

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1263 of 2018**

Arising Out of PS. Case No.-185 Year-2014 Thana- BARSOI District- Katihar

-
1. Md. Aslam, son of Late Manjur, resident of Village-Bajidpur, P.S.-Barsoee, District-Katihar.
 2. Md. Adil @ Adil, son of Md. Aslam, resident of village-Bajidpur, P.S.-Barsoee, District-Katihar.

... .. Appellants

Versus

The State of Bihar

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Y.C.Verma, Sr. Advocate Mr. Bijendra Kumar Singh, Advocate Mr. Kr. Dhananjay Singh, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, Addl.PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 19-03-2024

Heard Mr. Y. C. Verma, learned Senior Counsel assisted by Mr. Bijendra Kumar Singh, learned counsel for the appellants and Mr. Bipin Kumar, learned Additional Public Prosecutor for the State.

2. This appeal arises out of judgment of conviction dated 13.09.2018 and the order of sentence dated 17.09.2018 passed by learned Ist Additional District & Sessions Judge, Katihar in Sessions Trial No. 172 of 2015/CIS No. 308 of 2016.

3. By the judgment under appeal (hereinafter referred to as the ‘impugned judgment’), the learned trial court has been



pleased to hold the appellants guilty for the offences under Section 302/34 of the Indian Penal Code (in short 'IPC'). The appellant no. 2 has been further held guilty for the offences under Sections 307 and 325 IPC. The appellant no. 1 has been awarded a rigorous imprisonment for life for the offence under Section 302/34 IPC and he has also been ordered to pay a fine of Rs.10,000/-. The appellant no. 2 has been ordered to undergo a sentence of rigorous imprisonment for life under Section 302/34 IPC and a fine of Rs.10,000/-. For the offence punishable under Section 307 IPC, he has been awarded rigorous imprisonment of ten years and a fine of Rs.10,000/-. Appellant no. 2 has been further awarded a punishment of three years rigorous imprisonment for the offence under Section 325 IPC and a fine of Rs. 5,000/-. All the sentences are to run concurrently.

Prosecution Case

4. The prosecution case as disclosed in the *fardbeyan* of Md. Ekhlaiq (PW-6), who is the son of deceased, has been recorded by Md. Zulfikar, the Sub-Inspector of Police (PW-7) on 04.11.2014 at 10.00 am at the place of occurrence. According to the *fardbeyan* of PW-6, on 04.11.2014 at around 8.00 am in the morning, while his father was sweeping the 'parti' (vacant) land in front of his house, Md. Aslam, Lailun Neha, Md. Adil came there



and started abusing his father and stopped him from sweeping and exchange of hot words began. In the meantime, Md. Addu, Md. Meraj, Md. Sohail and Md. Taseer, Md. Shambul @ Aagaj, Kaliq also came and started instigating. On this, Md. Aslam attacked on the head of his father with a *dabiya* in his hand on which his father fell down there. Thereafter, Lailun Neha (wife of Md. Aslam) and Md. Adil (son of Md. Aslam) started assaulting his father indiscriminately with the sticks in their hands. On *hulla*, the informant and his mother Noorjahan came to save his father, then all the three accused persons badly injured his mother Noorjahan as a result of which she fell down. On raising alarm, people arrived there, thereafter, all the accused persons escaped. Informant's father succumbed to the injuries, however, his mother was sent to the hospital for treatment with the help of villagers.

5. Upon investigation, police submitted chargesheet bearing Chargesheet No. 07 of 2015 dated 12.02.2015 against Md. Adil (appellant no. 2), Lailun Neha (acquitted), Md. Aslam (appellant no. 1) for the offences punishable under Sections 147, 148, 149, 325, 307, 302 and 504 IPC. After taking cognizance of the offences, learned Chief Judicial Magistrate, Katihar having found that the offences punishable under Section 307 and 302 IPC



are sessions triable, committed to the Court of Sessions where it was registered as Sessions Case No. 172 of 2015.

6. The investigation against some of the accused namely, Md. Addu@ Asad, Md. Meraj, Md. Sohail, Md. Tasir, Khalik, Md. Shambul @ Aagaz, Gulsabbo, Md. Garibul and Md. Shoeb had been kept pending. Later on, police submitted a final form saying that no sufficient materials could be found against them to proceed but the learned Chief Judicial Magistrate differed with the police report and took cognizance for the offences under Sections 147, 148, 149, 325, 307, 302 and 504 IPC. This record was also committed to the court of sessions where Sessions Trial No. 221 of 2016 was registered. Later on, both the sessions trial have been merged *vide* order dated 16.11.2016 passed by the learned trial court.

7. Since all other accused except these two appellants have been acquitted by the learned trial court, at this stage, we are only concerned with the case of these two appellants.

