

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.152 of 2015

Arising Out of PS. Case No.-34 Year-2014 Thana- CHOUTARWA District- West Champaran

1. Vishun Deo Yadav

2. Satyadeo Yadav Both Sons of Late Saiyadav, Resident of Village - Nadava Pipara, P.S. - Chautarwa, District - West Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 174 of 2015

Arising Out of PS. Case No.-34 Year-2014 Thana- CHOUTARWA District- West Champaran

1. Santosh Yadav

2. Raju Yadav

3. Govind Yadav All three sons of Satyadeo Yadav

4. Raghunath Yadav Son of Briksha Yadav All are residents of Village - Nadava Pipara, P.S. Chautarwa, District - West Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 152 of 2015)

For the Appellants : Mr. Sanjay Singh, Senior Advocate
Mr. Rudrank Shivam Singh, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 174 of 2015)

For the Appellants : Mr. Sanjay Singh, Senior Advocate
Mr. Rudrank Shivam Singh, Advocate

For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 11-07-2024

These appeals are filed under Section 374(2) of the



Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 28.01.2015 and order of sentence dated 30.01.2015, passed by learned Ad hoc 1st Additional District & Sessions Judge, Bagaha, West Champaran in Sessions Trial No.442 of 2014, arising out of Choutarwa P.S. Case No.34 of 2014 whereby the court has convicted the appellants for the offences punishable under Sections 147, 148, 149, 323, 324, 302, 447, 504 and 506 of the Indian Penal Code and they have been sentenced to undergo imprisonment for life and fine of Rs.10,000/- each under Sections 302 read with 149 of the Indian Penal Code and in default of payment of fine, they have been further sentenced to undergo imprisonment for six months. The appellants have further been sentenced to undergo imprisonment for one year for the offences punishable under Sections 323, 147, 148, 324, 504 and 506 of the Indian Penal Code. The appellants have also been sentenced to undergo imprisonment for one month for the offence punishable under Section 447 of the Indian Penal Code. The sentences have been directed to run concurrently.

2. The factual matrix of the present case is as under:-

2.1 *Fardbeyan* of Balister Yadav came to be



recorded on 25.02.2014 at 02:00 p.m. in Sub-divisional Hospital, Bagaha wherein the informant has stated that on 24.02.2014 at 07:00 p.m. he was being ready to go to Harinagar mill by tractor with sugarcane, in the meantime, Vishun Deo Yadav, Satyadeo Yadav, Pramod Yadav, Santosh Yadav, Raju Yadav, Govind Yadav, Chhota Yadav and Raghunath Yadav came at his door armed with *lathi*, *danda* and *farsa* and started assaulting his son, namely, Tunna Yadav due to which the son of the informant sustained injuries on his leg, head and waist. It is further alleged that when Vinod Yadav, Lali Devi and Tunni Kumari came to save him, the accused persons also assaulted them with *lathi* and *danda* causing injuries to them also. When the villagers came there after hearing *hulla*, the accused persons started fleeing away from there after snatching Rs.5000/- and a mobile of Nokia company from the pocket of cousin of the informant, namely, Vinod Yadav. It is also alleged that the accused persons threatened that if they lodge a case, their family members would be killed. With the help of the villagers, the injured were brought to Sub-divisional Hospital, Bagaha and the son of the informant, namely, Tunna Yadav died during the course of treatment.

2.2 After registration of the formal FIR on the basis



of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellants.

2.3 The case was exclusively triable by court of sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.442 of 2014.

2.4 During course of trial, the prosecution had examined 10 witnesses, namely, PW-1 Chotak Yadav, PW-2 Bharat Yadav, PW-3 Dinesh Yadav, PW-4 Vinod Yadav, PW-5 Lalita Devi, PW-6 Tunni Kumari, PW-7 Mahanth Yadav, PW-8 Dr. Ashok Kumar Tiwari, PW-9 Balister Yadav and PW-10 Krishnandan Jha. The defence had also examined two witnesses, namely, DW-1 Prahlad Yadav and DW-2 Bira Yadav. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellants for the aforesaid offences as stated hereinabove.

2.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellants have



filed the instant appeal.

3. Heard Mr. Sanjay Singh, learned Senior Counsel assisted by Mr. Rudrank Shivam Singh for the appellants and Mr. Sujit Kumar Singh, learned APP for the State.

4. Learned Senior Counsel appearing for the appellants submits that the *fardbeyan* of the informant (PW-9) was recorded at Sub-divisional Hospital on 25.02.2014 at 02:00 p.m. for the alleged occurrence which took place on 24.02.2014 at 07:00 p.m. At this stage, learned Senior Counsel has pointed out, from the first page of the formal FIR, that the FIR was registered on 25.02.2014 at 12:15 p.m. Thus, from the aforesaid, it can be said that there is discrepancy in the time of recording *fardbeyan* and registration of the formal FIR. At this stage, it is also pointed out that from the evidence led by the prosecution, it is revealed that the doctor had received the dead body of the deceased on 25.02.2014 at about 09:00 a.m. and thereafter he had conducted the post-mortem at 10:30 a.m. However, surprisingly the inquest report of the dead body of the deceased was prepared at 02:30 p.m. The learned Senior Counsel, therefore, contended that the FIR is ante-dated/ante-timed.

