

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.642 of 2024

Arising Out of PS. Case No.-406 Year-2020 Thana- BAJPATTI District- Sitamarhi

Yogendra Sah @ Yougindra Sah, Son of Late Ram Bhagat Sah, Resident of village - Barri Fulwariya @ Barri Phulwariya, Police Station - Bajpatti, District – Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ganesh Sah Son of Late Lalbabu Sah @ Babulal Sah Resident of village - Barri Fulwariya, Police Station - Bajpatti, District - Sitamarhi
3. Shankar Sah Son of Late Mahendra Sah Resident of village - Barri Fulwariya, Police Station - Bajpatti, District - Sitamarhi
4. Bachchan Sah Son of Late Hulas Sah Resident of village - Barri Fulwariya, Police Station - Bajpatti, District - Sitamarhi
5. Ram Sakal Sah Son of Late Bhola Sah Resident of village - Barri Fulwariya, Police Station - Bajpatti, District - Sitamarhi
6. Thaga Sah Son of Late Vilash Sah Resident of village - Barri Fulwariya, Police Station - Bajpatti, District - Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ashhar Mustafa, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.P.P.
For the Respondent No.2:		Mr. S.K. Thakur, Advocate
For the Respondent No.3:		Mr. Santosh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 27-01-2025

This appeal against the judgment of acquittal of respondent nos. 3 to 6 of all the charges, has been preferred by the informant. Further the grievance of the informant-appellant is that the learned trial court has, though, convicted respondent no.2 of



the charge under Section 302 of the Indian Penal Code (in short 'IPC') and sentenced him a life imprisonment and a fine of Rs.10,000/- under Section 302 IPC but acquitted him and other respondents (R-3 to R-6) of the charges under Sections 307, 341, 323 and 324 IPC. The respondent nos. 3 to 6 have also been acquitted of the charge under Section 302 IPC.

2. The prosecution case as stated in brief in the memorandum of appeal are being reproduced hereunder:-

(i) That on 08.11.2022 at around 5:47 PM, the grandson of the appellant Murari Kumar (deceased), injured Rishi Kumar (PW-3), relative Anish Kumar (PW-1), Ramjee Kumar (PW-6), Guddu Kumar (PW-5) and few others were returning the village on their motorcycle after attending the Sradh ceremony from village Basant.

(ii) That as they reached near Raipur Musahri toll, they had to suddenly stop their vehicle because of traffic. As a result whereof, one Ganesh Sah (R/2), who was coming from behind on another motorcycle, lost his balance. He said that he could have fallen down, upon which, Murari Kumar said that they stopped the vehicle because of traffic. This infuriated Ganesh Sah who incited his companions and co-villagers namely, Shankar Sah (R/3), Bachchan Sah (R/4), Ram Sakal Sah (R/5) and Thaga Sah (R/6) to kill Murari Kumar.

(iii) That consequent thereto, all the abovenamed persons pulled dagger from their waist, attacked his grandson Murari Kumar and one Rishi Kumar. As they inflicted repeated knife blows, his



grandson Murari Kumar succumbed to his injuries while Rishi Kumar sustained grievous injuries.

(iv) That upon hulla, the accused persons fled away noticing the crowd. Both Murari Kumar and Rishi Kumar were taken to hospital by the villagers for treatment, where Murari Kumar was declared dead while Rishi Kumar received treatment.

3. On the basis of fardbeyan of Yogendra Sah, who is the grandfather of the deceased and has been examined as PW-4, recorded at Sadar Hospital campus on 09.11.2020 at 1.45 AM, a formal FIR being Bajpatti P.S. Case No.406 of 2020 was registered on 09.11.2020 for the offences punishable under Sections 341, 323, 324, 307, 302, 34 IPC.

4. The investigation found sufficient material to proceed against the accused persons. Accordingly, a charge-sheet was filed against all the accused. The learned S.D.J.M., Pupri took cognizance of the offences and after necessary compliance under Section 207 Cr.P.C., case was committed to the court of Session vide order dated 17.02.2021. The case was registered as Sessions Trial No.68 of 2021 in the court of Sessions.

5. The accused persons were explained the charges, they denied the same and claimed to be tried. On 08.03.2021, charges were framed against all the five FIR named accused persons under Sections 341/34, 323/34, 324/34, 307/34 and 302/34 IPC.