8. To complete the records, it is stated that after the prosecution evidences were led, statement of all the twelve accused were recorded under Section 313 IPC. They pleaded innocence. The defence did not produce any witness or document.



9. After hearing the prosecution and the defence, the learned trial court has in ultimate analysis found these two appellants guilty of the offences as stated hereinabove.

Prosecution Witnesses

10. It would appear from the records that in the trial court altogether ten witnesses were examined. PW-1 Md. Taha Alam reached at the place of occurrence and saw that Md. Taskin (the deceased) had already died and his wife was lying there with her head injured. He is a related witness who has stated that when he reached there, there were one or two persons and the crowd assembled there after he reached at the place of occurrence.

11. It appears that PW-1 was examined in Sessions Trial No. 172 of 2015 on 29th February, 2016 whereafter he was again examined in Sessions Trial No. 221 of 2016 on 14th November, 2016 wherein, in course of his cross-examination he has stated that Md. Addu, Md. Meraj, Md. Sohail, Md. Taseer, Md. Agadha, Khaliq, Garibul, Abdul Sabbo, Md. Shoeb were not involved in the occurrence.

12. PW-2 is the Doctor Deena Nath Poddar who conducted autopsy on the dead body of the deceased on 04.11.2014 at 3.00 p.m. He has stated that he found two injuries on the dead body of Md. Taskin, those were:-



(i) External: Bleeding from right ear, incised wound over left side of scalp behind left ear sized 3" × ½".

(ii) Incised wound over occipital region of skull sized 5" × 1/2" deep to bone-occipital bone fractured.

13. According to PW-2, who proved the *post mortem* report (Exhibit-1), injury no. (i) and injury no. (ii) may be caused after falling over sharp substance.

14. PW-3 is Md. Mohsin @ Mohtamin Alam who is one of the inquest report witnesses. PW-3 has stated that some people came shouting from the side of the house of Taskin that Taskin has been murdered. On this information, this witness went by his bicycle to see him and found that Taskin had already died and his wife was lying unconscious. He has stated that appellant no. 2 was seen there with a cricket bat in his hand, appellant no. 1 was having *hathauri* (hammer) in his hand and Lailun Neha was having a knife in her hand. Blood was lying on the earth and he came to know that Adil, Aslam and Lailun Neha had committed the occurrence. He has proved his signature on the inquest report as Exhibit '2'. From the deposition of PW-3 also it is clear that he is not an eye witness to the occurrence and he reached at the place of occurrence only after hearing about the murder of Taskin.



15. PW-4 is Tajna Khatoon, daughter of Md. Taskin who is a child witness. It appears from her deposition that at first instance, the trial court has not done its job by putting appropriate questions to this witness to test her understanding. It appears from her deposition that this witness claims to have seen the occurrence. According to PW-4, her father was assaulted by Adil (appellant no. 2) by a cricket bat, Aslam (appellant no. 1) had assaulted him by *dabiya* and Lailun had assaulted him by knife. PW-4 claims that when her mother came to save her father she was also assaulted by the accused persons. She has taken name of all the three accused who had assaulted her mother. In paragraph '2' of her examination-in-chief, she has stated that the accused persons chased her to catch, but she concealed herself in her house and her brother went to Mohalla and raised *hulla*. She has stated in paragraph '7' of her cross-examination that immediately after the occurrence, *Darogaji* had come and he had inquired from her brother Md. Ekhlaiq, Moti and Taha. According to PW-4, no other person was investigated about the occurrence. From the deposition of PW-4, it further appears that she was not interrogated by the Investigating Officer when he reached at the place of occurrence after the occurrence had taken place. PW-4 has also stated on the same pattern in her cross-examination saying that Md. Addu, Md.



Meraj, Md. Sohail, Md. Taseer, Md. Sambul @ Aagaz, Khaliq Garibul, Sahail and Gulsabbo, who were co-villagers, were not involved in the occurrence.

16. PW-5 Noorjahan Khatoon is the wife of the deceased and she is the injured witness. It appears that the prosecution case is more relying upon the deposition of PW-5 and she being an injured witness is definitely required to be given due credibility keeping in view the several materials which have transpired in course of trial. In her examination-in-chief, PW-5 has stated in paragraph '2' that Aslam (appellant no. 1) assaulted her husband on the right side of his head by the opposite side of *dabiya* and Adil (appellant no. 2) assaulted her husband by wooden bat. She has further stated that Lailun Neha assaulted her husband by a knife into his chest. In paragraph '3', this witness states that she came running after hearing *hulla* and then she further states that Adil assaulted her by bat and Lailun Neha assaulted on her hand by knife. She has further stated that Adil assaulted on her head by bat again and when she tried to save herself from the said assault on her head, she suffered injury on her hand and her hand got fractured. She has then stated that Lailun Neha assaulted on the wrist of her right hand by knife whereafter she fell down. In her cross-examination, this witness has stated that the occurrence took



