

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4835 of 2023

Arising Out of PS. Case No.-76 Year-2022 Thana- SARAN COMPLAINT CASE District-
Saran

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1. ALAUDIN MANSURI SON OF LATE SHER AZAM MIYAN @ SHER AALAM MIYAN RESIDENT OF VILLAGE - SISAI, P.S. - MASRAKH, DISTRICT - SARAN
 2. IRSHAD ALI @ IRSHAD ALI MANSURI SON OF LATE NIJAMUDDIN MIYAN RESIDENT OF VILLAGE - SISAI, P.S. - MASRAKH, DISTRICT - SARAN
 3. IKHLAK MANSURI SON OF LATE JAMALUDDIN MIYAN RESIDENT OF VILLAGE - SISAI, P.S. - MASRAKH, DISTRICT - SARAN

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. PASPAT SAH SON OF LATE CHANDRIKA SAH RESIDENT OF VILLAGE - SISAI, P.S. - MASRAKH, DISTRICT - SARAN

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajiv Kumar Verma, Sr. Advocate Mr. Rajneesh, Advocate Mr. Rohan Verma, Advocate
For the State	:	Mrs. Usha Kumari No.1, Spl. PP
For the Respondent No.2:	:	Mr. Jeetendra Narayan, Advocate

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 07-03-2024 Heard learned senior counsel for the Appellants,

learned counsel for respondent No.2 and learned Spl. PP for the

State.

2. The instant appeal has been filed under section
14A(1) of the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act (in short ‘SC/ST POA Act’).

3. The appellants have challenged the order dated
10.11.2022 passed by the learned Exclusive Special Judge



SC/ST (POA), Saran at Chhapra in Complaint Case No. 76/2022 (SC/ST Trial No. 186/2022) by which cognizance has been taken of the offences punishable under sections 302/34, 120B of the Indian Penal Code (in short 'IPC') and under Section 3(2)(r) of SC/ST POA Act against the appellants on the basis of protest petition, filed by the respondent No. 2 which was treated as fresh petition of complaint of the respondent No. 2. In this appeal, the appellants have made a prayer for setting aside the order impugned.

4. Mr. Rajiv Kumar Verma, learned senior counsel appearing for the appellants submits that the cognizance of the alleged offences has been taken by the learned Exclusive Special Judge, SC/ST (POA), Saran at Chhapra in mechanical manner without application of judicial mind and the instant matter relates to an unnatural death of one namely Manish Kumar, who happened to be grandson of the brother of respondent No. 2. The respondent No.2 initially on 29.04.2020 gave a written information to the police revealing that his brother's grandson namely Manish Kumar, aged about 13 years who was playing with other children of his village in an orchard, fell down from a tree then the other children who were playing with him, raised an alarm and thereafter he and his family



members rushed to the spot and saw his grandson, Manish Kumar in lying condition and he was found dead and on the basis of such information an U.D. Case bearing Masrakh P.S. U.D. Case No. 06 of 2020 (*Annexure-1*) was registered. Thereafter, the respondent made representations to the senior police officers complaining about the non-progress of the U.D. case and finally, on 13.09.2020, he filed a complaint case bearing C. No. 202 of 2020 in the court of First Additional District & Sessions Judge-cum-Special Judge, Saran at Chhapra that was sent to the police concerned for investigation and accordingly, SC/ST P.S. Case No. 50/2020 was registered on 13.09.2020 under section 302/34 of IPC and also under section 3(1)(r) and (s) of SC/ST Act and the appellants were named as accused in that case. It is further submitted that the said complaint case (*Annexure-2*) was filed five months after the occurrence without giving any explanation and the respondent No. 2 came with a new story and according to him, he was informed by some persons living nearby his house that around 2:00 P.M., all the accused persons (appellants) took the victim with them towards *Barhaiya* orchard where they brutally assaulted Manish Kumar (deceased) and he was killed by them and the appellants committed that occurrence on account of past