4.1. At this stage, learned Senior Counsel for the appellants would further submit that PW-8 Dr. Ashok Kumar



Tiwary deposed before the Court that on 24.02.2014 at 11:25 p.m., he examined Tunni Kumari, at 11:30 p.m., he examined Lalita Devi and thereafter he examined another injured Vinod Yadav at 11:45 p.m. It is submitted that the informant (PW-9) has admitted in paragraph-10 of the deposition that police came in the hospital and inquiry was made in the hospital itself. Thereafter he went to the police station and after returning to the police station his son died after 3-4 hours. Thus, from the aforesaid evidence led by the prosecution, it has been contended by the learned Senior Counsel for the appellants that in the hospital itself, the police has inquired from the informant as well witnesses about the injuries sustained by the injured witnesses as well as the deceased and thereafter the informant also went to the police station. Further, the deceased died at 09:00 a.m. and the post-mortem on the dead body of the deceased was conducted at 10:00 a.m. despite which the fardbeyan of the informant was recorded at 02:00 p.m. on 25.02.2014. Thus, there is a gross delay in lodging the FIR and the appellants-accused have falsely been implicated in the incident in question because of the land dispute. The first version of the informant and the other prosecution witnesses is not brought on record by the prosecution and, therefore, adverse



inference can be drawn.

5. Mr. Sanjay Singh, the learned Senior Counsel would thereafter submit that there are two versions with regard to the manner of occurrence. Learned Senior Counsel has referred the deposition given by the informant (PW-9) and the FIR. It is submitted that the informant has stated in the fardbeyan as well as in his deposition before the Court that at 07:00 p.m. on 24.02.2014 sugarcane was loaded on the tractor. At that time, all the accused came with *lathi*, stick, *farsa* and started assaulting his son Tunna and his son sustained injuries on various parts of his body. At that time, Vinod Yadav, Tunni Kumari, his aunt Lalita Devi and Mahanth Yadav tried to save his son, but all the accused also assaulted the said witnesses. However, another eye witness, i.e., PW-7 has deposed before the Court that he was standing near his door and he saw that Raju dragged Barister (informant) and thereafter Vishun Deo, Pramod, Raju, Satyadeo, Santosh, Govind and Raghunath came at the said place and also dragged Vinod Yadav and started assaulting him. In the said incident, Vinod sustained injuries at different parts of his body. At that time, when Tunna tried to save him, blow with torch was given by the accused on the forehead of Tunna. The other persons also tried to save them



and in the said incident, they also sustained injuries and the injured persons were taken to hospital. Learned Senior Counsel, therefore, submitted that the injured eye witnesses stated different story with regard to the manner of occurrence before the Court. Learned Senior Counsel, therefore, urged that the so called eye witness and injured witnesses are not trustworthy and, therefore, their deposition may not be relied upon as they are near relatives of the deceased.

6. The learned Senior Counsel for the appellants thereafter submitted that the injuries sustained by the injured are simple in nature and the same could have been suffered in accident. At this stage, it is contended that Bharat Yadav (PW-2) also sustained injury as per case of prosecution. However, he took treatment from Dr. S.P. Agrawal. However, the said doctor has not been examined.

6.1. Learned Senior Advocate submits at this stage that the jeep in which the injured and the deceased were travelling over turned and in the said accident, deceased Tunna Yadav sustained serious injuries whereas other persons sustained simple injuries and, therefore, they were taken to the hospital. However, the Trial Court has not properly considered the said defence.



7. Learned Senior Counsel further submits that the accused have falsely been implicated because of the land dispute with the informant (PW-9). Learned Senior Counsel has referred the deposition given by the informant (PW-9) in paragraphs-4 and 5. It is submitted that the informant has admitted that ash and dung were kept by the accused in the land in dispute and for removal of the same, PW-9 has submitted representation before the S.D.O. He has also made representation to *Sarpanch*. Learned Senior Counsel further submits that in paragraph-5, the informant has also admitted that the boundary wall was constructed after *Shradh* ceremony of deceased Tunna. At that time, all the six accused were in custody and now after construction of the boundary wall, the accused are not keeping ash and dung in the land in question. Learned Senior Counsel pointed out the conduct of the informant immediately after the death of his son. Thus, it is contended that the informant took over possession of the land in question and constructed wall after death of his son.