place for about two minutes and when the occurrence was taking place, at the same time she came outside from her courtyard to the place of occurrence. She has stated that when her husband fell down after becoming unconscious then she fell down over him to save him. Lailun Neha told that he had yet not died. In paragraph '13' of her statement, she has stated that three days after the occurrence, police came to her house and recorded her statement, but it is not known as to what was recorded by the police. She was suggested that the occurrence took place in the field of Karbala and her husband suffered injuries in playing with *bhala*, *barchhi* in the Moharram festival. PW-5 denied this suggestion.

17. PW-6 Md. Ekhlaq is the informant of this case. The learned Senior Counsel(s) for the appellants as well as learned Additional Public Prosecutor for the State have stated that from his deposition, it would appear that PW-6 is not an eye-witness to the occurrence. According to PW-6, he was in his house in the lavatory at 8.00 am in the morning when his sister Tajna Khatoon (PW-4) entered into the room shouting that 'Abba' has been assaulted by Aslam, Lailun Neha had knife in her hand and Adil (appellant no. 2) had also assaulted Abba and all three together have killed her Abba Md. Taskin. In paragraph '4', he has stated that on this information, he went to the place of occurrence and



found that his father was lying dead. He has further stated that he saw that Adil (appellant no. 2) was standing with a wooden bat and was assaulting, Lailun Neha had a knife in her hand and Aslam was having a *dabiya*. He has stated that when her mother came to save then she was also assaulted. PW-6 states that wife of Aslam, Lailun Neha assaulted his mother on her head by knife which caused injury to her whereafter Adil (appellant no. 2) assaulted his mother on her head and when she tried to save herself then her hand got fractured. He has stated in his cross-examination that when he reached the place of occurrence, blood was lying there on the earth. The place of occurrence is situated at a distance of 8 Kilometers from the police station and according to PW-6, the villagers had informed the police in the police station, but he could not say as to who had informed the police station. PW-6 has stated that police reached at the place of occurrence after one hour of the occurrence and had recorded his *fardbeyan* at the place of occurrence. In paragraph '24' of his cross-examination, PW-6 has stated that he had made statement before the police that his sister had told that Abba has been killed by Aslam by *dabiya* and Lailun Neha had a knife in her hand. In paragraph '25' of his cross-examination, PW-6 has stated that he had given statement before



the police that after death of his Abba, Adil (appellant no. 2) had been assaulting him by a wooden bat.

18. PW-7, Md. Zulfikar is the Sub-Inspector of Police who had recorded the *fardbeyan* of PW-6. He has proved his own signature and the signature of the witnesses on the *fardbeyan* as Exhibit '3/1', 3/2' and '3/3' respectively. PW-7 states that he got charge of the investigation on the same day at 12:30 P.M. whereafter he had got prepared the inquest report. He has proved the signature of Md. Mohtamin as Exhibit '5/1' on the inquest report. PW-7 has stated about the place of occurrence in paragraph '10' of his evidence. The place of occurrence is a vacant land and North to that place is the house of Aslam and orchard of Khalil, in South, there is a brick roof house of the deceased, in East there is orchard of Firoz @ Jafar and in West, there is vacant land of Firoz and then Madhya Vidhyalaya, Bajidpur. He recorded the re-statement of the informant and the statement of witness Taha Alam (PW-1). He recorded the statement of Mohtamin (PW-3) on 05.11.2014 and obtained the injury report of Noorjahan (PW-5) and *post mortem* report of the deceased Md. Taskin. PW-7 has stated in paragraph '21' of his cross-examination that information of occurrence had been received by the Station House Officer but he had not recorded this fact in the case diary. He had not inquired



from the SHO as to who had given the information of the occurrence to the police station and this witness was not aware as to at what time the information was received in the police station. He has stated he had got charge of the investigation at 12:30 P.M. On the same day, he reached the place of occurrence, however, it is not recorded in the case diary. When he reached at the place of occurrence, he found that the dead body was lying there and many people had surrounded the dead body. According to PW-7, the blood was lying on the earth, he had seized the clothes and had sent the same to the Forensic Science Laboratory. He had not recorded the statement of Md. Nadim Ahmed and Md. Asfaq two witnesses to the *fardbeyan*. PW-7 was suggested that the place of occurrence is the field of Karbala but he denied the suggestion.

