

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.109 of 2017

Arising Out of PS. Case No.-124 Year-2012 Thana- BHAGWAN BAZAR District- Saran

Vijay Rai Son of Jagarnath Rai Resident of Mohalla-Gudari Bazar Chawani,
P.S.-Bhagwan Bazar, District-Saran at Chapra Bihar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 50 of 2017

Arising Out of PS. Case No.-124 Year-2012 Thana- BHAGWAN BAZAR District- Saran

1. Uday Rai and Anr Son of Jagarnath Rai,
2. Khoa Rai @ Khoe Rai, Son of Jagarnath Rai, Both Residents of Village Gudri Bazar, Chhawani, P.S. Bhagwan Bazar, District Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 102 of 2017

Arising Out of PS. Case No.-124 Year-2012 Thana- BHAGWAN BAZAR District- Saran

1. Jai Ram Sah and Anr Son of Late Bhagwan Sah
2. Siya Ram sah Son of Late Bhagwan sah Both Resident of Mohalla-Gudari Bazar Chawani, P.S.-Bhagwan Bazar, District-Saran at Chapra Bihar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 110 of 2017

Arising Out of PS. Case No.-124 Year-2012 Thana- BHAGWAN BAZAR District- Saran

Hare Ram Sah Son of late Bhagwan Sah Resident of Mohallah- Gudari Bazar Chawani, P.S. Bhagwan Bazar, District- Saran at Chapra Bihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 165 of 2017



Arising Out of PS. Case No.-124 Year-2012 Thana- BHAGWAN BAZAR District- Saran

Rustam Ansari Son of Md. Hadeesh @ Hadish Mian, Resident of Mohalla -
Shekh Toli, Town, Chapra, P.S. Bhagwan Bazar, District - Saran
... .. Appellant/s
Versus
The State Of Bihar
... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 109 of 2017)
For the Appellant/s : Mr. Prashant Bhushan, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Arun Kumar, Advocate
Mr. Raghubir Choudhry, Advocate
(In CRIMINAL APPEAL (DB) No. 50 of 2017)
For the Appellant/s : Mr. Ajay Kumar Pandey, Advocate
Ms. Shyama Rani, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Binod Murari Mishra, Advocate
(In CRIMINAL APPEAL (DB) No. 102 of 2017)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Vijay Kumar Srivastava, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Arun Kumar, Advocate
Mr. Raghubir Choudhry, Advocate
(In CRIMINAL APPEAL (DB) No. 110 of 2017)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Vijay Kumar Srivastava, Advocate
For the State : Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Arun Kumar, Advocate
Mr. Raghubir Choudhry, Advocate
(In CRIMINAL APPEAL (DB) No. 165 of 2017)
For the Appellant/s : Mr. Nagendra Rai, Advocate
Mr. Navin Nikunj, Advocate
Mr. Koshalendra Rai, 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 : 24-06-2024

All the present appeals have been filed under Section
374(2) of the Code of Criminal Procedure, 1973 (hereinafter
referred as ‘Code’) challenging the judgment of conviction dated



16.11.2016 and order of sentence dated 22.11.2016 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Saran at Chapra in Sessions Trial No. 765 of 2012 (CIS Registration No. 4356 of 2014), arising out of Bhagwan Bazar P.S. Case No. 124 of 2012, whereby the concerned Trial Court has convicted the present appellants for the offences punishable under Sections 341 of the Indian Penal Code and sentenced to undergo simple imprisonment for one month, for under Section 148 Indian Penal Code three years, for under Section 385 of the Indian Penal Code two years and life imprisonment for the offences under Section 302/149 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocity) Act and also to pay a fine of Rs. 10,000/- each for the offences punishable under Section 302/149 of the Indian Penal Code and further a fine of Rs. 10,000/- each for the offences punishable under Section 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocity) Act and in default of payment of fine, the appellants have been directed to further undergo simple imprisonment for a period of six months for each default and all the sentences shall run concurrently.

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



2.1. On 30.06.2012, the informant was returning home from Gudari Bazar (Chhawani) and at about 12:30 pm, all the accused persons of *Mohalla*- Gudari Bazar (Chhawani) surrounded the informant and demanded ransom of fifty thousand rupees and asked him to bring the ransom money from his parents otherwise they would kill him. On this altercation, Rustam Ansari, Uday Rai, Vijay Rai and Jai Ram Sah caught hold of the informant and dragged him on the road and with a view to kill him, the accused persons, namely, Vijay Rai and Hare Ram Sah, gave knife blow on the abdomen, chest and *panjari* and when the informant fell down, then Siya Ram Sah took away a golden chain from his neck and Rs. 350/- from his pocket. On *hulla*, the people of the *mohalla*, mother, uncle, maternal-grandfather of the informant, Shivilal Chaudhary and Munna Singh reached there and brought the informant by a tempo to Sadar Hospital, Chapra, where the Doctor, after treatment, found the condition serious and referred him to P.M.C.H., Patna.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was



exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Trial No. 765 of 2012 (CIS Registration No. 4356 of 2014).

