

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.10 of 2004

1. Haricharan Ram son of Palat Ram
2. Bikrama Ram
3. Adenika Ram both sons of Shyamdeo Ram
All resident of village-Bishanpura Mahuwari, PS-Maharajganj, District-Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms.Rishika Jha, Amicus Curiae
For the Respondent/s : Mrs.Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 08-01-2025

1. The criminal appeal is filed against the judgment and order dated 08.12.2003, passed by the Adhoc Sessions Judge, Ist Fast Track Court, Siwan, in Sessions Trial No. 116 of 1985/140 of 2001, arising out of Case No. 48 of 1984 of Maharajganj PS, whereby the appellant No. 1 was convicted under Sections 148 and 324 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of two years. Further, appellants Nos. 2 and 3 were convicted under Sections 147 and 323 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for a period of one year each.



2. As there is no assistance from the counsel for the appellants, this Court is constrained to appoint Ms. Rishika Jha as *Amicus Curiae* to assist the Court and has also called for a report from the Superintendent of Police, Siwan, to verify whether the appellants are alive or not? The Court has received a letter dated 23.12.2024 from the Superintendent of Police, Siwan, informing the Court that appellant No. 1, Haricharan Ram, passed away five years ago. The letter is accompanied with the report from the *Mukhiya*, confirming the death of the 1st appellant. Therefore, case against appellant No. 1 shall stand abated. The remaining appellants are alive.

3. Heard Ms. Rishika Jha, *Amicus Curiae* for the appellants and Mrs. Anita Kumari Singh, Learned Additional Public Prosecutor for the State. Perused the records.

4. It is contended by the Learned *Amicus Curiae* that the informant, Motilal Ram, the doctor who is alleged to have examined the informant as well as the injured (his mother, PW-2), and the Investigating Officer were not examined in this case. It is also contended by her that neither the *fardbeyan* nor the FIR were marked, which are basic documents for the trial court to know the contents and prove the allegations against the appellants.



Furthermore, it is contended by the Learned *Amicus Curiae* that Exhibits 1 and 1/1 were marked under Section 294 of the Cr.P.C., despite the objections raised by the defense, and thus, those documents cannot be considered. It is further contended that other witnesses in this case, namely, PWs 1 and 3, are alleged to be eye-witnesses to the incident, but their presence is not established by the contents of the *fardbeyan*. Therefore, their evidence cannot be said to be corroborated with the evidence of PW-2, the injured, and thus, except for the sole testimony of PW-2, nothing remains on record to corroborate her version. Consequently, the conviction against the appellants is liable to be set aside.

5. On the other hand, the Learned Additional Public Prosecutor contended that the sole testimony of PW-2 inspires confidence of the Court and, therefore, there is no error or irregularity in the orders passed by the trial court and therefore, prayed for the confirmation of the trial court's judgment.

6. In support of the appellant's contentions, the Learned *Amicus Curiae* relied on the judgment of the Apex Court in ***State of Kerala and Anr. vs. C.P. Rao***, reported



in **(2011) 6 SCC 450**, wherein their Lordships held as follows:

“7. In the background of these facts, especially the non-examination of CW 1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in “Panalal Damodar Rathi v. State of Maharashtra” wherein a three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on. In the aforesaid circumstances, the three-Judge Bench in “Panalal Damodar Rathi” case held that there is grave suspicion about the appellant’s complicity and the case has not been proved beyond reasonable doubt.”

7. The *Amicus Curiae* also relied on the Judgment of this Court in **Dhanwant Sharan v. State of Bihar** reported in **2012 SCC OnLine Pat 770 : (2013) 1 PLJR 380 : (2013) 1 BBCJ 95**

“42.The defence has taken a plea that it is a case of false implication. On



behalf of the appellant, in course of argument, reliance has been placed on the decision of the Hon'ble Supreme Court in case of "State of Kerala v. C.P. Rao" since reported in "(2011) 6 SCC 450". In the said case the respondent was convicted under Section 7 and 13(2) read with 13(1)(d) of the 1988 Act by the Special Judge, Tiruananthpuram. The Kerala High Court had set aside the judgment of the trial court in appeal the State preferred an appeal before the Hon'ble Supreme Court against the Judgment of acquittal recorded by the Hon'ble High Court. The Hon'ble Supreme Court after taking into consideration the decision of the Apex Court given in "Panna Lal Damodar v. State of Maharashtra" since reported in "(1979) 4 SCC 526" dismissed the appeal. Paragraphs 5, 7 and 8 of the Judgment of the Hon'ble Supreme Court in State of Kerala v. C.P. Rao (Supra) is relevant for the present case which reads as under:-

"5. The prosecution case is that the demand of illegal gratification of Rs. 5000 was made by the respondent from CW 1 on 19.10.1994 for the purpose of giving pass marks to all the students who appeared in the practical examination of Pharmaceutical II in D-Pharma final



examination in the year 1994. It is an admitted case that the respondent alone cannot give such marks. In view of the examination system prevailing such marks have to be approved by others. The respondent alone, therefore, is admittedly not in a position to allot higher marks.