enmity. It is further submitted that after the registration of U.D. Case (*Annexure-1*), the police prepared an inquest report of the deceased and further got the dead body of the deceased examined by the Doctor and the postmortem report was prepared in which the cause of death was shown as '*C/R failure due to Spinal Shock*' and the said medical finding is completely corroborative to the accidental death of the victim that was revealed by the respondent No. 2, himself, in his first version and after the death of the victim, the news of his accidental death was also telecasted on *Zee News* and in this regard a xerox copy of the printout of the said news publication has been filed as *Annexure-4* and deceased's inquest report and postmortem report have been filed as *Annexure-3* and 3A. Learned counsel further submits that the investigating officer examined all the material witnesses during investigation and ultimately the case was found as untrue and in the result the appellants were not sent up for trial and as per the investigating officer, the appellant No. 1 (Alaudin Mansuri) was having a civil dispute with the informant and the deceased Manish Kumar had gone with his friends on 29.04.2020 towards *Barhaiya Gachhi* of his village, where he was playing with his friends and during that course of playing, he fell down from a tree and died of spinal injury. And



in this regard the first written information given by respondent No.2 is also relevant and supportive. Learned counsel further submits that there was a civil dispute between the respondent No.2 and the appellants and in between them an incident of mutual assault had taken place and thereafter, brother of the appellant No.1 namely, Kasim Mansuri lodged Mashrakh P.S. Case No. 291/2020 and the respondent No.2 also lodged a counter case bearing Mashrakh P.S. Case No. 292 of 2020 under the relevant sections of IPC and SC/ST Act and the said litigation is sufficient to show that there was no good relation in between the appellants and the respondent No.2, so respondent No. 2 cooked up a false story by taking an advantage of the accidental death of his grandson with an intention to put pressure upon the appellants with respect to the land dispute and fabricated false case in which the cognizance of the alleged offences has been taken by the order impugned.

5. Mr. Jeetendra Narayan, learned counsel appearing for respondent No.2, has vehemently opposed this appeal and submitted that the learned trial court has taken cognizance of the alleged offences and there is sufficient *prima facie* material to attract these offences and on the protest petition which was later converted into a complaint filed by respondent No. 2 the



material witnesses were examined who stated that the deceased was seen in the company of the appellants and admittedly, there was enmity in between the appellants and the family of the deceased who died an unnatural death.

6. Heard both the sides and perused the order impugned and other relevant materials. The respondent No.2, who happens to be cousin grandfather of the deceased Manish Kumar, firstly, lodged an U.D. Case by filing a written application in which he did not make any allegation of crime against any of the appellants and he revealed that his grandson fell down from a tree when he was playing with his friends in an orchard. The most important thing is that as per U.D, Case, respondent No.2 and his family members rushed to the spot and found the deceased in lying condition and furthermore as per the postmortem report, the cause of death of the deceased was opined as '*C/R failure due to spinal shock*' which is in conformity with an incident of falling down of a person from a tree. If the victim would have been assaulted by the appellants then there must be some external injuries on his body but no such injury was found by the doctor concerned. The respondent No.2 remained mum for several months and finally on 13.09.2020, he filed a typed complaint before the trial court



with the allegation that he was informed by some persons whose details was given by him in the complaint that the deceased was taken by the appellants from his house towards *Barhaiya Gachi*. Admittedly, there was a tense relation in between the appellants and the respondent No.2, so if the factum of taking of the deceased by the appellants from his house had come in the knowledge of respondent No.2 and others then a legal action ought to have been taken by the respondent No.2 immediately but he remained mum for several months which creates a serious doubt in the allegation levelled by the respondent No.2 in his complaint. Furthermore, the complaint petition of the respondent No.2 was investigated by the police but no any truth or substance was found in the allegation levelled by the respondent No.2.

7. In view of the aforesaid facts as well as considering the above submissions and the materials available on the case record, this Court forms the opinion that the respondent No.2 did not come with clean hands when he filed his complaint case as well as protest petition and the allegation levelled by him, appears to have been made by him against the appellants with malice intention and with the intention to harass the appellants or create pressure upon them on account of a civil dispute which



was running in between them and if in the light of the materials discussed above the appellants are put on trial then it would be a serious abuse of the process of law and will also defeat the ends of the justice. As such, this Court finds substance in this appeal and the order impugned appears to have been passed in mechanical manner and the same is not sustainable in the eye of law, so, the order impugned is hereby set aside and all the subsequent proceedings, if any, have arisen in pursuant to the order impugned against the appellants shall also stand set aside.

8. In the result, the instant appeal stands allowed.

(Shailendra Singh, J)

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