3. In Criminal Appeal (DB) No. 109 of 2017, we have heard learned counsel Mr. Prashant Bhushan for the appellant, Mr. Arun Kumar assisted by Mr. Raghubir Choudhry, learned counsels for the informant and Mr. Sujit Kumar Singh, learned APP for the Respondent-State.

3.1. In Criminal Appeal (DB) No. 50 of 2017, we have heard learned counsel Mr. Ajay Kumar Pandey for the appellant assisted by Ms. Shyama Rani, Mr. Sujit Kumar Singh, learned APP for the Respondent-State and Mr. Binod Murari Mishra, learned counsel for the informant.

3.2. In Criminal Appeal (DB) No. 102 of 2017, we have heard learned counsel Mr. Ajay Kumar Thakur for the appellant assisted by Mr. Vijay Kumar Srivastava, Mr. Sujit Kumar Singh, learned APP for the Respondent-State and learned counsel Mr. Arun Kumar assisted by Mr. Raghubir Choudhry for the informant.

3.3. In Criminal Appeal (DB) No. 110 of 2017, we have heard learned counsel Mr. Ajay Kumar Thakur for the appellant



assisted by Mr. Vijay Kumar Srivastava, Mr. Sujit Kumar Singh, learned APP for the Respondent-State and learned counsel Mr. Arun Kumar assisted by Mr. Raghubir Choudhry for the informant.

3.4. In Criminal Appeal (DB) No. 165 of 2017, we have heard learned counsel Mr. Nagendra Rai for the appellant assisted by Mr. Navin Nikunj and Mr. Koshalendra Rai and Mr. Sujit Kumar Singh, learned APP for the Respondent-State.

4. Learned counsels for the respective appellants would submit that, as per the case of the prosecution, there is no eye-witness to the incident. However, the prosecution has placed reliance upon the *fardbeyan* given by the injured, who died after a period of one month from the registration of F.I.R. Learned counsels would further submit that witnesses are either near relatives of the deceased or known to the deceased and his family members. It is submitted that even PW-3 has not supported the case of the prosecution and he was declared hostile.

4.1. At this stage, it is also contended that the investigating officer (PW-10) had recorded the statement of independent witnesses, namely, Laalbabu, Gyan Prakash, Lalan Sah, Sonamati Devi and Chote Laal Manjhi. However, though the aforesaid persons were cited as witnesses in the charge-sheet, the



prosecution did not examine the said persons and thereby suppressed the material fact. It is contended that the investigating officer has specifically admitted, during cross-examination, that some of the aforesaid persons, whose statements were recorded, have given the name of only one accused. Thus, it is submitted that though some of the persons were eye-witnesses to the incident in question, for the reasons best known to the prosecution, they have not been examined and, therefore, adverse inference can be drawn.

5. At this stage, it is submitted that the *fardbeyan* of the informant was recorded by A.S.I., and on the said *fardbeyan*, left thumb impression of the informant was taken. It is contended that, as per the case of the prosecution, the condition of the informant was serious and, therefore, his thumb impression was taken. However, it is contended that, as per the deposition given by PW-4, Dr. Shailendra Kumar Singh, who had examined the injured informant, there was no injury on the right arm and, therefore, the Police Officer, who had recorded the *fardbeyan*, could have obtained the signature of the injured informant. At this stage, it is also contended that even, as per the case of the prosecution, the condition of the injured was serious, then how his *fardbeyan* came to be recorded is not known.



6. Thereafter, learned counsels would contend that while recording the *fardbeyan* of the injured, which was treated as his dying declaration, the endorsement of the Doctor, who had given the treatment to the injured, was not obtained. Therefore, it does not transpire from the record that whether the informant was in a position to give his statement before the Police or not. At this stage, it is also submitted that the occurrence took place on 30th June, 2012 and the injured informant died after a period of one month i.e. on 30th July, 2012. During the said period, which type of treatment was given to the injured is not pointed out by the prosecution by leading any evidence. It is submitted that the injured informant survived for a period of thirty days despite which the investigating agency did not call the Executive Magistrate for recording the dying declaration of the injured informant.