6. In course of trial, the prosecution examined as many as ten witnesses. Out of these 10 witnesses, one namely Sujit Kumar (PW-7) was not a witness in the final form submitted by the Investigating Officer (in short 'I.O.') but was permitted to depose after allowing an application dated 25.10.2021 filed on behalf of the prosecution. The list of witnesses and the documents exhibited on behalf of the prosecution are as under:-

List of Prosecution Witnesses

PW-1	Anish Kumar
PW-2	Chandan Kumar
PW-3	Rishi Kumar (brother of victim)
PW-4	Yogendra Sah (Informant)
PW-5	Guddu Kumar
PW-6	Ramji Sah @ Ramji Kumar
PW-7	Sujit Kumar
PW-8	Dr. Kalikant Jha
PW-9	Dr. Ashok Kumar Singh
PW-10	Devendra Chaudhary

List of Exhibits

Exhibit-1	Signature and mobile number of Anish Kumar on fardbeyan
Exhibit-1/1	Signature of Yogendra Sah on fardbeyan
Exhibit P-2	Injury report of Rishi Kumar
Exhibit P-3	Postmortem report of deceased Murari Kumar
Exhibit P-4	FIR
Exhibit P-4/a	Endorsement on fardbeyan
Exhibit P-5	Charge-sheet
Exhibit P-6	Carbon copy of death inquest report.

7. On completion of the prosecution evidence, the statement of the accused persons were recorded under Section 313 Cr.P.C. in which all of them claimed that they were falsely



implicated in this case. The defence did not adduce any oral or documentary evidence.

Findings of the Trial Court

8. As stated above, after examining the evidences available on the record, the learned trial court found that the prosecution had fully established the charge of murder against the respondent no.2 beyond all shadow of doubts, however, respondent nos. 3 to 6 were acquitted of all the charges. The respondent no.2 has also been acquitted of the charges under Sections 307, 341, 323 and 324 IPC.

Submissions on behalf of the appellant

9. Learned counsel for the appellant has confined his submissions within the scope of the present appeal. This Court would observe at the outset that the discussions made in this judgment are only in context of the subject matter of the present appeal and not beyond that, therefore, no part of its observations in this judgment shall influence the appeal, if any, pending against the judgment of conviction at the instance of respondent no.2.

10. Learned counsel for the appellant has submitted before this Court that as many as four prosecution witnesses, namely, PW-1, PW-2, PW-5 and PW-6 have fully supported the prosecution case, they are eye witnesses to the occurrence and they



have corroborated PW-3 in saying about the involvement of all the accused persons in commission of the murder of the deceased.

11. Learned counsel submits that the learned trial court failed to consider that the timing of occurrence is 08.11.2020 at 5.47 PM and the fardbeyan of the informant was recorded after few hours i.e. on 09.11.2020 at 1.45 AM at Sadar Hospital, Sitamarhi and as such there is no delay in lodging of the FIR. It is submitted that the delay of few hours has been well explained by the prosecution.

12. Learned counsel submits that the learned trial court ought to have considered that the postmortem report of the deceased fully corroborated that the deceased was stabbed/inflicted injuries by means of dagger. Further, non-examination of the father of the deceased namely Dinesh Sah may not have any adverse bearing in this case even as he is an inquest witness but is not eye witness of this case.

Submissions on behalf of the State and Respondents

13. Learned Addl.P.P. for the State as well as learned counsel for the respondent nos.2 to 6 have opposed the appeal. It is submitted that the learned trial court has not committed any error in acquitting the respondent nos.2 to 6 of the charges which are subject matter of the present appeal.



Consideration

14. We have heard learned counsel for the parties and have gone through the evidences available on the record. In this case, the fardbeyan of Yogendra Sah, who is the grandfather of the deceased (PW-4), recorded by S.I. Jitendra Kumar Singh (not examined) at Sadar Hospital, Sitamarhi on 09.11.2020 at 1.45 AM is the basis of the prosecution case. According to his fardbeyan, the occurrence took place on 08.11.2020 at 5.47 PM when the deceased Murari Kumar and his injured brother Rishi Kumar and his village relatives Anish Kumar, Guddu Kumar and his daughter's son Ramjee Kumar along with some other villagers were returning from village Basant after eating a 'Shradh feast'. They were returning by bicycle.

15. In his fardbeyan, the informant (PW-4) has narrated the occurrence which started with Ganesh Sah (R-2) asking the prosecution side as to why they stopped the cycle. The informant has stated that it was Ganesh Sah who became excited and started hurling abuses upon his grandson and others and when he was asked to refrain from doing so then Ganesh and all other accused persons took out sharp edge knife from their waist and attacked upon the deceased Murari Kumar and the injured Rishi Kumar. They repeatedly assaulted them. He has stated that on hulla, on



seeing the crowd they fled away whereafter the villagers took both of them for treatment to Sitamarhi where Murari Kumar was declared dead and Rishi Kumar was receiving treatment. The fardbeyan has been marked Exhibit-1.