19. In his cross-examination, this witness (PW-7) has stated that the witness Mohtamin Alam had not stated to him that blood had fallen at the place of occurrence. He had not stated that there was a knife in the hand of Lailun, but in the hand of Adil and *dabiya* in the hand of Aslam. In paragraph '45' of his cross-examination, PW-7 has stated Tajna had not given him statement that she came running into her house and was saying that her 'Abba' has been killed by Aslam by *dabiya* and a knife was there in the hand of Lailun. In paragraph '46' of his cross-examination,



PW-7 has stated that Md. Ekhlaiq (PW-6) had not stated before him that after death of his father, Adil was assaulting him by a wooden bat, PW-6 had not stated that there was a knife in the hand of Lailun and that Aslam had assaulted Abba on the ear side. In paragraph '47', PW-7 has further stated that the informant had not stated before him that when his mother Noorjahan came to save, then she was also assaulted. In paragraph '48' of his cross-examination, PW-7 has further stated that PW-6 had not stated before him that Lailun had assaulted his mother by a knife on her head causing injury and Adil (appellant no. 2) had assaulted her by a wooden bat on her head and when she tried to save herself, her hand got fractured. He had not stated that he fled away after the accused persons ran towards him to kill him.

20. PW-8, Dr. Ravindra Kumar Sinha is a doctor who had examined PW-5 on 04.11.2014 at 09:45 A.M. in Sub-Divisional Hospital, Barsoi as a Sub-Divisional Medical Officer. He had found the following injuries on her person:-

- “i) Swelling 3”×3” on dorsum of right hand. X-ray of right hand anterior and lateral. Opinion after X-Ray report.
- ii) Swelling 6”×3.5” on left forearm. X-ray of left forearm and lateral. Opinion after x-ray report.
- iii) lacerated wound 6”×1/3”×1/3” over right parietal head simple in nature caused by blunt object.



iv) lacerated wound 3"×1/3"×1/3" over occipital (head) simple in nature and caused by blunt object.

v) lacerated wound 1/3"×1/4"×1/4" on left forearm simple in nature and caused by blunt object.

vi) lacerated wound 2"×1/3"×1/3" over left parietal head. Simple in nature caused by blunt object.

vii) Time and date of examination – 9:45 am on 04.11.2014.

viii) Age of injury -within one hour.

ix) M.I. -A small black mole on right shoulder.

Patient referred to Sadar Hospital, Katihar. Received X-ray report on 15.01.2015 sent by Dr. S.M. Thakur, Sadar Hospital, Katihar. X-ray plate no. (registration no. 1337 dated 05.11.2024 shows fracture of lower third of left radius and ulna shows injury no. ii is grievous in nature caused by blunt object & injury i) is simple in nature caused by blunt object."

21. According to PW-8, the injury no. 2 was grievous in nature caused by blunt object and he did not find any injury on the person of the patient caused by sharp cut weapon. Thus, the evidence of PW-8 completely rules out any injury of knife or *dabiya* on the body of the injured (PW-5).



22. PW-9 and PW-10 are Md. Tajim and Md. Sadeek who are the seizure list witnesses. They are formal witnesses and not witnesses as to the facts and circumstances of the case.

Submissions on behalf of the Appellants

23. Assailing the judgment of the learned trial court, Mr. Y.C. Verma, learned Senior Counsel submits that the learned trial has failed to appreciate the prosecution evidence on the following grounds:-

(i) According to him, the prosecution has suppressed the initial version of the case. Referring to the evidence of the I.O. (PW-7) and that of the informant (PW-6), learned senior counsel would submit that the alleged occurrence had taken place at 08:00 AM, PW-7 has stated that an information about the occurrence was received by the S.H.O. in the police station but this fact is not mentioned in the case diary. It is pointed out that the F.I.R. has been lodged at 12:30 PM but prior to that the inquest report (Exhibit '5') had been prepared by PW-7 at 10:15 AM. PW-6, who is not an eye witness to the occurrence, has lodged the F.I.R. and PW-5 who is the injured witness has been examined by PW-7 after about eight days of the occurrence. It is submitted that a cumulative reading of these materials would show that there had



been a considerable delay in recording of the *fardbeyan* of PW-6 and lodging of the F.I.R.

(ii) The inquest report was not containing the name of the accused, learned Senior Counsel submits that though he is aware of the fact that the inquest report does not contain any column showing the name of the accused but his submission is that the inquest report was prepared at 10:15 AM and the delay of four and half hours in lodging of the F.I.R. with regard to the occurrence gives rise to a doubt as to whether it is a case registered as an after-thought.

24. Learned Senior Counsel submits that the prosecution case stands falsified from the *post mortem* report (Exhibit '1') and the injury report (Exhibit '14').

