

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.314 of 2023**

Arising Out of PS. Case No.-19 Year-2021 Thana- CHHATAPUR District- Supaul

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1. HARI SUTIHAR @ HARI SHARMA Son of Late Zabar Sutihar R/V- Dahariya, P.S- Chhatapur, Dist- Supaul
  2. Ashok Sharma @ Pintu Sutihar @ Pintu Sharma Son of Hari Sutihar @ Hari Sharma R/V- Dahariya, P.S- Chhatapur, Dist- Supaul
  3. Anil Kumar @ Anil Sutihar Son of Hari Sutihar @ Hari Sharma R/V- Dahariya, P.S- Chhatapur, Dist- Supaul
  4. Sunil Kumar @ Sunil Sutihar Son of Hari Sharma @ Hari Sutihar R/V- Dahariya, P.S- Chhatapur, Dist- Supaul
  5. Surya Narain Sutihar @ Mantu Kumar Son of Kari Sutihar R/V- Dahariya, P.S- Chhatapur, Dist- Supaul

... .. Appellant/s

Versus

1. The State of Bihar
2. Satyendra Paswan Son of Satan Paswan R/V- Dahariya, Ward No. 6, P.S- Chhatapur, Dist- Supaul

... .. Respondent/s

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**Appearance :**

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| For the Appellant/s  | : | Mr. Dhananjay Kumar Tiwary, Advocate |
| For the Respondent/s | : | Mrs. Usha Kumari 1, Spl. PP          |
| For the Informant    | : | Mr. Kuldeep Kumar, Advocate          |

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**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY**

ORAL ORDER

10    15-02-2025                      Learned counsel for the appellant undertake to remove the defect.

2. Heard Mr. Dhananjay Kumar Tiwary, learned counsel for the appellant and Mrs. Usha Kumari 1, learned Special PP for the State as also Mr. Kuldeep Kumar representing the Informant.

3. The present appeal has been preferred:-

*“against the order dated 16.12.2021 passed by  
learned Sessions Judge cum Special Judge*



*(SC/ST Act), Supaul in SC/ST P.S. Case No. 5 of 2021 arising out of Chhatapur P.S. Case No. 19 of 2021 whereby and whereunder cognizance under Section 302 of the Indian Penal Code read with Section 3(i)(x) of the SC/ST Act has been taken against the appellants differing with the final form submitted by the police under Section 279, 304A of the Indian Penal Code.”*

4. With the consent of the parties, both the Appeal and the Interlocutory Application shall be taken up for hearing.

5. As per the prosecution story, the informant alleged that his father had gone to Tapra Mohammadgang border to see his farm and the daughters of the informant were there to collect dung. They came home crying that the grandfather has been thrown by the motorcyclist on the road and he is injured. The father of the informant was taken to the Health Centre, Chhatapur and upon regaining consciousness he explained the assault theory to the informant. Subsequently, he succumbed to the injuries whereafter the F.I.R.

6. The police investigated the matter, submitted charge-sheet and the learned court vide an order dated 16.12.2021 took cognizance under section 302 of the Indian



Penal Code and section 3(i)(x) of the SC/ST Act.

7. The police investigated the matter and found the allegation against the appellants to be untrue vide final form dated 30.08.2021 vide no. 217/2021.

8. The court thereafter took up the matter, having recorded the paragraph nos. 4, 8 to 10 and 24 of the case diary as also the post mortem report where sharp cutting injuries were found on the person/deceased, took cognizance in the matter vide an order dated 16.12.2021.

9. Aggrieved, the present appeal.

10. It is the case of the appellant that a pure road accident has been changed into a murder case forcing the appellants to face the trial. It is his submission that though there is no eye witness to the occurrence, though the names of two granddaughters recorded that they have seen grandfather being thrown away by motorcyclist.

11. He further submits that even the statement of the informant that his father upon regaining consciousness explained the assault theory is doubtful. In that background, when the Police found the case to be untrue, it was incumbent upon the learned court to accept the same and exonerate them of the charges. Instead, cognizance order was passed which has



been challenged.

12. The informant is represented and according to him, the Police erred in filing the final form despite clear allegation against the appellants. According to him, firstly the deceased upon regaining consciousness informed the informant about the occurrence, secondly, the court has observed that the sharp cutting on the person/deceased was found in the post mortem.

13. He last submits that the appellants despite the cognizance order of the year 2021 did not file any appeal in time and instead went for anticipatory bail vide Cr. Appeal (SJ) No. 2919 of 2022 which came to be rejected on 02.11.2022.

14. Instead of surrendering, the present appeal was filed two months later in the month of January 2023.

15. Learned Special PP also submits that for the present, the court had to see whether the prima facie case is made out or not and in that background, it rightly took cognizance having taken note of the different statements of the witnesses as also the post mortem report.

16. Having heard the parties and perusing the record, the fact remains that a person is dead. Whether it is a road accident or a killing took place, it is for the Trial Court to decide



prima facie a case is made out as the informant alleges that upon regaining consciousness, his father (deceased) informed about the occurrence. The post mortem report also supports the assault theory. The names of the appellants have been cropped up, in that background when only the cognizance order has been passed, it would have been better for the appellants to appear before the court. The matter is of the year 2021 and it has long wandered. Time has come when it is put back to the trial.

17. Accordingly, both the Appeal as also the Interlocutory Application stands dismissed.

**(Rajiv Roy, J)**

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