

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1408 of 2016**

Arising Out of PS. Case No.-73 Year-2004 Thana- PAROO District- Muzaffarpur

1. Jyoti Sah, Son of Late Jugul Sah.
2. Shiv Sah, Son of Jyoti Sah.
3. Bhola Sah, Son of Late Haruni Sah, All are resident of Village- Gokula Rupauli, Police Station- Paroo, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raj Shekhar, Adv. Mr. Sanjay Kumar, Adv. Mr. Gyan Ranjan, Adv.
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 29-01-2024

1. Heard Mr. Raj Shekhar, learned counsel appearing for the appellants and Mrs. Anita Kumari Singh, learned APP for the State.

2. The appeal has been filed against the judgment of conviction dated 02.11.2016 and order of sentence dated 04.11.2016 passed by learned 8th Additional Sessions Judge, Muzaffarpur, in connection with Sessions Trial Case No. 275 of 2005 arising out of Paroo P.S. Case No. 73 of 2004, whereby and whereunder the appellants have been convicted for the offences punishable under Sections 307 and 341 of the Indian Penal Code (hereinafter referred to as IPC) and sentenced to undergo rigorous

imprisonment for five years for the offence punishable under Section 307 of IPC with a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer three months of simple imprisonment and to undergo one month of imprisonment for the offence punishable under Section 341 of IPC and both the sentences have been directed to run concurrently.

3. The instant appeal has been filed by the appellants Jyoti Sah, Shiv Sah and Bhola Sah, among them, the appellant Bhola Sah died after filing of this appeal, hence the instant appeal stood abated to the extent of the said appellant vide order dated 04.01.2024 and the appeal remains alive against the appellants Jyoti Sah and Shiv Sah and both the appellants stood charged for the offences punishable under Sections 307, 341 and 379 of IPC.

4. After taking evidences of prosecution and examining the appellants, the learned trial court held the appellants guilty of the offences punishable under Sections 341 and 307 of IPC and sentenced them in the manner mentioned above.

5. As per the allegation, on 23.05.2004 the appellant/convict Shiv Sah, firstly, demanded Rs. 5,000/- (rupees five thousand) from the victim as an extortion money and thereafter, on the next day i.e. 24.05.2004, he stabbed in the stomach of the informant and during that occurrence, the other

appellants/co-convicts were also present at the place of occurrence and participated in the commission of the alleged occurrence by surrounding and catching the victim and instigating the main accused to kill the victim.

6. The main submissions advanced by learned counsel for the appellants are that a long delay of 16 days took place in lodging the FIR regarding which no proper explanation was given and altogether 13 witnesses have been shown in the chargesheet but out of them, only 8 witnesses were examined and regarding non-examination of rest witnesses, no explanation was given and the investigating officer was also not produced and examined which seriously prejudiced the defence of the appellants. Further submission is that the prosecution failed to prove the motive of the appellants to commit the alleged occurrence as the offence under Section 379 of IPC, for which the appellants were charged, was disbelieved by the trial court and the same goes against the genesis of the occurrence and the evidence of P.W. 3 and P.W. 6 was not properly appreciated by the trial court and the said witnesses do not support the prosecution's case. Further submission is that the injury report of the informant which is said to have been proved by P.W. 7 is completely unreliable as the dimension of the informant's injury was not given in the said injury report and the prosecution

witnesses made contradictory statements regarding the presence of the witnesses who claimed to have seen the commission of the alleged occurrence.

7. On the contrary, learned APP has argued that in the present matter, the prosecution succeeded to prove the motive of the appellants to commit the alleged occurrence of attempt to murder as a demand of Rs. 5,000/- was, firstly, made by the appellant Shiv Sah just one day before the commission of the main occurrence and when the said demand was not fulfilled by the informant then the main occurrence was committed by the appellants and the medical evidence completely supports the prosecution's allegation levelled against the appellant Shiv Sah and there was no reason for the informant to lodge a false case against the appellants, hence the judgment impugned convicting the appellants for the alleged offences has been rightly passed and there is no merit in this appeal and the same is liable to be dismissed.

8. Heard both the sides and perused the judgment impugned and evidences and also gone through the statements of the appellants which are available on the case record of trial court.