25. It is his submission that PW-5 is a wholly unreliable witness which may be found from her evidence wherein she has made materially inconsistent statement that Aslam (appellant no. 1) had assaulted her husband on the right side of her head by the opposite side of *dabiya*. It is submitted that the *post mortem* report (Exhibit '1') completely rules out any injury caused by the opposite side of *dabiya*. As per Exhibit '1', both the injuries are in the nature of incised wound and such injuries may be caused by falling on a sharp cut substance. Learned Senior Counsel further



submits that appellant no. 2 was carrying a cricket bat in his hand, the allegation is that he had also assaulted the deceased but no injury corresponding to the kind of weapon attributed to appellant no. 2 has been found by the doctor (PW-2) in Exhibit '1'.

26. It is submitted that from the *fardebayan* of PW-6, it would appear that initially, there had been a hot exchange of words between the deceased and the appellants and in the meantime, the co-accused persons who have been acquitted by the learned trial court reached at the place of occurrence and on their instigation, the appellants are said to have assaulted the deceased, however, Exhibit '1' and Exhibit '14' both discarded the ocular evidence with regard to the allegations of assault by appellant no. 2 on the deceased and by Lailun Neha on the deceased as well as PW-5. It is for this reason that the learned trial court has acquitted Lailun Neha from all the charges.

27. In order to strengthen his submissions, learned Senior Counsel submits that there is an unexplained delay in not only lodging the F.I.R. but also in recording the statement of PW-5. He relies upon a judgment of the Hon'ble Supreme Court in the case of **Maruti Rama Naik Vs. State of Maharashtra** reported in **(2003) 10 SCC 670** to submit that the Hon'ble Supreme Court found it difficult to place reliance on the evidence of a witness not



only for the reason of the omissions but also because his statement was recorded a day later even though the Investigating Officer had ample opportunity to record the statement of the witness on the day of the incident itself. In this case, it is submitted that there is no explanation as to why a delay of eight days took place in recording the statement of PW-5. Neither PW-5 nor PW-7 has furnished any explanation for this delay.

28. It is submitted that in the case of **Thulia Kali Vs. State of Tamil Nadu** reported in **(1972) 3 SCC 393**, the Hon'ble Supreme Court has observed that a 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 at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence are important and delay in lodging of the first information report quite often results in embellishment which is a creature of afterthought.

29. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in case of **Harbeer Singh vs. Sheeshpal**



and others reported in **AIR 2016 SC 4958**. It is submitted that in this case, the High Court gave benefit of doubt to the respondents and acquitted them on the ground that the prosecution was not able to prove its case beyond all reasonable doubts and since the eye witnesses were interested in the complainant and hence, unreliable. One of the grounds of acquittal was an unexplained delay in recording the evidence of certain prosecution witnesses as well as many important and basic lapses in investigation that made the prosecution case suspicious.

30. Learned counsel submits that in this case, PW-5 has improved upon her statement, her statements do not corroborate the *fardbeyan* and it may amount to contradiction. It is submitted that truthfulness and credibility of PW-5 lacks confidence as it may be found that about some of the accused persons who had instigated the appellants to kill the deceased, the prosecution witnesses including PW-5 have stated in course of trial that they were not present at the place of occurrence. This is a vital departure from the prosecution case and the fact that the co-accused persons who have been acquitted had instigated the accused persons (appellants) to kill the deceased is part of the same transaction which is inseparable.



31. As regards the evidence of child witness (PW-4), learned Senior Counsel submits that the child witness in this case would not be reliable and as has been held by the Hon'ble Supreme Court in catena of judgments, one of which is **Pradeep versus State of Haryana** reported in **AIR 2023 SCC 3245** in which the Hon'ble Supreme Court has observed that it would not be safe to base the conviction only on the testimony of the child witness which does not inspire confidence. It is submitted that in this case the I.O. (PW-7) has also contradicted the prosecution witnesses on many counts. He has stated in paragraph '45' of his cross-examination that the sister of the informant, Tajna (PW-4) had not told him that she came crying to her house and was saying that Aslam had killed her 'Abba' by *dabiya* and that Lailun had a knife in her hand.

32. PW-7 had also stated in paragraph '46' of his cross-examination that the informant (PW-6) had not made a statement before him that after death of his Abba, Adil (appellant no. 2) was assaulting him by a wooden bat and Lailun had a knife in her hand. PW-6 had also not stated that Aslam had assaulted his Abba near the ears (*kanpatti*). It is submitted that the defence had a stand that the place of occurrence was the field of Karbala where people were playing with *barchhi* and *bhala* on the eve of Muharram.



Submissions on behalf of the State

33. On the other hand, Mr. Bipin Kumar, learned Additional Public Prosecutor for the State has contested the appeal. Learned Additional Public Prosecutor for the State has submitted that according to him, the informant (PW-6) is not an eye witness but PW-4 and PW-5 are the eye witnesses to the occurrence.