7. Learned counsels thereafter submitted that, as per the case of the prosecution, the statement of PW-8, who is the father of the deceased, was recorded on the next date of occurrence i.e. on 01.07.2012. However, statement of the other witnesses, who have claimed that they reached the place of occurrence immediately after the occurrence took place and before whom the injured (deceased) narrated the entire incident, were recorded somewhere



in October, 2012. Even otherwise, the deposition given by the near relatives of the deceased before the Court is also required to be discarded as there are major contradictions and discrepancies. It has been pointed out by the learned counsels that, as per the deposition given by PW-1, when he reached at the place of occurrence, he found the informant in an injured condition and when enquired, the injured narrated the incident. Similarly, PW-2, PW-5, PW-6 and PW-7 have also deposed that when they reached at the place of occurrence, the informant narrated the incident. It is contended that the said story is not believable because, as per the case of the prosecution, the injured narrated the entire story before each of the witnesses. It is not the case of the prosecution that when all the witnesses reached at the place of occurrence, the injured narrated once the entire incident before all the witnesses. At this stage, it is also pointed out that, as per the case of the prosecution, all the aforesaid witnesses were residing at a distance of 10 kms. away and, therefore, their presence at the time and place of occurrence was not natural. Thus, the aforesaid witnesses are the chance witnesses. Hence, their deposition is required to be discarded.

8. Learned counsels further submit that, as per the case of the injured informant, the occurrence took place at 12:30 hours.



It is submitted that, as per PW-4, Dr. Shailendra Kumar Singh, who had examined the injured at 12:40 hours, i.e. within 10 minutes from the time of occurrence and thereafter he was referred to P.M.C.H., Patna, hence, recording of the *fardbeyan* at 14:30 hours at Chapra Hospital creates doubt. It is also submitted that in his cross-examination, PW-4 has specifically admitted that the nature of injuries show that only one weapon was used. Thus, theory of the informant and the prosecution witnesses that assault was made by the named accused with different weapons creates doubt.

9. Learned counsels for the appellants, therefore, urged that though conviction can be recorded only on relying upon the dying declaration and no corroboration is required, looking to the facts and circumstances of the present case, when the entire story put forward by the prosecution is doubtful and once so-called dying declaration given by the informant is doubtful, conviction of the appellants cannot be recorded. Thus, the Trial Court has committed an error while passing the impugned judgment and order. Learned counsels, therefore, urged that the impugned judgment and order be quashed and set aside.



10. Learned counsels for the appellants have placed reliance upon the following decisions in support of their contention:-

(i) **Darshana Devi Vs. State of Punjab**, reported in **1995 Supp (4) SCC 126**.

(ii) **Ramakant Mishra Vs. State of U.P.**, reported in **(2015) 8 SCC 126**.

(iii) **Shankar Chaudhary Vs. State of Bihar**, reported in **2023 SCC OnLine Pat 6764**.

(iv) **State of Punjab Vs. Kikkar Singh**, reported in **2002 SCC OnLine P&H 543**.

11. Learned A.P.P. has opposed all these appeals. It is contended that once there is a dying declaration given by the injured himself wherein he has narrated the names of all the accused and specific role has been attributed, no corroboration is required. Even if there is no endorsement of the Doctor that the patient was conscious and in a fit state of mind to give his statement, dying declaration can be relied upon. The prosecution witnesses have specifically stated that when they reached at the place of occurrence, the injured himself has narrated the entire incident and pointed out the role played by each of the accused. Thus, the dying declaration was also given by the informant before



the prosecution witnesses. It is also contended that merely because the witnesses are the near relatives, their version cannot be discarded only on this ground. It is further submitted that PW-8 has put signature on the *fardbeyan* and also signed the Inquest Report. His presence at the place of occurrence was natural. It is further submitted that the motive was to commit the offence is also established by the prosecution. Learned counsel, therefore, urged that the prosecution has proved the case against the accused beyond reasonable doubt and no error is committed by the Trial Court while passing the impugned order. Hence, no interference is required in the present appeals.

12. Learned counsels for the informant has placed reliance upon the following decisions:-

(i) **Bapu Vs. State of Maharashtra**, reported in (2006) 12 SCC 73.

(ii) **State of Punjab Vs. Sanjiv Kumar & Ors.**, reported in AIR 2007 SCC 2430.

(iii) **Sunder Singh Vs. State of Uttaranchal**, reported in (2010) 10 SCC 611.

(iv) **Lakhan Vs. State of Madhya Pradesh**, reported in (2010) 8 SCC 514.



(v) Tejram Patil Vs. State of Maharashtra, reported in
2015 (2) BLJ.

13. It would emerge that, PW-1 Madan Mohan Nat, has deposed that, on the day of incident, he was coming from Masumganj to Gudri Bazar. He saw a crowd gathered there. When he went there, he saw that his grandson Harsh Ranjan Raj @ Raja was injured and lying on road. Knife wounds were visible in his stomach, chest and ribs and blood was oozing out from those wounds. When he asked him, he told him that Vijay Rai, Hare Ram Sah, Khowa Rai, Udai Rai, Jai Ram Sah, Siyaram Sah and Rustam Ansari surrounded him and threw him on the ground. Then, Hare Ram Sah and Vijay Rai stabbed him with a knife and then Jai Ram Sah took away Rs. 350/- from his pocket and a golden chain. From there, he took him on the tempo and brought him to Sadar Hospital and admitted him in the Emergency Ward. After giving him first aid, the Doctors, seeing the wound, sent him to P.M.C.H., Patna. The injured had also told that a month ago, all the accused persons were demanding ransom of Rs. 50,000/- but when he did not pay the ransom money, they surrounded him and, till date, the ransom money had not been paid. The injured was then taken to Patna where he died during his treatment on 30.07.2012.