9. In the present matter, the most important witness is the victim himself who, firstly, recorded his fardbeyan at

S.K.M.C.H., Muzaffarpur, on that basis, a formal FIR (Ext-1) bearing Paroo P.S. Case No. 73/2004 was registered under Sections 341, 324, 307, 379 and 506 of IPC and he was examined as P.W. 5. He deposed before the trial court that he was involved in the business of selling of pulses and on the alleged day of occurrence, he was returning from Jafarpur market and going towards his home but when he reached near the cattle-shed (*bathan*) of accused/convict Shiv Sah then he was caught by him and the said accused demanded money from him and threatened to kill him if he would not fulfill his demand and thereafter, he told the said incident to his brother, after that his brother made a complain to the father of the appellant Shiv Sah. He further deposed that on the second day from the commission of the first occurrence, when he was returning and reached near the *cattle-shed* of the accused, he was again caught hold by the accused persons namely Jyoti Sah and Bhola Sah and thereafter, on the direction and instigation of co-convict, the appellant Shiv Sah stabbed in his stomach and on account of that stabbing injury, his intestine came out of his stomach. At the time of recording the evidence, the witness showed the sign of his visible injury before the trial court. Similar allegation was made by the victim in his fardbeyan. As per the fardbeyan of the victim, on hearing his *hulla*

the witnesses Kishun Sah, Mangru Mahto @ Jhagru Mahto, Gaggan Sah and Krit Mahto rushed to the spot and saw the assailant and co-accused persons and his brother also reached at the place of occurrence and then the accused persons (appellants) fled away and thereafter, his brother and co-villagers took him to Paroo hospital from where he was referred to S.K.M.C.H., Muzaffarpur. The statements of Kishun Sah, Mangru Mahto @ Jhagru Mahto, Gaggan Sah and informant's brother were recorded and they were examined as P.Ws No. 1 to 4. All these witnesses remained consistent to the allegations levelled by the victim in his fardbeyan as well as supported the said allegations in their evidence.

10. P.W. 1, Kishun Sah, stated in his examination-in-chief that the reason of the occurrence was that the accused/appellant Shiv Sah demanded Rs. 5,000/- from the informant/victim Suresh Sah as an extortion money and the occurrence was seen by Mangru Mahto, Krit Mahto and others and at the time of occurrence, he was at his *cattle-shed* and on hearing *hulla*, he came at the place of occurrence and saw the informant in the injured condition.

11. P.W. 2, Mangru Mahto @ Jhagru Mahto, deposed in his examination-in-chief that a quarrel had taken place in between

the appellant Shiv Sah and the informant and the informant was stabbed in his stomach by the appellant Shiv Sah and the informant was treated at Muzaffarpur. He further deposed in his cross-examination that when he reached at the place of occurrence, he found the informant in injured condition lying on the ground and also saw the accused in fleeing position and as the informant was in unconscious condition so he could not talk with him and the victim's stomach was wrapped with a cloth.

12. P.W. 3, Gaggan Sah, deposed in his examination-in-chief that on hearing *hulla*, he came at the spot of occurrence and saw the informant in injured condition and there was bleeding from his stomach and co-villagers had also gathered there and the informant was taken to hospital and he also accompanied him.

13. Though the above witnesses, P.Ws. No. 1, 2, and 3 did not claim to have seen the appellant Shiv Sah stabbing the informant but they clearly supported the other relevant facts as to the presence of the appellants at the place of occurrence, the informant being in injured position and severe injury in his stomach and taking the victim to the hospital by the villagers.

14. The above facts deposed by the said witnesses are completely relevant and supportive to the prosecution's allegation. From the evidence of these witnesses, it is also evident that just

one day before the alleged occurrence, a demand of Rs. 5,000/- was made by the appellant Shiv Sah from the informant that is said to be the genesis of the occurrence as well as motive of the accused to commit the alleged occurrence of attempt to murder.

15. P.W. 4 is brother of the informant and he is an important witness of the prosecution as the first incident of demanding of Rs. 5,000/- by the convict Shiv Sah from the informant was firstly given in his knowledge by the informant and thereafter, the witness made a complain to the convict Jyoti Sah who happens to be father of the convict Shiv Sah. The witness fully supported the said allegation in his evidence and his evidence is also relevant to the main allegation of stabbing the victim by the accused/convict Shiv Sah. He deposed in the examination-in-chief that in the evening of the alleged day of occurrence, his brother was returning from *Jafarpur* bazar and when he reached near the *cattle-shed* of the appellant Jyoti Sah then the accused Jyoti Sah and Bhola Sah surrounded him and after that, in following with their direction, the appellant/convict Shiv Sah stabbed the informant and on hearing *hulla* of the informant, he rushed to the spot from his house and tried to snatch the *dagger* from the hand of the accused Shiv Sah but in that course, he also sustained injury at his hand. The witness showed his injury mark before the trial

court at the time of recording his evidence. Though regarding the allegation as to the said witness having sustained knife injury in the course of saving the informant, no statement was made by the victim in his *fardbeyan* and also no injury report of the said witness was produced before the trial court, so to this extent, the allegation levelled by this witness regarding sustaining injury by him in the course of occurrence does not appear to be reliable but merely by this fact, the other main allegation can not be deemed to be unreliable.