34. Learned counsel submits that in the present case, there is neither any inordinate delay in recording of the *fardbeyan*, lodging of the F.I.R. or preparation of the inquest report nor there is any unexplained delay in recording of the statement of PW-5. It is submitted that from the *fardbeyan* of PW-6 itself, it would appear that after the assault received by PW-5, she had become unconscious. The other prosecution witnesses who reached later at the spot such as PW-1 and PW-3 they have also stated that they found PW-5 lying there in injured condition. PW-5 was shifted to hospital for treatment by the co-villagers, the evidence of PW-8 who is the doctor posted at Sub-Divisional Hospital, Barsoi would show that on 04.11.2014, PW-5 had been brought to the Sub-Divisional Hospital, Barsoi from where she was referred to Sadar Hospital, Katihar. She had received grievous injury and as many as



total six injuries had been noticed on the body of PW-5. The injury report has been proved as Exhibit '14'.

35. Learned Additional Public Prosecutor submits that the contention of the learned Senior Counsel for the appellant that PW-5 is wholly unreliable witness is not correct. The learned Additional Public Prosecutor would submit that the testimony of PW-5 may be kept in the category of neither wholly reliable nor wholly unreliable and in case it is found that her evidence is being corroborated in material particulars by reliable testimony direct or circumstantial and is also corroborated from the *post mortem* report and the injury reports, this Court would not have any difficulty in accepting the evidence of PW-5 to that extent.

36. Learned counsel further submits that in the case of **Yanob Sheikh @ Gagu** reported in **(2013) 6 SCC 428**, the Hon'ble Supreme Court has reiterated that the acquittal of co-accused *per se* is not sufficient to result in acquittal of other accused. It has been held that where the prosecution is able to establish the guilt of the accused by cogent, reliable and trustworthy evidence, mere acquittal of one accused would not automatically lead to acquittal of another accused. It is only where the entire case of prosecution suffers from infirmities, discrepancies and where prosecution is not able to establish its



case, the acquittal of the co-accused would be of some relevancy for deciding the case of the other. The submission is that the Hon'ble Supreme Court has held that the court has to screen the entire evidence and does not extend the threat of falsity to universal acquittal.

37. It is further submitted that in such cases where injuries suffered by the deceased do not match with the ocular evidence and a contradiction is found between ocular testimony and medical evidence, the Hon'ble Supreme Court has held in the case of **Khambam Raja Reddy & Another versus Public Prosecutor, High Court of Andhra Pradesh** reported in **AIR 2006 SC 3236** that if the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have inflicted, the court has the discretion not to accept the ocular evidence. A distinction has been made with the principles enunciated in the case of **State of M.P. versus Dharkole @ Govind Singh and Another** reported in **(2004) 13 SCC 308** wherein it has been held that where the medical evidence was at variance with the ocular evidence, the testimony of the eye witnesses should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion.



38. Learned Additional Public Prosecutor submits that the learned trial court has rightly appreciated the evidence of PW-5 who is an injured witness and found that her testimony is not liable to be wholly rejected in this case. It is submitted that PW-5 is a natural witness, her presence at the spot cannot be doubted, therefore, the delay is well explained and would not prove fatal to the prosecution case. The evidence of PW-5 cannot be held wholly unreliable. It is submitted that each case has to be considered on its own merit. Learned Additional Public Prosecutor submits that PW-5 is a truthful witness.

Consideration

39. Having heard learned Senior Counsel for the appellants and learned Additional Public Prosecutor for the State and on perusal of the evidences available on record, we are of the considered opinion that the entire prosecution case cannot be thrown out on the grounds pleaded on behalf of the appellants. In this case, the prosecution has been able to prove the motive of occurrence which is a land dispute between the parties. The place of occurrence has also been proved by the prosecution witnesses who are consistent as regards the place where the occurrence took place. The I.O. (PW-7) has given the full description of the place of occurrence in paragraph '10' of his evidence.



40. As regards the manner of occurrence, the prosecution case is based on the *fardbeyan* of PW-6. We find that PW-6 is, though not an eye witness to the occurrence as has been accepted by learned Additional Public Prosecutor for the State but he had reasons to lodge the F.I.R. His mother (PW-5) had been injured in the occurrence and she was lying on the earth when the prosecution witnesses reached at the place of occurrence. PW-5 was taken to Sub-Divisional Hospital at Barsoi initially where she was examined by PW-9 and then she was referred to Sadar Hospital, Katihar. She had received grievous injury in the said occurrence. The occurrence took place at 08:00 AM and police reached the place of occurrence immediately within two hours. Considering that the police station is situated at a distance of eight kilometers and after receipt of the informant, the I.O. (PW-7) reached the place of occurrence, recorded the *fardbeyan* of PW-6 at 10:00 AM and prepared the inquest report at 10:15 AM, we do not find any inordinate delay in recording of the *fardbeyan* of PW-6.

