

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.922 of 2019

Arising Out of PS. Case No.-272 Year-1999 Thana- RAHIKA District- Madhubani

1. Kamal Mahto Son of Late Anup Mahto Resident of village - Malangia, P.S.- Rahika, District - Madhubani
2. Raj Kumar Mahto Son of Sri Bramhdeo Mahto Resident of village - Malangia, P.S.- Rahika, District - Madhubani
3. Chandeshwar Mahto Son of Sri Kamal Mahto Resident of village - Malangia, P.S.- Rahika, District - Madhubani
4. Sajivan Mahto Son of Sri Kamal Mahto Resident of village - Malangia, P.S.- Rahika, District - Madhubani

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur Ms. Vaishnavi Singh Mr.Md.Imteyaz Ahmad
For the Respondent/s	:	Mr.Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 20-02-2025 Heard learned counsel for the appellants and learned counsel appearing on behalf of the State.

2. The present appeal has been preferred against the order passed by the Additional District and Sessions Judge-VI, Madhubani in Sessions Trial No.464/2007 arising out of Rahika P.S.Case No.272/99, G.R.No.1557/99, the appellants were charged under sections 147, 148, 149, 324/149, 380/149, 307/149, 452/149, 354/149, 323/149 and 504/149 of the Indian Penal Code, who vide his judgment and order dated 31.1.2019 has been pleased to convict the appellants under sections 307/149, 452/149 and 323/149 of the Indian Penal Code and vide order dated 6.2.2019 sentenced the Bramhdeo Mahto to undergo simple imprisonment for 4 years and a fine of



Rs.5000/- under section 307/149 of the Indian Penal Code and in default of payment to undergo simple imprisonment for two months. Similarly to undergo four years simple imprisonment and fine of Rs.5000/- under section 452/149 of the Indian Penal Code and in default to undergo two months simple imprisonment and simple imprisonment for one year under section 323/149 of the Indian Penal Code. Appellant Raj Kumar Mahto to simple imprisonment for 7 years and fine of Rs.5000/- under section 307/149 of the Indian Penal Code and in default of payment to undergo simple imprisonment for two months. Similarly to undergo 7 years simple imprisonment and fine of Rs.5000/- under section 452/149 of the Indian Penal Code and in default to undergo two months simple imprisonment and simple imprisonment for one year under section 323/149 of the Indian Penal Code. Appellant Kamal Mahto to undergo simple imprisonment for 7 years and fine of Rs.5000/- under section 307/149 of the Indian Penal Code and in default of payment to undergo simple imprisonment for two months. Similarly to undergo 7 years simple imprisonment and fine of Rs.5000/- under section 452/149 of the Indian Penal Code and in default to undergo two months simple imprisonment and simple imprisonment for one year under section 323/149 of the Indian Penal



Code. Appellant Chandeshwar Mahto and Ram Sajivan Mahto to undergo simple imprisonment for 5 years and fine of Rs.5000/- under section 307/149 of the Indian Penal Code and in default of payment to undergo simple imprisonment for two months. Similarly to undergo five years simple imprisonment and a fine of Rs.5000/- under section 452/149 of the Indian Penal Code and in default to undergo two months simple imprisonment and simple imprisonment for one year under section 323/149 of the Indian Penal Code. It is ordered that all the sentences of each convict shall run concurrently and the period undergone shall be set off.

3. The prosecution case in brief is that P.W.6 Ram Narain Prasad Singh lodged *fardbeyan* on 25.10.1999 at 16.30 hours in Government Hospital, Raiyam before the Officer Incharge of Raiyam Police station stating therein *inter alia* that on 24.10.1999 in the evening at about 4.00 P.M. his villager Brahmdeo Mahto was carrying paddy bundle on bullock cart to his house and in that course, one wheel of bullock cart climbed on the plinth of his house as a result of which his plinth was damaged. His wife Sita Devi asked him as to why he damaged the plinth. On which Brahmdeo Mahto, Raj Kumar Mahto, Kamal Mahto, Chandeshwar Mahto, Sajivan Mahto,



Jagtarni Devi, Sita Devi armed with lathi, iron rod, farsa, axe came at his house and started abusing his wife and when he objected them then Brahmdeo Mahto gave rod blow on him which hit his left eye as a result of which he became injured. Thereafter he, his son Mahesh Kumar Singh, wife Sita Devi fled away inside the house and closed the door. Upon which all accused persons after breaking the door entered into house and dragged his son and his wife from the house to the Angan and Brahmdeo Mahto gave order to kill them. Raj Kumar Mahto gave Tengari blow on head of his wife as a result of which she fell down and Kamal Mahto gave Farsa blow on his son on his head as a result of which he also fell down. Thereafter all the accused assaulted his son and wife with lathi and Rod and also looted the box containing jewelry, clothes and cash and radio worth Rs. 35000/-. On hulla villagers namely Ram Bilash Mahto, Bil-at Mahto, Ram Prasad Mahto and others came running and with the help of them they took his wife and son to Government Hospital Raiyam for treatment.