16. It has been argued by learned counsel for the appellants that the prosecution failed to prove the injury of the victim as the medical opinion given in the injury report of the informant is completely vague in respect of the injury of the informant because no dimension of the injury of the victim was given by the concerned Doctor and moreover, the injury report was issued several days after the date of occurrence regarding which, no proper explanation was given and the prosecution failed to produce any documentary evidence with regard to the victim's initial treatment which is said to have taken at Primary Health Centre concerned.

17. In the light of above contention, I have perused the Ext.- 2 which has been proved by P.W. 7, Dr. Nand Kishore

Mishra. Though, in the injury report of the victim, the dimension of his injury was not given by the Doctor concerned but in the cross-examination, the witness explained the reason for not giving the dimension of the injury and he deposed that as he had not examined the injured initially so the dimension of the injury was not given. He deposed in the examination-in-chief that the victim was referred from Primary Health Centre vide ticket no 166 dt. 24.05.2004 hence injury report may be obtained from that place, however, as the patient had stab injury with *protrusion* of intestine, hence his injury was grievous and caused by sharp pointed weapon.

Though, the prosecution did not produce the injury report of the Primary Health Centre at where the victim was initially treated but from the evidence of P.W. 7, who was the assistant Professor of Surgery in S.K.M.C.H., Muzaffarpur at the time of recording his evidence, it is clearly evident that the victim sustained sharp cut injury in his stomach and that was also a stab injury as per the opinion of P.W. 7.

Furthermore, the ocular evidence of the prosecution witnesses also corroborates the medical opinion given by P.W. 7 and it is important to mention that the victim showed the mark of his injury before the trial court at the time of recording his

evidence so in view of this position, merely on account of this fact that the Doctor concerned did not give the dimension of the injury of the victim in his injury report and the medical opinion was given several days after the alleged occurrence, the main allegation which gets support from the ocular evidence of P.Ws. No. 1 to 5 can not be deemed to be not reliable. Accordingly, I find no force in the aforesaid contention advanced by learned counsel for the appellants.

18. It has been argued by learned counsel for the appellants that before the commission of the alleged occurrence, there was no bad relation between the informant/victim and the appellants so there was no reason for the appellants to commit the alleged occurrence. I find no force in the said contention as from the evidence given by the prosecution witnesses, the prosecution succeeded to prove that just one day before the commission of the alleged occurrence of stabbing, the accused/convict Shiv Sah made a demand of Rs. 5,000/- from the victim when he was returning from the market and thereafter, in this regard, a complain was also made by the victim's brother to the appellant Jyoti Sah who happens to be the father of the appellant/convict Shiv Sah and in this regard, the evidence of P.W. No. 4 and 5 is relevant and the said demand of Rs. 5,000/- made by the appellant Shiv Sah can be

deemed to be a motive on the part of the appellants to commit the alleged occurrence of attempt to murder as according to the prosecution's allegation, the extortion demand of appellant Shiv Sah was not fulfilled by the informant/victim. Accordingly, I find no force in the said contention.

19. It has been argued by learned counsel for the appellants that the FIR was registered after inordinate delay of several days. No doubt the FIR was registered after inordinate delay of several days but as per the *fardbeyan* of the victim, which is basis of the formal FIR, the alleged occurrence of attempt to murder took place on 24.05.2004 and thereafter, the victim was immediately taken to Primary Health Centre from where he was referred to S.K.M.C.H., Muzaffarpur at where his *fardbeyan* was recorded on 03.06.2004.

The injuries sustained by the victim in his stomach i.e., a vital part of his body, were so serious that in such type of matter when an injured remains under treatment then some delay, like in the present matter, may normally take place in lodging the FIR or recording the *fardbeyan* of the victim. Accordingly, I find no force in the above-mentioned contention.

20. It has been argued by learned counsel for the appellants that before the trial court, the prosecution did not

produce the Investigating Officer (I.O.) and non-examination of I.O. seriously prejudiced the defence of the appellants and the place of occurrence was also not established.

21. I find no force in the said contention, though in the present matter, the Investigating Officer was not examined by the prosecution but other material witnesses of the prosecution were cross-examined on all important aspects and relevant points such as about place of occurrence, genesis of the occurrence, the weapon that was used in the occurrence and regarding the manner of occurrence, etc. and the materials available on the case record of the trial court do not suggest that on account of non-examination of I.O., the defence of the appellants was seriously prejudiced. Accordingly, I find no force in the above contention of the appellants.