41. We are also not impressed with the submission of learned Senior Counsel that there had been an inordinate delay in lodging of the F.I.R. The formal F.I.R. (Exhibit '4') had been lodged at 12:30 PM. The judgment of the Hon'ble Supreme Court



in the case of **Thulia Kali** (supra) has been recently followed in the case of **Hari Prasad alias Kishan Sahu** reported in (2024) 2 SCC 557 wherein the Hon'ble Supreme Court has referred catena of judgments such as **Ravinder Kumar Vs. State of Punjab** reported in (2001) 7 SCC 690, **Jamna vs. State of U.P.** reported in 1994 Supp (1) SCC 185 and **Tara Singh versus State of Punjab** reported in 1991 Supp (1) SCC 536 and in the case of **Tara Singh** (supra), it has been observed thus:- “....the delay in giving the F.I.R. by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are, we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take sometime to go to police station for giving the report”.

42. In the case of **Harbeer Singh** (supra) after noticing the facts of the case and the submissions pertaining to the delay in recording of the statement of the witnesses by police, the Hon'ble Supreme Court found that the evidence of PW-11 was recorded



after 10 days of incident. It has been held in the said case as under:-

“16. Further, it is well-settled law that delay in recording the statement of the witnesses does not necessarily discredit their testimony. The Court may rely on such testimony if they are cogent and credible and the delay is explained to the satisfaction of the Court. [See Ganeshlal v. State of Maharashtra [Ganeshlal v. State of Maharashtra, (1992) 3 SCC 106 : (1992 AIR SCW 1175) ; Mohd. Khalid v. State of W.B., (2002) 7 SCC 334; Prithvi (Minor) v. Mam Raj & Ors., (2004) 13 SCC 279 : (AIR 2004 SC 2729) and Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 : (AIR 2010 SC 2352).”

43. We are of the opinion that the prosecution case cannot be doubted on the ground of delay in recording of *fardbeyan* and lodging of the F.I.R. Thus, this plea raised by the learned Senior Counsel is liable to be rejected.

Analysis of the Prosecution Evidences

44. Having said so, we proceed to examine the prosecution evidences which are available on the record to find out whether the prosecution witnesses are liable to be discredited and their testimonies are such that the Court should not place reliance on that. Before this Court, it has been pleaded that the evidence of PW-4 and PW-5 are not reliable. We have gone through the evidence of PW-4 who is a child witness.



Although we are not satisfied with the kind of questions put by the learned trial court to PW-4 to test her competency to understand the questions and depose the truth, when we proceed to examine her evidence, it is found that in her examination-in-chief, she has stated that PW-4 was in her house when her father was brooming. She has stated that her father was assaulted by Adil (appellant No. 2) by a bat, Aslam assaulted by *dabiya* and Lailun assaulted by knife. She has further stated that when the accused persons ran towards her to kill her, she went inside her house and concealed herself. In paragraph '7' of her cross-examination, she has stated that *Darogaji* had come to her house immediately after the occurrence and had inquired about the occurrence from her brother Md. Ekhlaq (PW-6) and Md. Mohtamin and not from any other person. It means that PW-4 was though present in the house when the I.O. (PW-7) came after the occurrence but her statement was not recorded by the I.O. (PW-7). This evidence of PW-4 would lead us to take a view that the presence of PW-4 as an eye-witness at the place of occurrence has not been fully established by the prosecution and the fact that she was not investigated/interrogated by the I.O. (PW-7) on the day of occurrence would lead us to take a view that it would not be safe to base the conviction on the basis of



her testimony alone. This would take us to the evidence of PW-5 who is in fact the star witness of this case. She has received as many as six injuries on her body, therefore, her presence at the place of occurrence cannot be doubted.

45. On perusal of the evidence of PW-5, we find that in paragraph '2', she has made a statement that Aslam assaulted her husband on the right side of his head by opposite side of *dabiya*. It is this statement of PW-5 which has been pointed out by learned Senior Counsel in course of hearing of the appeal with a submission that PW-5 has improved upon the prosecution case. We find from the evidence of PW-5 that by the time, she came running from her house, her husband had been assaulted and fell down whereupon she fell down on her husband in order to save him and then she received the assaults from Adil (appellant No. 2) by bat causing fracture of her hand. She has stated that Lailun had assaulted her on her hand by a knife but the evidence of PW-9 and the injury report (Exhibit '14') completely rules out any assault by a knife. PW-5 had received all lacerated wounds with swelling which were caused by hard and blunt substance.