8. Learned Senior Counsel thereafter submitted that while recording the further statement of the accused-appellants under Section 313 of the Code, all the incriminating circumstances against the accused were not put to them. It is



submitted that statement under Section 313 of the Code is not mere formality, therefore, prejudice has been caused to the defence. Learned Senior Counsel has placed reliance upon the following decisions:

(i) (1994) 5 SCC 188 [Meharaj Singh v. State of U.P]

(ii) 2024 SCC OnLine SC 1641 (Naresh Kumar v. State of Delhi).

8.1. Learned Senior Advocate further submits that even the medical evidence does not support the version given by the so called eye witnesses/injured witnesses. There is *farsa* blow sustained by the deceased.

9. On the other hand, the learned APP for the State has vehemently opposed these appeals. It is submitted that in the present case the informant is an eye witness and other four witnesses are injured eye witnesses. The injured eye witnesses have supported the version of the informant and the medical evidence also supports the case of the prosecution. Learned APP, therefore, urged that the prosecution has proved the case against the appellants-accused beyond reasonable doubt hence, the Trial Court has not committed any error while passing the judgment of conviction and order of sentence. Learned APP,



therefore, urged that both these appeal be dismissed.

10. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined ten witnesses. The defence has also examined two witnesses.

11. PW-1 Chotak Yadav has deposed in his examination-in-chief that the incident took place seven months ago at 07:00 p.m. He was at his house. Tunna Yadav and Vinod Yadav were assaulted by Vishun Deo, Pramod, Satyadeo, Santosh Yadav, Raju Yadav, Chhota Yadav, Govind Yadav and Raghunath by means of lathi. Balister Yadav raised alarm and he went there and saw the incident. The injured sustained injuries on his head, stomach and leg. Vinod sustained bleeding injury on his head. Tunna Yadav died during the course of treatment. It is further deposed by this witness that Bharat Yadav, Vinod Yadav, Lalita Devi, Tunni Kumari and Mahanth had also sustained injuries.

11.1. During cross-examination, the said witness has stated that he has not received any summon to depose and



he was informed by *Chowkidar*. He further stated that he works in Punjab and he does not know that for which land, there is enmity between the parties. His house is situated 10 steps away from the house of Barister Yadav. On walking from the house of Barister, the first house would be the house of his uncle Jogendra Yadav. Thereafter house of Madan Yadav is situated, house of Lal Ji Yadav is situated after the house of Madan Yadav and after that his house is situated. The police had recorded his statement. He had stated the name of Chhota Yadav. He had stated before the police that Barister raised alarm and he went. He had stated before the police that Vinod sustained bleeding injury on his head. He had stated before the police that Bharat Yadav, Lalita Devi, Munni and Mahanth also sustained injuries.

12. PW-2, Bharat Yadav has deposed in his examination-in-chief that the incident took place seven months ago at 07:00 p.m. He was coming from Parsoi market to his home. At the door of Barister Yadav, Satyadeo Yadav, Vishun Deo, Pramod, Raju, Santosh, Govind Yadav, Raghunath and Chhote Yadav were assaulting Vinod Yadav and Tunna Yadav by means of *farsa*. When he went to save, he was also assaulted by Pramod Yadav causing bleeding injury in his head. Tunna Yadav



died in Bagaha Hospital.

12.1. During cross-examination, this witness has stated that injured were brought to hospital. He did not go to the hospital. Mother of Tunna was present at Tunna's house. All came after treatment.

13. PW-3 Dinesh Yadav has deposed in his examination-in-chief that occurrence took place seven months ago at 07:00 p.m. He was at his door and Barister Yadav was raising alarm. When he went there, he saw that Vishun Deo Yadav, Pramod, Santosh, Satyadeo, Raju, Chhota Yadav, Govind, Raghunath were assaulting Tunna and Vinod Yadav by fists and slaps. We had pacified the matter. All injured were brought to the hospital where Tunna Yadav died during the course of treatment. He identified the accused persons.

13.1. During cross-examination, PW-3 stated that he also went to the hospital by jeep. He proceeded for the hospital at 8' O clock. The injured were not bandaged. He went to the hospital first. He reached hospital between 9 to 11 O'clock. He has not sustained any injury. Those who went to the hospital were treated. The police had recorded his statement after three days.

14. PW-4 Vinod Yadav has deposed in his



examination-in-chief that the incident took place seven months ago at 07:00 p.m. He was at his door. He had to go to Ramnagar. He was dragged to the door of Barister Yadav by Vishun Deo, Satyadeo, Pramod, Raju, Santosh, Govind, Chhota and Raghunath due to dispute of money where he was assaulted. Tunna Yadav, Tunni Kumari and Mahanth came to save him. Pramod assaulted Tunna by means of torch. His teeth was broken. He was treated. Tunna sustained injuries on his head and stomach. Blood was also oozing out from his private part. Tunni and Lalita also sustained injuries. Tunna Yadav died in hospital during the course of treatment.

