in this appeal.



57. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

58. The records of this case be returned to the Trial Court forthwith.

59. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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