13.1. In his cross-examination, he has stated that, the deceased's father is an Advocate in the Chapra Court. His grandson was living with his parents. When he reached the incident site, for the first time, he saw that his son-in-law Harish Kumar, Ram Kishore Mishra, Rajiv Nat, Munna Nat and Shivilal Chaudhary were standing there. The house of these people are not in the Gudri Bazar. These people are not even the residents of Ramakrishna Puri. He has stated that there were many people at the site of incident. He doesn't recognize them. He doesn't even know the names of the shopkeepers. Further, he has also stated that there were blood on the road. He picked up the injured (deceased) from the incident site. While he was picking him up, there were blood-stains on his clothes and clothes of Harish and Munna. The blood-stained clothe was not given to the Inspector because he had not asked for it. The blood-stained clothe was not shown to the Inspector as he had not come there in front of him. He has also said that he had no idea as to whether there were any case of ransom against his grandson or not. Later, he has stated that his grandson was buried at Rivilganj. The said cemetery is at a distance from Masumganj.

14. PW-2 Raj Kumar Mishra has stated that the incident took place on 30.06.2012 at around 12:30 pm. That day, he had



come to Chapra and was returning home after taking goods from Joganiya Kothi. When he reached Gudri Bazar, he saw a crowd. When he went there, he saw that Harsh Raj had been stabbed. He saw the knife wounds on his ribcage, stomach, chest and left arm. There, he heard Harsh Raj (injured) saying that the accused were demanding ransom of Rs. 50,000/- from him and this incident happened due to non-payment of ransom money and because of this he was stabbed by Vijay Rai and Hare Ram.

14.1. In his cross-examination, he has stated that his statement was recorded by the Police a week after the incident. The Police came to his village and took his statement. Before Police, he has stated that Harsh Raj had told him that an ransom of Rs. 50,000/- was demanded and when it was not given, the said incident took place. He has further stated in his cross-examination that he is acquainted with the deceased through his maternal grandfather.

15. PW-3 Shivlal Choudhury has not supported the case of the prosecution and has turned hostile.

16. PW-4 Dr. Shailendra Kumar Singh was posted at Sadar Hospital, Chapra as a Medical Officer on 30.06.2012. On the very same day, at about 12:40 pm, he examined the body of the injured informant and found following injuries:-



“(i) Sharp cut over left arm 2” x 1/2” x Muscle deep,

(ii) Sharp cut over left side of abdomen 2” x 1/2” x muscle deep,

(iii) Sharp cut over lower part of mid of chest 1/2” x 1/2” x muscle deep,

(iv) Sharp cut below left axilla 1/2” x 1/2” x muscle deep.

(v) Sharp cut over left axilla below pelvic 1/2” x 1/2” cavity deep.

Time- Within six hours of examination.

Nature- Injury No. I to IV are simple in nature caused by sharp cutting substance for injury No. V injured was referred to P.M.C.H., Patna, opinion released till opinion given by P.M.C.H.”

16.1. In his cross-examination, he has stated that he examined the injured on requisition of Police and the nature of injury showed that only one weapon was used.

17. PW-5 Munna Nat has stated, in his examination-in-chief, that at the time of incident, he was in the Gudri Market. The incident was taking place at Gudri Bazar Cantonment. When he went there, he saw that his nephew (deceased) was struggling. He had a knife wound. When he asked him, his nephew told him that Vijay Rai, Uday Rai, Khowa Rai, Hare Ram Sah, Siya Ram Sah were demanding ransom of Rs. 50,000/- and if the said amount was not given on time, then the accused persons will not let his family stay in Chapra and threatened to kill him. Because of this,



Rustam Ansari, Vijay Rai, Hare Ram Rai and Siya Ram Sah beat hi and stabbed him in the stomach, chest, ribs and right arm. After that, Siya Ram snatched the golden chain from his nephew's neck and took away Rs. 350/- from his pocket. After that, he picked up the injured and took him to Sadar Hospital, Chapra. From there, the Doctors sent him to P.M.C.H., Patna for treatment where he died during the course of treatment.

17.1. In his cross-examination, he has shown ignorance about the informant of this case. He has stated that the issue of ransom and threats were told to him before the incident. His *sanha* was not given in the Police Station. No information with regard to the ransom, demand or threat were given to any Police Station. He has stated that this incident occurred at Gudri Cantonment. Further, he had stated that whatever he had been told by his injured nephew was told in front of all the shopkeepers.