22. It has been argued by learned counsel for the appellants that the narration of the events made by P.W. 5, who is stated to be the victim, is so contradictory to the statements of other prosecution witnesses that he can not be deemed to be a trustworthy witness and the medical evidence totally improbabilities the ocular testimony of the witnesses. In support of this argument, the learned counsel has placed reliance upon the judgment of Hon'ble Division Bench of this Court passed in the

case of **Moti Mahto and Others vs. the State of Bihar** reported in **2012 (3) PLJR 279**. I find no force in the said contention as the incident of making a demand of Rs. 5,000/- from the victim and thereafter, on account of non-fulfillment of the said demand, the appellant Shiv Sah stabbed in the stomach of the victim as alleged and narrated by the victim in his *fardbeyan* appears to be believable as the allegations levelled by him get support from the evidence of other prosecution witnesses as well as from the medical evidence given by P.W. 7 and in this regard, the evidence of P.Ws. 1, 2, 3, 4, 5 and 7 appears to be reliable and the medical evidence given by P.W. 7 probablises the allegations appearing from the ocular testimony of the prosecution witnesses. Accordingly, I find no force in the above argument and the principles laid down in the above cited judgment do not help the appellants.

23. It has been further argued by learned counsel for the appellants that the alleged offence of 307 of IPC is not made out against the appellants as there is no allegation of inflicting the repeated *knife* blows to the victim by the appellant Shiv Sah and in support of this contention, learned counsel has placed reliance upon the judgment of the **Hon'ble Apex Court** passed in the case of **Sivamani & Anr. vs. State represented by Inspector of**

**Police, Vellor Taluk Police Station, Vellore District in Cr. App
No. 3619/2023.**

In the present matter, the prosecution's evidence clearly goes to show that, firstly, the appellant Jyoti Sah and the deceased appellant Bhola Sah surrounded the victim and thereafter, instigated the appellant Shiv Sah to stab the victim and thereafter, the victim was stabbed in the stomach by the said appellant Shiv Sah and on account of stabbing, the victim's intestine came out of his stomach.

In respect of the above allegations, the material prosecution witnesses remained firm and consistent as discussed in earlier paragraphs and the manner in which the alleged occurrence was committed and the type of weapon which was used in causing grievous injury on the vital part of the body of the victim show the seriousness and gravity of occurrence that was committed in a planned manner when the victim was returning from the market and all these facts clearly go to show that the appellant Shiv Sah attempted to kill the victim and the appellant Jyoti Sah helped him in committing the said occurrence for which the offence punishable under Section 307 read with Section 34 of IPC clearly attracts in this matter. Accordingly, I find no force in

the above argument and the principles laid down in the above-mentioned judgment do not help the appellants.

24. From the above discussion of the evidences and materials available on the case record of the trial court, this Court forms the opinion that though the appellants had no enmity with the victim but as the victim indulged in the pulse business so the appellant Shiv Sah, firstly, made a demand of Rs. 5,000/- from the victim as an extortion money and when his demand could not have been fulfilled by the victim then the appellants Jyoti Sah and Bhola Sah (now deceased), firstly, surrounded the victim and thereafter, instigated the appellant Shiv Sah to stab him and thereafter, the victim was stabbed in his stomach by the appellant Shiv Sah and there are sufficient evidences to make the said allegations to be believable and the appellant Shiv Sah was rightly convicted for the offences charged, punishable under Sections 307 and 341 of IPC and so far as the conviction of the appellant Jyoti Sah is concerned, he ought to have been convicted for the said offences with the add of Section 34 of IPC. Though the trial Court did not frame charge under Sections 307/34 and 341/34 of IPC against the appellant Jyoti Sah but the contents of the charge clearly go to show that the said appellant was explained by the trial court that the alleged offences were committed by him and others,

in furtherance of their common intention and furthermore, from the evidence adduced by the prosecution and the defences taken by the said appellant while cross-examining the prosecution witnesses it is evident that he had become aware of his alleged act which is punishable under Sections 307/34 and 341/34 of IPC and the omission on the part of the trial court in the charge regarding not mentioning of Section 34 of IPC has not prejudiced the said appellant and the same appears to be mere a defect in the form of charge and there is sufficient evidence to convict the appellant Jyoti Sah for the offences punishable under Sections 307/34 and 341/34 of IPC hence, **conviction of the appellant Jyoti Sah stands modified and converted to the Sections 307 read with 34 and 341 read with 34 of IPC.** This Court finds no reason to interfere with the conclusion made by the trial court. Accordingly, the instant appeal filed by the appellants stands dismissed with the above change in the offences for which the appellant Jyoti Sah has been convicted.

25. The appellants Jyoti Sah and Shiv Sah are on bail hence their bail bonds are cancelled and they are directed to surrender before the convicting trial court within ten days from the date of receipt of this judgment's copy by the trial court and serve and complete the remaining part of their sentence awarded by the

trial court. If the said appellants do not surrender within the fixed period then the trial court shall take legal action against them to get them in custody.

26. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for needful compliance and information.

27. Let the LCR be sent back to the trial court concerned forthwith.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	08.01.2024
Uploading Date	29.01.2024
Transmission Date	29.01.2024