7.In the background of these facts, especially the non-examination of CW 1, was found very crucial by the High Court. The High Court has referred to the decision of this Court in “Panalal Damodar Rathi v. State of Maharashtra” wherein a three-Judge Bench of this Court held that when there was no corroboration of testimony of the complainant regarding the demand of bribe by the accused, it has to be accepted that the version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied on. In the aforesaid circumstances, the three-Judge Bench in “Panalal Damodar Rathi” case held that there is grave suspicion about the appellant’s complicity and the case has not been proved beyond reasonable doubt.

8.This Court finds that the appreciation of the ratio in Panalal Damodar Rathi case by the High Court was



correctly made in the facts and circumstances of the case.”

43. In the present case too, the complainant from whom the demand of bribe is said to have been made by the appellant, has not been examined. The version of the complainant is not corroborated and, therefore, the evidence of the complainant cannot be relied upon.”

8. The points for determination in this appeal are:

(i) Whether the trial court rightly convicted the appellants for the aforesaid offences and

(ii) Whether the prosecution was able to prove the guilt of the appellants beyond a reasonable doubt?

9. In order to determine these points, it is necessary to re-appreciate the entire evidence on record.

10. The criminal law was set into motion based on the fardbeyan of Motilal Ram/the informant, who gave the report on 02.04.1984 at 2:30 PM to ASI/B. Hansda of Maharajganj P.S. The contents of the fardbeyan disclose that, in the midnight of 02.04.1984, six villagers, namely (1) Haricharan Ram, (2) Ravindra Ram, (3) Ambika Ram, (4) Adenika Ram, (5) Vikrama Ram, and (6) Shyam Dev Ram, all of a sudden came to the door, armed with lathis and an axe,



and injured the informant's mother, Laxminia Devi, with the axe, causing her to become unconscious. When the informant, Motilal Ram, tried to save his mother, the rest of the accused struck him, with an axe on his left elbow, left shoulder, and the thumb of his left hand, and attacked the house with bricks, breaking the gate and destroying a cycle. On hearing the noise, Durga Paswan and Devnath Paswan witnessed the incident and saved the others from the hands of the accused. The motive for the incident was a long-standing dispute/case between them.

11. Basing on the fardbeyan, a criminal case was registered bearing Case No. 48 of 1984 for offences punishable under Sections 147, 148, 307, and 326 of the Indian Penal Code. The trial court framed charges against five of the accused on 02.12.1998, for offences punishable under Sections 147, 148, 307, and 326 of the Indian Penal Code. The charges were read over and explained to the accused. Out of the five accused, only three were put on trial, and the accused Ambika Ram and Adenika Ram were ordered to be produced for a separate trial, as the absconding accused persons could not be tried together. However, the Sessions Court merged the cases. The trial



took place after nineteen years and eight months. On behalf of the prosecution PWs-1 to 5 were examined.

12. The evidence of PW-1, Durga Paswan, discloses that on the date of the incident, while he was at his house, he heard noise and ran towards the house of Motilal Ram. He saw Haricharan Ram, Ambika Ram, Adenika Ram, Shyam Dev Ram, Ravindra Ram, and Vikrama Ram. A sharp-edged weapon, a farsa, was in the hand of Haricharan Ram, and sticks were in the hands of Adenika Ram. Further, Haricharan Ram hit the injured Laxminia Devi with the farsa, and the rest of the accused hit her with sticks. When Motilal Ram came to save his mother, Adenika Ram, Ravindra Ram, and Vikrama Ram hit him with sticks. In cross-examination, the defence tried to prove that he was not present at the time of the incident and did not witness the incident.

13. PW-2/Laxminia Devi, is the injured witness. Her evidence discloses that on the date of the incident, while she was sitting at her door, the appellants and others came to her house. Haricharan Ram hit her on the head with the *farsa*, and the others hit her with sticks. Ravindra Ram hit her left arm and shoulder with a stick, and when her son came to save her, they hit him as well. Immediately after



being struck on the head, blood oozed out, and she became unconscious. In cross-examination, she admitted that she remained unconscious for 2-3 hours after being hit and blood spilled on the floor. She went to the police station the following morning and that she received nine stitches for the injuries sustained by her.

14. PW-3/Devnath Paswan, testified that on the date of the incident, he witnessed the incident. Appellant No. 1/Haricharan Ram, hit Laxminia Devi on the head with a *farsa*. Ravindra Ram and Adenika Ram hit her with an axe, and when Motilal Ram tried to save her, the rest of the accused hit him with lathis. The accused also demolished the informant's house, destroyed the door, and damaged a cycle. In cross-examination, he denied the suggestion that he did not witness the incident.

15. PW-4/Doodhnath Sah, and PW-5/Timal Ram, are also alleged to be eye-witnesses to the incident, but they turned hostile. It is pertinent to mention that Exhibits 1 and 1/1 were marked under Section 294 of the Cr.P.C., despite objections raised by the defence counsel.