18. PW-6 Usha Devi is the mother of the injured informant who has deposed in her examination-in-chief that after getting the information that her son was injured with a knife, she went to Gudri Bazar Cantonment and saw that her son was lying on the road. On asking, her son told her that when he was returning from Gudri Bazar, then Vijay Rai, Uday Rai, Khova Rai, Hare Ram Sah, Jai Ram Sah, Siya Ram Sah and Rustam Ansari



surrounded him and verbally abused him with casteist slurs that they were demanding ransom from his mother since last one month and why were they not getting the ransom money. They threatened that if they did not get the ransom money, they will not let his parents live in Chapra and then threatened to kill him. After this, her son told her that the accused persons pinned him down on the road with the intention of killing him. Vijay Rai and Hare Ram Sah started stabbing him on his stomach, chest, ribs and left hand with a knife due to which he got injured and fell on the road. She has also stated that Siya Ram Sah snatched the golden chain from her son's neck and Rs. 350 from his pocket. Her son was given treatment at Sadar Hospital, Chapra. The Doctors, for his better treatment, referred him to P.M.C.H., Patna where, during the course of his treatment, he died.

18.1. In her cross-examination, she has stated that she was at work on the day of incident. Her office timing is from 10:00 am to 04:00 pm. She did not have to register her attendance. She did not have any register in her office. She cannot produce documentary proof that there was no office on the day of occurrence. She has further stated that her son had informed her earlier that the ransom money was being demanded. She had wanted to inform regarding this, but the said incident took place in



the meantime. Further, she has stated that there were no blood stain on her clothes but there were blood stains on her husband's clothes but that clothe was not given to the Police. She had no knowledge that her son had lived with Rustam Ansari prior to the incident. As long as she was at the place of occurrence, no Police Officer came there. The Police came to the Hospital and got the information regarding the incident. Her husband took her son away to P.M.C.H., Patna where his operation was done. Her son's *post mortem* was done in Patna, after which he was brought to Chapra. Later, she has stated that her statement was recorded by the Police at her home after ten days. Her home is at a distance of 10 kilometers from the place of occurrence. She cannot tell if there is a graveyard near the place of occurrence or not. She buried her son in Riwilganj as there is custom of burial in her caste.

19. PW-7 Rajiv Kumar Nat has stated that the injured was lying down in an injured condition when he first saw him. He was stabbed on his chest, stomach and left rib cage with knives. On asking, he stated that an ransom amount of Rs. 50,000/- was being demanded from him by the accused persons who then surrounded him and verbally abused him with casteist slurs and then, Vijay Rai, Hare Ram Sah stabbed him in the stomach and chest with a knife. Then the injured was taken to Sadar Hospital,



Chapra where the Doctors referred him to P.M.C.H., Patna where he died during the course of his treatment on 30.07.2012.

19.1. In his cross-examination, he has stated that he was among those persons who were carrying the injured. Blood stains were on his clothes. The blood-stained clothes were not handed over to the Police. He did not put his signature on any papers.

20. PW-8 Harish Kumar has stated in his examination-in-chief that he is the father of the deceased. The said occurrence took place on 30.06.2012 at 12:30 pm. He was going from Court to his home in a tempo. There was a commotion going on in the Gudri Bazar. Hearing the commotion, he went there and saw that his son was lying there in an injured condition on the road. On asking, his son told him that Rustam Ansari, Uday Rai, Khova Rai, Vijay Rai, Jairam, Siya Ram, Hare Ram Sah were demanding a ransom of Rs. 50,000/- since last one month. They were verbally abusing him with casteist slurs. Then they threw him on the road and then Vijay Rai, Hare Ram Sah stabbed him repeatedly in his stomach, chest, rib cage, left side of the arm with the intention of killing him. From there, he took him to Sadar Hospital, Chapra in a tempo for treatment. When he was being treated at Sadar Hospital, Chapra, then the Police Inspector came and took his statement which was signed by his son and marked it as Exhibit-1.



On seeing the gravity of the injury, the Doctors referred his son to Patna for better treatment. His son's treatment was being done at P.M.C.H., Patna. During the course of his treatment, he died in P.M.C.H., Patna on 30.07.2012.

20.1. In his cross-examination, he has stated that before the incident, he was unaware that the accused persons were demanding ransom money from his son. He has stated that the Police took his son's statement in P.M.C.H. Further, he has stated that there was a delay of ten minutes in getting the treatment in Sadar Hospital, Chapra. Police came to Sadar Hospital. He left the hospital for P.M.C.H., Patna at around 02:30 hours where his son died on 30.07.2012. He has stated that his son was friend with Rustam Ansari.

21. PW-9 Arun Kumar Sharma is the Investigating Officer who was posted as A.S.I. at Bhagwan Bazar Police Station on 30.06.2012. He received the injury report of the injures. After reaching Sadar Hospital, Chapra, the statement of the injured was recorded which was signed by the injured himself.

21.1. In his cross-examination, he has stated that before writing the F.I.R, he did not take a certificate from the Doctor with regard to the condition of the injured. The Doctor's signature was not taken on the *fardbeyan*.