4. Learned counsel for the appellants has submitted that the prosecution in support of its case examined altogether 8 (eight) witnesses namely P.W.1 is Ram Prasad Mahto, P.W.2 is Bil-at Mahto, P.W.3 is Mahesh Kumar Singh (injured), P.W.4 is



Ram Bilash Mahto, (Injured & Wife of Informant) P.W.5 is Sita Devi P.W.6 is Ram Narain Prasad Singh (informant), P.W.7 is Dr. Ram Aadhar Choudhary and P.W.8 is Subhash Chandra Mishra and the prosecution also exhibited certain documents in their support such as Ext.1 is signature of informant on fardbeyan, Ext.2 is injury report of Ram Narain Prasad Singh, Ext.3 is injury report of Mahesh Kumar Singh, Ext.4 is injury report of Sita Devi, Ext.5 is fardbeyan, Ext.6 is certified copy of judgment of criminal appeal no.16/08 which was allowed.

5. It is also submitted on behalf of the appellants that from the impugned judgment itself it is evident that the so-called injured were allegedly treated at Raiyam ignoring the place of treatment i.e. firstly in village of the informant and secondly at Rahika. From Rahika one can go to Madhubani within 15 to 20 minutes whereas for going to Raiyam it will take more time as the road is not good.

6. It is submitted that the alleged occurrence took place on 24.10.99 at 4.00 P.M. while the first information report was registered on 27.10.1999 and no explanation has been offered for the same.

7. The main thrust of the argument of the learned counsel for the appellants is that there is a delay of three days in



the registration of the F.I.R. and the injury report does not support the prosecution case.

8. Learned counsel for the State has supported the impugned judgment and has submitted that the appellants have been rightly convicted by the trial Judge.

9. I have considered the submissions of the parties.

10. The appellant No. 1 (Kamal Mahto) has already died and his name has been deleted by order dated 18.11.2024.

11. So far as the P.W.-7 who is the doctor is concerned, he has proved the injury reports.

12. As per the prosecution witnesses, Sita Devi was assaulted by the appellant Raj Kumar Mahto with a Tengari which is a sharp edged weapon but the injuries which have been sustained by Sita Devi are lacerated caused by hard and blunt substance. Similarly, the injured Mahesh Kumar Singh has been assaulted by the appellant No. 2 Kamal Mahto by a *Farsa* and he has sustained incised wounds 3 ¼" X ¼" scalp deep and two lacerated wounds. These injuries are not possible by *Farsa*.

13. The informant has been assaulted by Brahmadeo Mahto by a rod but the injuries caused are hard and blunt substances and the size of the injury is 1/2"X1/4"X1/6.

14. The allegations against the appellants are not



corroborated by the medical evidence. Moreover, the delay of three days in registration of the formal F.I.R. has not been explained by the prosecution. The *fardbeyan* was recorded on 25.10.1999 but the F.I.R. has been registered on 27.10.1999.

15. Learned counsel for the appellant has relied on the judgment of the Hon'ble Supreme Court in the case of ***Meharaj Singh v. State of U.P.*** reported in **(1994) 5 SCC 188**. Relevant paragraphs are quoted herinbelow:-

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.

16. Learned counsel for the appellants has further relied on the judgment of the Hon'ble Supreme Court in the case of ***State of Andhra Pradesh Vs. Madhusudan Rao*** reported in ***(2008) 15 SCC 582***. Paragraphs No. 30 and 31 are quoted for ready reference:-

“30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured



version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.

31. In the present case, as noted supra, the first information report in a regard to the alleged occurrence on 19-4-1996 was lodged on 22-5-1996. Admittedly, after her discharge from the hospital on 22-4-1996, the complainant went to her parents' house and resided there. In her testimony, the complainant has deposed that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the first information report. No explanation worth the name for delay in filing the complaint with the police has come on record. We are of the opinion that this circumstance raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW 1) and her father (PW 3), rendering it unsafe to base the conviction of the respondent upon it. Resultantly, when the substratum of the evidence given by the complainant (PW 1) is found to be unreliable, the prosecution case has to be rejected in its entirety.”

17. Learned counsel for the appellants has also relied on the judgment of the Hon'ble Supreme Court in the case of **Satpal Singh Vs. State of Haryana** reported in **(2010) 8 SCC 714**. Paragraph No. 10 of the aforesaid judgment is quoted below:-

“15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment



and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.

18. In view of the above, I am of the view that the prosecution has miserably failed to prove the prosecution case and therefore the impugned judgment dated 31.01.2019 cannot be sustained.

19. Accordingly, the judgment and order dated 31.01.2019 and 06.02.2019 respectively passed by the Additional District and Sessions Judge, VI, Madhubani in Sessions Trail No. 464 of 2007 arising out of Rahika P.S. Case No. 272 of 1999 is hereby quashed. The appeal stands allowed.

(Sandeep Kumar, J)

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