14.1. The said witness stated in his cross-examination that when he saw the accused, he did not try to flee. He was not afraid. The date was 24th. It was not dark yet at 7 p.m. At that time, it would get dark by 07.15-07.30 p.m. It is wrong to say that the sun sets at 5 o'clock at that time. The accused came raising alarm having torch and *danda*. They started assaulting. It is further stated by this witness that he sustained many blows of *lathi* and fell down. He was also assaulted even after falling down. He sustained injuries on his entire body. Blood oozed out from his body, mouth and nose. He became unconscious. The tooth was not broken due to the fall.



The fight would have lasted for an hour. Dinesh, Bharat, Chhota Babu Ji, his uncle and others came. The police did not seize the torch during the course of inspection. Tunna sustained head injury by means of torch.

15. PW-5 Lalita Devi has deposed in her examination-in-chief that the occurrence took place six months ago. It was 07:00 p.m. She was in her house. His son was going to mill with sugarcane. Raghunath Yadav took money from Vinod Yadav. When Vinod Yadav started demanding his money, Pramod, Vishun Deo, Raju, Santosh, Chhota and Satyadeo started assaulting him with *lathi* and *phattha*. When she went to save him, she was also assaulted. She and Vinod were treated. Her granddaughter, Tunni and her husband Mahanth also sustained injuries. Tunna was also assaulted and he died.

15.1. During cross-examination the said witness stated that when she came out from her house, Vinod was raising alarm. No one was present in the house at that time. When she came out from the house, she saw that her son was being assaulted. After assault, he fell down on the ground. She was also assaulted. She sustained injury in her rib cage. Due to assault, she became unconscious and fell down. She also went to Bagaha. When she came back she came to know that others



were also assaulted. The police recorded her statement next day at the door. She did not tell the police about assault made by *lathi* and *phattha*. She did not tell the police about injury sustained by Mahanth. It is wrong to say that due to enmity, false case was lodged.

16. PW-6 Tunni Kumari, who is sister of the deceased, has deposed in her examination-in-chief that the occurrence took place seven months before. It was 07:00 p.m. She was at her home. After hearing *hulla*, she came running and saw that Vishun Deo, Satyadeo, Pramod, Santosh, Chhota, Raju and Govind were assaulting Tunna. When she went to save, she was also assaulted. She sustained injuries on his right wrist and rib cage. Her uncle and brother were treated. Tunna Yadav died during the course of treatment in the hospital. Her grandmother and grandfather also came to save who were also assaulted. Chhotak, Dinesh, Bharat also came to save and they sustained injuries.

16.1. She went at the door after hearing alarm of her brother and uncle. Sound was not clear. When she reached, her brother and uncle were standing. They fell down after that. This witness further stated in her cross-examination that she cannot remember that whether blood was there or not where



they fell down. When she reached, she saw that blood was oozing out from the body of Tunna Yadav. She did not see that blood was oozing out from the body of any one besides her brother. The injured persons were put on a jeep and none was unconscious at that time. She also sat on the jeep. She cannot remember that at what time she reached hospital. She reached between 08:30-08:45. The police recorded the statement at her house. When the police came to hospital, they were present there. She has denied the suggestion that she did not tell the police that eight persons were assaulting her brother by means of *lathi* and torch. It is wrong to say that no such occurrence took place and she has falsely deposed.

17. PW-7 Mahanth Yadav has deposed in his examination-in-chief that occurrence took place six months ago at 07:00 p.m. He was at his door. Vinod was ready to go to the mill. Raju started dragging Barister. Vishun Deo, Pramod, Raju, Satya Deo, Chhote, Santosh, Govind and Raghunath came, dragged Vinod Yadav and started assaulting him. When Tunna went to save him, he was also assaulted causing bleeding injury on his head. The injured were treated and Tunna died.

17.1. The said witness stated in his cross-examination that Satyadeo and Vishun Deo are brothers.



Satyadeo has four sons, namely, Raju, Santosh, Chhotan and Govind. No one from his family went to take part in prayer and feast of Dashrath Yadav. He has no enmity with Dashrath. There was no enmity with the accused persons from before. The road is situated in the eastern side of the orchard. A 15 cubits vacant land is situated between the orchard and the road which is *Gair Mazarua* land. The accused persons put fertilizers etc. on that land. Barister Yadav gave application before the S.D.O. for vacating the land. He did not know the contents of the application. When Vinod was being assaulted, he immediately reached there. Vinod was surrounded by the accused persons. When he reached, he was being assaulted indiscriminately. Vinod did not fall down. Vinod sustained injuries on his whole body. This witness has further stated in his cross-examination that he was also assaulted. He did not go anywhere for help. Tunna and Vinod were put on the jeep to go to the police station. He did not go to the police station. Tunna sustained bleeding and fracture injuries on his head and leg. It is wrong to say that no such occurrence took place.