22. PW-10 Kumar Santosh Rajak was posted at Bhagwan Bazar Police Station at the post of Sub Inspector. On the basis of *fardbeyan* of the informant, the responsibility of P.S. Case No. 124/12 was given to him. When he went to the Hospital to take the statement of the injured, he came to know that, for better treatment, he was sent to Patna. During the course of investigation, he inspected the site of incident. On the basis of the informant's statement of witnesses and injury report, charge-sheet was submitted against Rustam Ansari and the investigation was kept on for others. He received the *post mortem* report and injury letter of the deceased during the course of supplementary investigation. On 10.11.2012, he was transferred. He then gave the responsibility of the investigation to S.H.O.

22.1. In his cross-examination, he has stated that he had gone to P.M.C.H., Patna on 01.07.2012 and took the statement of the injured and his father. He had arrested Rustam Ansari who said that it was him who had stabbed the knife.

23. PW-11 Rajeshwar Prasad was posted as S.I. at Bhagwan Bazar Police Station on 16.11.2012. He was given the responsibility of P.S. Case No. 124/12 by S.H.O. He presented the charge-sheet by preparing it against the accused Vijay Rai in the Court.



24. PW-12 Jogendra Ram is the *Post Mortem* Attendant at Mortuary of P.M.C.H., Patna. He has stated that Dr. Anil Kumar has died and the *post mortem* report is in his handwriting which he recognizes and marked as Exhibit-7.

25. We have re-appreciated the entire evidence led by the prosecution. It emerges from the record that, as per the case of the prosecution, there is no eye-witness to the incident. However, the prosecution has mainly placed reliance upon the *fardbeyan* given by the deceased and the same was treated as dying declaration. Learned A.P.P. as well as the learned counsels for the informant have placed reliance upon the said piece of evidence by contending that as the injured himself has given the dying declaration before the Police immediately after incident took place, on the basis of the same accused can be convicted and no corroboration is required. It is true that if the dying declaration given by the deceased is found to be true and reliable, conviction can be recorded without any corroboration. Therefore, in the present case, we have to examine that simply on the basis of the *fardbeyan* given by the injured, the accused have been rightly convicted or not.

26. It would emerge from the record that, as per the *fardbeyan*, the occurrence took place at 12:30 hours and the



fardbeyan was recorded in Sadar Hospital, Chapra, at 14:30 hours. The said *fardbeyan* is not signed by the injured informant, but his left thumb impression was obtained by the Police Officer. It is the case of the prosecution that the informant was not in a position to sign the *fardbeyan* because of his condition, his thumb impression was obtained. However, it is relevant to note that the injured was immediately examined by the Doctor at 12:40 hours and the Doctor found the injury on the left arm of the injured informant and not on the right palm. Further, it is revealed that for injury No. 5, mentioned by the Doctor, the informant was referred to P.M.C.H., Patna. It is also relevant to observe, at this stage, that there is no signature of the Doctor on the said *fardbeyan* nor there is any endorsement of the Doctor that the injured informant was conscious and was in a fit state of mind to give the statement.

26.1. It further transpires from the evidence that the injured remained in P.M.C.H., Patna, for thirty days and he succumbed to the injuries on 30th July, 2012. The prosecution has failed to produce any evidence with regard to the medical treatment given to the injured informant during the said period of thirty days. Whether he was conscious or unconscious during the said period is not known. Further, as per PW-10 (I.O.), he had gone to P.M.C.H., Patna and recorded further statement of injured



then why the investigating agency has not called the Executive Magistrate for recording the dying declaration of the injured informant. In view of the aforesaid, we are of the view that simply relying upon the aforesaid dying declaration in the form of *fardbeyan*, conviction cannot be recorded and further corroboration is required.

27. It is revealed from the evidence led by the prosecution that PW-1, PW-5, PW-6, PW-7 & PW-8 are near relatives of the deceased and from the deposition of the said witnesses, it can be said that their presence at the place of occurrence was not natural. Most of the witnesses are residing at a distance of 10 kilometers from the place of occurrence. Further, none of the aforesaid witnesses are the eye-witness to the occurrence in question. As per the case of the prosecution, all the aforesaid witnesses reached at the place of occurrence after the incident took place. As per the deposition given by PW-1, he reached at the place of incident, the injured narrated the entire incident before him wherein he had given the name of the accused. Similarly, PW-2, PW-5, PW-6, PW-7 & PW-8 have also stated that as and when they reached at the place of occurrence, the injured narrated the entire incident. Thus, from the deposition given by the aforesaid witnesses, it can be said that the injured has individually