46. On the other hand, the deceased had received two injuries which were caused by sharp cutting weapons. It is at



this stage that this Court has to take a view as to whether the entire evidence of PW-5 may be rendered unreliable and it may be put in the category of wholly unreliable evidence or that the evidence of PW-5 is to be appreciated by putting it in the category of neither wholly unreliable nor wholly reliable kind of evidence.

47. In the case of **Lallu Manjhi and Another versus State of Jharkhand** reported in **(2003) 2 SCC 401**, the Hon'ble Supreme Court has reiterated the views expressed earlier in the case of **Vadivelu Thevar and Another versus The State of Madras** reported in **AIR 1957 SC 614** and held in paragraph '10' as under:-

"10. The decision of this Court in the case of **Vemireddy Satyanarayan Reddy v. State of Hyderabad**, (1956) SCR 247:((S) AIR 1956 SC 379) (B) was also relied upon in support of the contention that in a murder case the court insists on corroboration of the testimony of a single witness. In the said reported decision of this Court, P.W. 14 has been described as "a dhobi boy named Gopai". He was the only person who had witnessed the murder and his testimony had been assailed on the ground that he was an accomplice. Though this Court repelled the contention that he was an accomplice, it held that his position was analogous to that of an accomplice. This Court insisted on corroboration of the testimony of the single witness not on the ground that his was the only evidence on which the conviction could be based, but on the ground that though he was not an accomplice, his evidence was analogous to that of an accomplice in the peculiar circumstances of that case as would be clear from the



following observations at p. 252 (of SCR):(at p. 381 of AIR):

“...Though he was not an accomplice, we would still want corroboration on material particulars in this particular case, as he is the only witness to the crime and as it would be unsafe to hang four people on his sole testimony unless we feel convinced that he is speaking the truth. Such corroboration need not, however, be on the question of the actual commission of the offence; if this was the requirement, then we would have independent testimony on which to act and there would be no need to rely on the evidence of one whose position may, in this particular case, be said to be somewhat analogous to that of an accomplice, though not exactly the same.”

It is not necessary specifically to notice the other decisions of the different High Courts in Indian in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely stated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.”



48. Looking into the evidence of PW-5, we would put her evidence in the third category. The *post mortem* report (Exhibit '1') and the injury report (Exhibit '14') corroborate the evidence of PW-5. All the prosecution witnesses are consistent that Aslam was having *dabiya* in his hand and it is a sharp cutting weapon, therefore, the assault caused on the deceased by *dabiya* were inflicted by Aslam (appellant no. 1). No injury by wooden bat or knife which are attributed to Adil (appellant no. 2) and Lailun Neha (acquitted) could be found on the body of the deceased. Even the learned Additional Public Prosecutor has gone on to the extent of saying that so far as the charge under Section 302/34 IPC against Adil (appellant no. 2) is concerned, that may not be proved beyond all reasonable doubts considering the kind of weapon attributed to him which has no nexus with the injuries found on the body of the deceased.

49. We find that the injuries inflicted on the body of the wife of the deceased, who is PW-5, have been caused by hard and blunt substance and there is a statement of PW-5 that it was Adil (appellant no. 2) who had assaulted her firstly on her head by a bat and then in second attempt, when the blow was being repeated, she tried to stop that by her hand in order to save her head and in the process, she suffered a fracture of her hand.



We do not find any reason as to why the whole evidence of PW-5 be rejected.

50. We are of the considered opinion that the prosecution is not able to prove the charge under Section 302/34 IPC against appellant no. 2 beyond all shadow of doubt. Hence, he is acquitted of the charge under Section 302/34 IPC. The evidences against appellant no. 1 are consistent and trustworthy, hence, we do not find any reason to interfere with the conviction of appellant no. 1. The conviction and sentence of appellant no. 1 is affirmed.

51. In the ultimate discussions, we have noticed from the injury report (Exhibit '14') of 325 IPC that she had suffered only one grievous injury i.e. fracture of lower third of left radius and ulna which is injury no. 2 on the left forearm. All other injuries are simple in nature. The kind of weapon attributed to the appellant no. 2 is a wooden bat and it appears from the evidences on the record that appellant no. 2 had caused grievous hurt to PW-5 in course of the occurrence which would attract Section 325 IPC. We, therefore, acquit appellant no. 2 from the charge under Section 307 and upholds his conviction under Section 325 IPC. Since he has already served 5 years 7 months of sentence, we deem it just and proper to reduce his sentence



under Section 325 IPC to the extent of the period undergone.
Appellant no. 2 is discharged from the liability of his bail bond.

52. This appeal is partly allowed and is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.03.2024
Transmission Date	28.03.2024