16. Section 294 of Cr.P.C defines as follows:-

294. No formal proof of certain documents.—(1) Where any document is



filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

17. As per the above-mentioned section, any document filed before the Court by the prosecution or the accused can be called upon to admit or deny the genuineness of such a document when its authenticity is not disputed. The section itself is clear that if a document is disputed, it cannot be marked under Section 294 of the Cr.P.C.



18. At this juncture, it is necessary to rely on the citations of the Hon'ble Apex Court in **Pankaj Singh V. State of Haryana** reported in **2024 SCC OnLine SC 474** wherein their Lordships have held that:-

20.*The submission made by the learned counsel appearing for the Prosecutrix based on Section 294 of the Cr. P.C. remains to be dealt with. Section 294 of the Cr. P.C. reads thus:*

"294. No Formal Proof Of Certain Documents.—(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed.



Provided that the Court may, in its discretion, require such signature to be proved."

Similarly in, ***Shamsher Singh Verma v. State of Haryana*** reported in **(2016) 15 SCC 485** it was held that:

14. *In view of the definition of "document" in the Evidence Act, and the law laid down by this Court, as discussed above, we hold that the compact disc is also a document. It is not necessary for the court to obtain admission or denial on a document under sub-section (1) of Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed by the prosecution or on the application/report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly, on a document filed by the defence, endorsement of admission or denial by the Public Prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel*



for the complainant in respect of document filed by the defence.

In ***Sonu alias Amar v. State of Haryana*** reported in **(2017) 8 SCC 570**, their Lordships have held that:

35. *Section 294 CrPC, 1973 provides a procedure for filing documents in a court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act. The judgment in Sk. Farid case [Sk. Farid Hussinsab v. State of Maharashtra, 1981 SCC OnLine Bom 26: 1983 Cri LJ 487] is not applicable to the facts of this case and so, is not relevant.*

The above citations squarely apply to the facts and circumstances of the case on hand.

19. This Court is unable to understand as to how Exhibits 1 and 1/1 were marked under Section 294 of the Cr.P.C. despite objections raised by the appellants. It is also



relevant to mention that the prosecution failed to examine the informant/injured to corroborate the contents of the fardbeyan. Neither the fardbeyan nor the FIR were brought on record to prove the initial allegations against the appellants, nor was the police investigation was presented by the police to prove the contents of the chargesheet. The reasons for not examining the informant, the medical officer who examined the informant and PW-2 (the injured), and the investigating officer are best known to the prosecution. Even in the absence of the key witnesses, the trial court marked the documents—i.e., the injury report of PW-2, Laxminia Devi, as well as that of the informant—as Exhibits 1 and 1/1. Despite this, the trial court relied solely on the evidence of PW-2 to convict and sentence the appellants.

20. Admittedly, appellant No. 1 died during the pendency of the appeal, and the case against him was abated. The prosecution's case is that appellant No. 1/Haricharan Ram, hacked the informant/PW-2 on her head with a farsa, causing grievous injury, while the rest of the appellants struck the informant with lathis. However, there is no evidence from the informant on record to prove the allegations against the remaining appellants. According to the evidence of PW-2, Haricharan Ram struck her head with



the farsa, and the other appellants hit her with sticks. However, the injury report (Exhibit-1) does not corroborate this allegation. PW-2 stated that the other appellants hit her with lathis. Admittedly, the prosecution's case is that the other appellants hit the informant; however, in the absence of the informant's evidence, there can be no conviction against these appellants. Therefore, this Court finds that the trial court erred in convicting appellant Nos. 2 and 3 for the offences punishable under Sections 147 and 323 of the Indian Penal Code. Section 321 of the Indian Penal Code deals with the punishment for voluntarily causing hurt.

21. Section 321 defines “voluntarily causing hurt”:-

“Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

22. The prosecution has miserably failed to prove that appellant Nos. 2 and 3 committed an act with the intention of causing hurt to the informant/Motilal Ram, or with the knowledge that they had caused harm to him. The prosecution has also miserably failed to prove the guilt of



appellant Nos. 2 and 3 for the offences punishable under Sections 148 and 323 of the Indian Penal Code. Therefore, the conviction and sentence of the trial court against appellant Nos. 2 and 3 are liable to be set aside.

23. In result the appeal is allowed. The judgment and order dated 08.12.2003 passed in Sessions Trial No. 116 of 1985/140 of 2001 arising out of Maharajganj PS Case No. 48 of 1984 are hereby set aside.

24. The record reveals that appellant Nos. 2 and 3 were released on bail on 08.01.2004, therefore, the bail bonds are liable to be cancelled.

25. A copy of this judgment be handed over to Ms. Rishika Jha, Advocate (*Amicus Curiae*), so that she may claim her remuneration before the competent authority.

(G. Anupama Chakravarthy, J)

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