narrated the story before each of the witnesses separately. It is not the case of the prosecution witnesses that when they all reached at the place of occurrence, the injured narrated the story before all of them. Thus, the so-called dying declaration given by the injured before the aforesaid witnesses raises doubt with regard to the story of the prosecution. At this stage, it is relevant to note that PW-3 Shivlal Chaudhary did not support the case of the prosecution and he was declared hostile. It would further reveal from the record that PW-10 Kumar Santosh Rajak, who had carried out the investigation, has specifically admitted, during the course of his cross-examination, that he had recorded the statement of Laalbabu, Gyan Prakash, Lalan Sah, Sonmati Devi and Chote Laal Manjhi. The investigating officer has further admitted that witness Lal Babu Rai has stated before him that the quarrel took place between two persons. One person took hold of the collar of another person and one Rustam Ansari gave knife blow. Another witness Gyan Prakash stated before him that the quarrel took place between two boys and the said witness further stated that other persons were not present at the place. Another witness Lalan Rai has also stated that quarrel took place between two boys and one boy fled away from the spot and thereafter he came to know that knife blow was given to another boy. Thus, from the deposition given by PW-10



(investigating officer), it is clear that there are eye-witnesses to the occurrence in question and the investigating officer recorded the statement of the said witnesses, who are the independent witnesses, despite which the aforesaid witnesses, whose names are referred in the charge-sheet filed by the investigating agency, the prosecution did not examine the said eye-witness and thereby suppressed the correct facts. No explanation has been given by the prosecution for non-examination of the aforesaid witness and, therefore, adverse inference can be drawn in the facts and the circumstances of the present case.

28. It further transpires from the deposition given by Dr. Shailendra Kumar Singh, who examined the injured informant, that injury Nos. 1 to 4 were simple in nature. The said witness has further admitted, during cross-examination, that the nature of injuries show that only one weapon was used. Thus, the aforesaid medical evidence also does not support the story put forward by the informant in the *fardbeyan* that more than one person inflicted blows with knife.

29. It is further revealed from the record that the statement of PW-8 (Harish Kumar), who is the father of the deceased, was recorded on the next date of the incident i.e. on 01.07.2012, whereas the statement of other witnesses were



recorded after more than one month. Statement of some of the prosecution witnesses were recorded only in October, 2012. Thus, it creates doubt with regard to the story of oral dying declaration given by the injured before the aforesaid witnesses.

30. In the case of **Lakhan (supra)**, the Hon'ble Supreme Court has observed in **Paragraphs-10, 12 & 21** as under:-

“10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide Khushal Rao v. State of Bombay [AIR 1958 SC 22 : 1958 Cri LJ



106] , *Rasheed Beg v. State of M.P.* [(1974) 4 SCC 264 : 1974 SCC (Cri) 426 : AIR 1974 SC 332] , *K. Ramachandra Reddy v. Public Prosecutor* [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] , *State of Maharashtra v. Krishnamurti Laxmipati Naidu* [1980 Supp SCC 455 : 1981 SCC (Cri) 364] , *Uka Ram v. State of Rajasthan* [(2001) 5 SCC 254 : 2001 SCC (Cri) 847] , *Babulal v. State of M.P.* [(2003) 12 SCC 490 : 2005 SCC (Cri) 620] , *Muthu Kutty v. State* [(2005) 9 SCC 113 : 2005 SCC (Cri) 1202] , *State of Rajasthan v. Wakteng* [(2007) 14 SCC 550 : (2009) 3 SCC (Cri) 217] and *Sharda v. State of Rajasthan* [(2010) 2 SCC 85 : (2010) 2 SCC (Cri) 980] .)

12. *A dying declaration recorded by a competent Magistrate would stand on a much higher footing than the declaration recorded by officer of lower rank, for the reason that the competent Magistrate has no axe to grind against the person named in the dying declaration of the victim, however, circumstances showing anything to the contrary should not be there in the facts of the case. (Vide Ravi Chander v. State of Punjab [(1998) 9 SCC 303 : 1998 SCC (Cri) 1004] , Harjit Kaur v. State of Punjab [(1999) 6 SCC 545 : 1999 SCC (Cri) 1130] , Koli Chunilal Savji v. State of Gujarat [(1999) 9 SCC 562 : 2000 SCC (Cri) 432] and Vikas v. State of Maharashtra [(2008) 2 SCC 516 : (2008) 1 SCC (Cri) 486] .)*

21. *In view of the above, the law on the issue of dying declaration can be summarised to the effect that in case the court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying*



declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”

31. In the case of **Sunder Singh (supra)**, the Hon’ble Supreme Court has observed in **Paragraphs-30 & 31** as under:-

“30. There can be no dispute that the dying declaration can be made a basis of conviction. There again can be no dispute that for basing the conviction on the dying declaration, the dying declaration must pass all the tests of voluntariness, the fit condition of mind of the maker of the dying declaration and the witness not being influenced by any other factors and the truthfulness of the declaration. The law is settled by this Court in the decision of Laxman v. State of Maharashtra [(2002) 6 SCC 710 : 2002 SCC (Cri) 1491] . There, of course, the Court has discussed the implication of the doctor's statement. The Court has further considered the subject in Shanmugam v. State of T.N. [(2002) 10 SCC 4 : 2003 SCC (Cri) 1501] as also in P.V. Radhakrishna v. State of Karnataka [(2003) 6 SCC 443 : 2003 SCC (Cri) 1679] . We hasten to add that we do not want to understate the importance of the evidence of doctors. However, there could be cases where though there is no certification by the doctor, still the dying declaration can be accepted and in our opinion present is such a case. In Laxman case [(2002) 6 SCC 710 : 2002 SCC (Cri) 1491] the Court had observed in SCC para 3 : (SCC p. 713)



“3. ... Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable.”