18. PW-8 Dr. Ashok Kumar Tiwary, is the doctor who has treated the injured persons. He has found following injury on the body of Tunni Kumari:



1. Swollen right wrist $1\frac{1}{2}$ " x $\frac{1}{2}$ " caused by heard and blunt substance within six hours.

Simple.

The doctor has found following injury on the body of Lalita Devi:

(i) Hemetoma on right (not legible) 1" cm caused by hard and blunt substances.

Six hours, simple injury.

The doctor also treated Vinod Yadav and found following injuries:

(i) Swelling behind left eye $\frac{1}{2}$ " x $\frac{1}{2}$ " (not legible)

(ii) Redness on right eye.

(iii) Abrasion on nose $\frac{1}{2}$ "x $\frac{1}{4}$ "x (not legible) caused by hard and blunt substance.

On 25.02.2014 at about 10:30 a.m., this witness has conducted post mortem examination on the dead body of Tunna Yadav and found following injuries:

External:

(i) Hemetoma over (not legible) region 2" in diameter.

(ii) Compound fracture of both tibia & fibula & cover end with skin & soft tissue badly lacerated.



(iii) Swelling on left illiac fossa

(iv) Bluish colour ton over left side of chest 3" x
1/2".

Internal -

(i) Spleen ruptured (lacerated)

(ii) Peritoneal cavity filled with blood and blood
clots about one litre.

(iii) Laceration of urinary bladder and prostate.

(iv) Cardiac chambers were empty.

(v) Rest of the internal organs were very pale but
intact.

(vi) Stomach contains partial digested food part.

(vii) Urinary bladder laceration leading to urethra
filled with blood.

Weapon – hard and blunt weapon.

Cause of death – Hemorrhage and shock.

Time since death 6 to 12 hours.

Rigor mortis is not started.

18.1. The doctor has stated in his cross-examination
that Ante-mortem injury may be possible by accident in road by
jeep or motor.

19. PW-9 Balister Yadav, who is informant of the



case, has deposed in his examination-in-chief that the occurrence took place on 24.02.2014 at 07:00 p.m. He was trying to prepare himself to go to Hari Nagar, in the meantime, Pramod Yadav, Vishun Deo Yadav, Satyadeo Yadav, Santosh Yadav, Raju Yadav, Govind Yadav, Chhota Yadav and Raghunath Yadav forming a group came at his door and started assaulting his son Tunna by means of *lathi*, *danda* and *farsa*. Tunna sustained injuries on his head, chest, stomach and right leg. Vinod Yadav, Tunni Kumari, Lalita Devi and Mahanth Yadav went to save him and they were also assaulted. It is further deposed by this witness that the accused persons snatched Rs.5000/- and a mobile from the pocket of Vinod Yadav and threatened that if a case is lodged, he would be killed. With the help of villagers, he came to Choutarwa and proceeded towards Sub-divisional Hospital, Bagaha from there. His son died during the course of treatment. Others were treated. The police has recorded the statement. The inquest report of Tunna Yadav was prepared on which he has put his signature.

19.1. The said witness has stated in his cross-examination that his wife is alive. His wife and his younger son are not the witnesses of this case. Mahanth Yadav has two sons, namely, Vinod and Baharan Yadav. Baharan is not a witness of



this case. Hari Narayan has no issue. He has wife. His wife is not a witness. There is no witness other than Yadav. This witness has further stated in his cross-examination that he did not sustain any injury. Only Mahanth Yadav had sustained injury. His father and uncles are living separately for 18-20 years. The orchard is joint. His orchard is in northern direction, the orchard of Mahanth Yadav is in the middle whereas the orchard of Hari Narayan Yadav is in the southern direction. This witness has further stated in his cross-examination that he has given an application before the S.D.O. for vacating the land. His orchard is surrounded by boundary wall from northern and eastern side. The boundary was made after the *Shradh* of Tunna. All the six accused were in jail. They are not keeping ash and dung due to boundary wall. He did not go to the house of Dashrath to eat feast at the time of incident. This witness has denied the suggestion that he has stated before the police that he has visited the house of Dashrath to eat feast. He has also denied the suggestion that he has not written in the *fardbeyan* that he was ready to go to Ram Nagar with his tractor and sugarcane. It is further stated by this witness in his cross-examination that he did not see the blood fallen on the ground. He has not stated about the assault at the door. This witness has further denied the



suggestion that he has stated before the police that he has visited the house of Dashrath to eat feast. He was making noise standing there. The fight continued for 15-20 minutes. The injured did not fall on the ground. The injured sustained injuries in standing position. He had called the police. The police took his statement in the hospital. He immediately go to the police station from the hospital. His son died 3-4 hours after returning from the police station. He has denied the suggestion that he was going to hospital alongwith Tunna and Vinod for treatment of Lali and the jeep over turned and in that accident Tunna died.