This decision was by the Constitution Bench of this Court and has taken stock of all the earlier decisions. It has been throughout followed by this Court in the later cases.

31. After examining all the circumstances, particularly, the evidence of the Magistrate, we are of the clear opinion that the dying declarations of Vimla Devi and Prem Singh do pass the test of credibility. Of course, the dying declaration of Vimla Devi cannot be substantive evidence and it can only be corroborative evidence of oral testimony since she survived. However, the evidence of Prem Singh does become substantive evidence and in our opinion, wholly reliable. We, therefore, hold that the trial court and the appellate court have committed no error in relying on that dying declaration.”

32. In the case of **Tejram Patil (supra)**, the Hon’ble Supreme Court has observed in **Paragraph-15** as under:-

*“15. As regards the reliability of DD Exhibit 45, we find merit in the contention of learned counsel for the appellant. We are of the view that the trial Court was justified in discarding the said piece of evidence. Undoubtedly, as held by the High Court relying on judgment of this Court in **Laxman vs. State of Maharashtra, (2002) 6 SCC 710** that*



even in absence of certification by the Doctor as to fitness of mind of the declarant and even if the DD is recorded by the Police Officer, the same can be relied upon. However, the Court must be satisfied that the deceased was in a fit mental condition to make the DD and that the statement was faithfully recorded and was otherwise reliable. In the present case, it is difficult to record such satisfaction. There is no material for the Court being satisfied that the deceased was in fit condition to make the declaration. The deceased was in the hospital at the time of her alleged statement but no effort was made by the PSI to ascertain her medical condition or to certify that he had satisfied himself about the fitness of the declarant. The DD does not bear the signature or thumb mark of the deceased. The deceased had sustained 100 per cent burns and succumbed to her injuries on 29 March, 1999 at 6.25 a.m. as already noted. The view taken by the High Court that in the peculiarity of facts, authenticity of DD could be accepted, in our opinion, is not sound.”

33. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that, in the case where the Court comes to the conclusion that the dying declaration is true and reliable and has been recorded by a person at a time when the deceased was fit, physically and mentally, to make the declaration and it has not been made under any tutoring, duress and prompting, it can be the sole basis for recording the conviction. In such an eventuality, no corroboration is required.

33.1. In the present case, as discussed hereinabove, it is difficult to record such satisfaction. There is no material before us from which such satisfaction is to be recorded in the present case,



that the deceased was in a fit condition to make the declaration. We have already discussed that, as per the deposition given by PW-10, he had gone to P.M.C.H., Patna on 01.07.2012 and took the statement of the injured. However, it is pertinent to note that the Executive Magistrate was not called for recording the dying declaration of the injured. The deceased survived for a period of thirty days. However, no efforts were made by the investigating agency to call the Executive Magistrate for recording the dying declaration of the injured. Further, the prosecution has failed to produce any medical record of the deceased when he had taken the treatment in P.M.C.H., Patna. Thus, in the facts and circumstances of the present case, we are of the view that, solely relying upon the so-called dying declaration given by the informant, in the form of *fardbeyan*, conviction cannot be recorded.

34. In view of the aforesaid discussion, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, the impugned judgment and order of conviction and sentence passed by the learned Trial Court are required to be quashed and set aside. Accordingly, the same are quashed and set aside.

35. The impugned judgment of conviction dated 16.11.2016 and order of sentence dated 22.11.2016 passed by



learned 1st Additional Sessions Judge-cum-Special Judge, Saran at Chapra in Sessions Trial No. 765 of 2012 (CIS Registration No. 4356 of 2014), arising out of Bhagwan Bazar P.S. Case No. 124 of 2012, are quashed and set aside.

36. The appellant Jai Ram Sah, in Criminal Appeal (DB) No. 102 of 2017, has died during the pendency of the appeal. As such, the appeal stands abated with regard to Jai Ram Sah.

37. All the appellants are acquitted of the charges levelled against them by the learned Trial Court.

38. Appellant, namely Vijay Rai (in Criminal Appeal (DB) No. 109 of 2017) is in jail. He is directed to be released from custody forthwith, if his custody is not required in any other case.

39. All the other appellants are on bail. They are discharged from the liabilities of their bail bonds, if any.

40. All these appeals stand allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	27.06.2024
Transmission Date	27.06.2024