20. PW-10 Krishnanand Jha is the Investigating Officer of the case who has stated in his examination-in-chief that he was posted as S.H.O. in Choutarwa police station on 25.02.2014. He has lodged the formal FIR on the basis of fardbeyan of Barister Yadav which was recorded by A.S.I. Ram Vinay Sharma. This witness has taken charge of investigation of this case. At the time of investigation he has recorded the statements of Mahanth Yadav, Barister Yadav, Yogi Yadav, Vinod Yadav, Bharat Yadav, Lalita Devi, Tunni Kumari, Chhotak Yadav and Dinesh Yadav who have supported the case. He has inspected the place of occurrence. The place of occurrence is situated in village Nadwa Pipra near the house of



Mahadev Yadav. There were pieces of bricks at the place of occurrence. He had received the post-mortem report. A.S.I. Ram Vinay Sharma had prepared the inquest report of deceased Tunna Yadav.

20.1. PW-10 has stated in his cross-examination that he had proceeded for investigation at 12:45 p.m. The date of visiting the place of occurrence and recording the statement of witnesses are different. He had visited the place of occurrence on 25.02.2014 and recorded the statements of Mahanth Yadav, Barister Yadav, Yogi, Vinod and Bharat Yadav. This witness has further stated in his cross-examination that he had arrested Satyadeo and Raghunath from Parsauni Chowk. He had not found blood at the place of occurrence. He had not seized blood stained clothes and soil. He has denied the suggestion that Chhotak Yadav has stated in his statement that Bharat Yadav, Mahanth, Vinod Yadav, Lalita Devi and Tunni Kumari sustained injury. It is wrong to say that that the statement was not recorded before him. He has not written that Vinod sustained bleeding injury on his head. It was not written in the statement of Vinod Yadav that he was at the door. The informant has stated that he had visited the house of Dashrath to eat feast. The wife has not stated that she came running after hearing *hulla*. She has not



stated that Vinod Yadav and Tunna were assaulted by Bishun Deo, Satyadeo Prasad, Santosh, Chhotan, Raju, Govind and Raghunath. She has only taken the names of Pramod and Raju. This witness has not written that she tried to save and she was also assaulted and sustained injury on right rib cage. He has not written that Dinesh and Chhotak also sustained injuries. He has not written that Tunna went to pacify and he was assaulted by torch causing injury on his head.

21. The defence has also examined two witnesses. DW-1 Prahlad Yadav has deposed in his examination-in-chief that in the feast held in the house of Dashrath, Balister Yadav was sitting beside him. When he and Balister Yadav were taking meal, Tunna Yadav came and said that grandmother has fallen from the stairs. He came at the door of Mahanth Yadav and saw that the aunt was unconscious. Thereafter she was put on the jeep. Balister Yadav was driving the jeep. Vinod Yadav and Tunna sat beside him. The wife of Mahanth Yadav, Tunni Kumari, Bharat Yadav and others were also in the jeep. It is further deposed by this witness in his examination-in-chief that next day he came to know that the jeep over turned and Tunna died.

21.1. The said witness has stated in his cross-



examination that he did not see that jeep over turned at Chhathiya Ghat. Bharat Yadav and Tunna sustained injuries in the jeep. He has seen the dead body of Tunna. He has not seen the dead body of Tunna in the hospital. It is wrong to say that due to family dispute, he has deposed falsely.

22. DW-2 Bira Yadav has stated in his examination-in-chief that after hearing *hulla*, he went and saw that jeep over turned. One person was under the jeep and he came to know that the jeep belongs to Barister Yadav. Tunna Yadav was under the jeep. He came to know that they were going for treatment of an old lady and accident took place. They went for treatment by another jeep. He came to know that during the course of treatment the boy died. This witness could not state about the day, month, date and number of the jeep.

23. We have re-appreciated the evidence led by the prosecution before the Trial Court. We have also considered the submissions canvassed by learned counsel appearing for the parties. It would emerge from the record that the informant (PW-9) has given his *fardbeyan* at 02:00 p.m. on 25.02.2014 at Sub-divisional Hospital. From the *fardbeyan*, it is revealed that the incident took place at 07:00 p.m. on 24.02.2014. Further, as per the case of the informant, all the accused came at the place



of incident with *lathi*, *danda* and *farsa* and started assaulting his son Tunna Yadav and in the said incident, Tunna Yadav sustained injuries on various parts of his body and when he shouted for help, cousin of the informant, namely, Vinod Yadav, aunt of the informant, namely, Lalita Devi and daughter of the informant, Tunni Kumari came at the said place and tried to save Tunna Yadav and, therefore, the accused also gave blow with *lathi* to the said persons in which the aforesaid persons sustained injuries and after hearing *hulla*, the village people gathered at the place of incident. Thereafter with the help of the village people, the injured were taken to Sub-divisional Hospital and during the course of treatment, Tunna Yadav succumbed to the injuries. Now, it is pertinent to note at this stage that though the *fardbeyan* was recorded at 02:00 p.m. on 25.02.2014, surprisingly, the formal FIR was registered at 12:15 p.m., i.e., prior to recording of the *fardbeyan* of the informant. It is further relevant to note that the doctor (PW-8), who had given the treatment to the injured between 11:25 p.m. to 11:50 p.m. on 24.02.2014, has further deposed that he has conducted the post-mortem on the dead body of the deceased at 10:30 a.m. on 25.02.2014. Further, from the post-mortem report, it would reveal that the dead body was received by him at 09:00 a.m. on



25.02.2014 despite which the *fardbeyan* was recorded at 02:00 p.m. and there is no explanation given by the prosecution for delay in lodging the FIR. Further, from the inquest report of the dead body of the deceased, it is revealed that the inquest report was prepared at 02:30 p.m., i.e., after registration of the FIR. It has been stated in column 3 and 4 of the inquest report that dead body was lying in the emergency ward. Thus, there is discrepancy in the timing and it is the specific defence of the appellants-accused that because of the land dispute, all the accused persons have falsely been implicated.

24. From the evidence led by the prosecution, it also transpires that the informant (PW-9) has stated in paragraph-10 that the police came to the hospital, he called the police and inquiry was made in the hospital. Thereafter he went to the police station. After the informant returned to the hospital from the police station, 3-4 hours thereafter his son died. From the deposition of PW-9, as observed hereinabove, the other injured witnesses took the treatment in the hospital during night hours, i.e., 11:25 to 11:50 p.m. on 24.02.2014 itself. The police came in the hospital as per the version of PW-9. However, the prosecution has failed to bring on record the first version of the informant and the injured witnesses before the Court. It is



revealed from the record that before registration of the FIR and recording of *fardbeyan* of the informant, the post-mortem on the dead body of the deceased was also conducted. Thus, from the aforesaid facts and circumstances of the case, we are of the view that the FIR is ante-dated/ante-timed. Thus, the prosecution has suppressed the first version and, therefore, adverse inference can be drawn.

25. At this stage, we would like to observe that the defence has examined two defence witnesses and from the deposition of the said witnesses, it is revealed that the defence has taken defence that the deceased and the injured sustained injuries in the road accident and the jeep in which they were travelling over turned. At this stage, the cross-examination of PW-8, the doctor, is also required to be considered. The doctor, who had conducted the post-mortem, has stated that ante-mortem injury may be possible by accident in road by jeep or motor.

26. Now, it is the case of the informant (PW-9) in the *fardbeyan* as well as in his deposition before the Court that all the persons came at his place with *lathi*, *danda* and *farsa* and assaulted Tunna Yadav and when the other four persons tried to save Tunna, they also sustained injuries. However, Mahanth



Yadav (PW-7), who is also an injured witness, deposed before the Court that when he was standing at his door, one Raju started dragging Barister. Vishun Deo, Pramod, Raju, Satyadeo, Chhote, Santosh, Govind and Raghunath after forming an assembly came, dragged Vinod Yadav and started assaulting him. Vinod Sustained injuries and when Tunna went to save him, he was also assaulted by means of torch causing bleeding injury on his head. The others, who also went to save, were assaulted. The injured were treated and Tunna died.

26.1. Thus, both the so called eye witnesses have given different version with regard to the manner of occurrence and there are major contradictions and inconsistencies in their deposition. Further, it is surprising that the informant, who is father of the deceased, though was present, had not considered to intervene to save his son instead his 16 years old daughter, 70 years old aunt have tried to save the deceased. Further, from the post-mortem report of the dead body of the deceased, it is revealed that the deceased did not sustain any injury by means of farsa and weapon used to have been shown as hard and blunt weapon. Further, some of the witnesses injured/eye witnesses have stated that the accused gave blow with *lathi*, *danda* and *farsa* whereas PW-7, the injured witness, has stated that blow



was given with torch to Tunna. Thus, we are of the view that there are major contradictions, inconsistencies and discrepancies in the deposition of the prosecution witnesses. The injured witnesses are near relatives of the deceased and, therefore, their version is required to be scrutinized closely. It is well settled that if the deposition given by near relatives is trustworthy, their version can be accepted even without corroboration and conviction can be recorded on the basis of the same. However, from the discussion made hereinabove, it can be said that deposition given by the aforesaid injured/eye witnesses is not trustworthy and, therefore, we are not inclined to accept the version of the said witnesses more particularly in view of the defence taken by the appellants-accused. The defence taken by the accused with regard to road accident is also supported from the cross-examination of the doctor (PW-8) who had conducted the post-mortem on the dead body of the deceased. Thus, the defence has raised the doubt with regard to manner in which the occurrence took place and with regard to the presence of the so called eye witnesses at the place of occurrence.

27. At this stage, it is also relevant to note that it is the specific case of the defence that because of the land dispute with PW-9, accused have falsely been implicated. The informant



(PW-9) has stated in paragraphs-4 and 5 of his deposition about the land in dispute between the parties. He has specifically stated that the accused were keeping ash and dung on the land in question and for removal of the same, the informant made complaint before the various authorities. Further, after *Shradh* ceremony of the deceased Tunna, immediately the informant constructed boundary wall in the land in dispute. At that time, all the accused were in jail.

28. From the deposition given by the Investigating Officer (PW-10), it is revealed that he did not find any blood stain at the place of occurrence and the said officer did not collect any blood stained soil/earth or the blood stained cloth of the deceased. The said witness has further stated that witness Chotak Yadav had not stated in his statement that Bharat Yadav, Mahanth, Vinod Yadav, Lalita Devi and Tunni Kumari sustained injuries. Further, the alleged weapon used in the incident in question were also not recovered/discovered from the accused.

29. We have also perused the statement of the accused recorded under Section 313 of the Code. Only one question was put to the accused and all the incriminating evidence were not put to the accused. It is well settled that recording of the statement under Section 313 of the Code is not



mere formality.

30. At this stage, we would like to refer the decisions rendered by the Hon'ble Supreme Court in the case of Meharaj Singh (supra) wherein the Hon'ble Supreme Court has observed in paragraph-12 as under:

“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.”

30.1. We would also like to refer the decisions rendered by the Hon’ble Supreme Court in the case of Naresh Kumar (supra) wherein the Hon’ble Supreme Court has observed in paragraphs-21 to 23 as under:

“21. We have already held that whether non-questioning or inadequate questioning on incriminating circumstances to an accused by itself would not vitiate the trial *qua* the accused concerned and to hold the trial *qua* him is vitiated it is to be established further that it resulted in material



prejudice to the accused. True that the onus to establish the prejudice or miscarriage on account of non-questioning or inadequate questioning on any incriminating circumstance(s), during the examination under Section 313, Cr. P.C., is on the convict concerned. We say so, because if an accused is ultimately acquitted, he could not have a case that he was prejudiced or miscarriage of justice had occurred owing to such non-questioning or inadequate questioning.

22. In the light of the above view of the matter, we are inclined to consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313, Cr. P.C., had caused material prejudice to him. The decision of this Court in *State of Punjab v. Swaran Singh*⁸, constrain us to consider one another factor while considering the question of prejudice. In *Swaran Singh's case* (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such



an accused and, therefore, could not be held as grounds vitiating the trial *qua* the convict concerned. We have already found that Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Mrs. Madhu (PW-19) and Anand Kumar (PW-22) have deposed about the said circumstances. A scanning of their oral testimonies, available on record, would undoubtedly reveal that on both the points, on behalf of the appellants they were cross examined.

23. The position, as above, would take us to the last question whether material prejudice was caused to the appellant on account of non-questioning him on the aforesaid incriminating circumstances and thereby depriving him an opportunity to explain. This question can better be considered by referring to paragraph 31 of the judgment of the Trial Court, which virtually got confirmance from the High Court under the impugned judgment. It reads thus:—

“31. As far the part played by accused Naresh is concerned, this has come in the evidence of PWs that he (Naresh) is the man, who called his brother Mahinder and exhorted “Mahender came out and kill them today” and thereafter his taking part in the incident, by catching hold of deceased Arun Kumar, clearly goes to show the common’ intention of the two, i.e. Naresh and Mahinder and even the Learned Defence Counsel, cannot be benefited from the



above noted authorities. ””

31. Keeping in view of the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts and evidence, as discussed hereinabove, are examined, we are of the view that both the aforesaid decisions are in favour of the appellants-accused.

32. Further, we are of the view that the prosecution has failed to prove the case against the accused-appellants beyond reasonable doubt and, therefore, the Trial Court has committed error while passing the judgment of conviction and the order of sentence and the same is required to be quashed and set aside.

33. Accordingly, the appeals stand allowed. The impugned judgment of conviction dated 28.01.2015 and order of sentence dated 30.01.2015 passed by learned *Ad hoc* 1st Additional District & Sessions Judge, Bagaha, West Champaran in connection with Sessions Trial No.442 of 2014, arising out of Choutarwa P.S. Case No. 34 of 2014 are quashed and set aside and the appellants are acquitted of the charges levelled against them by the learned Trial Court.

33.1. The appellants of Criminal Appeal (DB) No.174 of 2015, namely, Santosh Yadav, Raju Yadav, Govind Yadav and Raghunath Yadav are on bail. They are discharged



from the liabilities of their respective bail bonds.

33.2. Since the appellants of Criminal Appeal (DB) No.152 of 2015, namely, Vishun Deo Yadav and Satyadeo Yadav are in jail, they are directed to be released from jail custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.07.2024
Transmission Date	20.07.2024