16. It appears that the fardbeyan was forwarded to the officer in-charge of Bajpatti police station where a formal FIR was registered on 09.11.2020 at 8.30 AM. It is evident from the fardbeyan of the informant (PW-4) that he is not an eye witness to the occurrence and his statement has been recorded after 8 hours of the occurrence. The learned trial court has considered the explanation offered by the prosecution to explain the delay in recording of the fardbeyan of the informant and the learned trial court has accepted the explanation but at the same time the learned trial court has taken this as an additional reason to take a view that the delay of about 8 hours gave the chance to the informant to fully think about the manner in which the fardbeyan was to be recorded as well as he had got an opportunity to discuss with his well-wishers as well as his family members and eye witnesses to gather the information about the occurrence and also to incorporate the names of the persons against whom he wished to lodge the FIR. The evidences available on the record clearly demonstrate that the informant is an eye witness and he got the



information about the occurrence at his residence thereafter he reached Sadar Hospital, Sitamarhi where he must have been informed about the occurrence by eye witnesses, so he had given his fardbeyan on the basis of the information given by him by his family members.

17. In the fardbeyan, it is alleged that all the accused persons (respondent nos.2 to 6) repeatedly assaulted Murari Kumar (deceased) and Rishi Kumar (PW-3) but the postmortem report of the deceased which has been marked Exhibit-P3 at the instance of the doctor (PW-9) would show that the doctor had found only one external injury on his body which was an incised wound over left side chest size 1-1/2”X1/2”X cavity deep with blood and blood clot. Dr. Ashok Kumar Singh (PW-9) who was posted at Sadar Hospital, Sitamarhi as Medical Officer had conducted the postmortem on the body of the deceased at 1.40 AM. In his opinion, the cause of death was due to hemorrhage and shock leading to cardio-respiratory failure as injury had been caused by sharp cutting weapon (penetrating weapon). It is evident from the postmortem report (Exhibit-P3) that it clearly rules out the prosecution story of repeated assault by the accused persons on the deceased. So far as the injury of PW-3 is concerned, the same has been brought on record as Exhibit-P2 at the instance of doctor



(PW-8). The doctor Kalikant Jha (PW-8) examined Rishi Kumar (PW-3) on 08.11.2020 at 7.30 PM at Primary Health Centre, Bajpatti. He had found only one injury on his body which was penetrating wound 1”X1/2”X1/4” mid of back which was caused due to penetrating substance and was simple in nature. PW-8 was suggested by the defence that he had examined PW-3 without any police requisition which he denied and claimed that he had submitted his injury report on the back side of the requisition sent by the police.

18. On perusal of Exhibit ‘P2’, it would appear that police had sent a requisition on 10.11.2020 in which it is addressed to the Medical Officer of Primary Health Center, Bajpatti that he had examined the injury of PW-3 vide Serial No. 4538 on 08.11.2020. The Officer-in-Charge of Bajpatti Police Station, namely, Devendra Chaudhary requested the Medical Officer of Primary Health Center, Bajpatti to make available the injury report of PW-3. After receipt of this requisition from the Officer-in-Charge of Bajpatti Police Station, Dr. K.K. Jha (PW-8) prepared the inquest report on 10.11.2020 which has been marked Exhibit ‘P2’. On Exhibit ‘P2’, the date seems to have been overwritten. Two things are evident from the injury report (Exhibit P2) that PW-3 was examined at P.H.C., Bajpatti on 08.11.2020 at 07:30 PM



without any police requisition and the injury report has been prepared later on. The prosecution has not proved the entry made in the register of the Primary Health Center, Bajpatti vide Serial No. 4538 on 08.11.2020. PW-8 has admitted in paragraph '6' of his cross-examination that there is an overwriting in the date on the injury report and it does not bear his signature. He has further stated in his cross-examination that this kind of injury may occur due to fall on the edge of a brick or due to fall on a pointed substance. The learned trial court has discussed the evidence adduced with regard to the injury suffered by PW-3. It has been noticed that the prosecution witnesses as well as injured Rishi Kumar (PW-3), all have stated that PW-3 was also inflicted several knife blows but the injury report showed only one injury over the back of Rishi Kumar. It has been noticed that the prosecution witnesses have stated that Rishi Kumar had fallen down in the field from his back so the learned trial court has upon complete evaluation of the evidences on this point taken a view that Rishi Kumar had received injury over his back while he was trying to save Murari Kumar at the time of occurrence.

19. In our considered opinion, the learned trial court has rightly appreciated the evidence on this point and we find no reason to take any other view. It is evident from the evidence on



the record that Rishi Kumar (PW-3) had not received any knife injury and did not receive any intentional assault. On the face of these evidences, the prosecution case as disclosed in the FIR that Respondent Nos. 3 to 6 had given repeated knife blows to the deceased Murari Kumar and the injured Rishi Kumar (PW-3) is getting completely ruled out. The learned trial court has discussed in paragraph '38' of the impugned judgment that the injury report and postmortem report are only the opinion of the expert and if it is not in consonance with the statements of the prosecution witnesses which are found to be reliable then the injury report and postmortem report may not be taken as conclusive proof, but where the other circumstance attached with the occurrence makes it possible for giving time to the prosecution to craft a story then the contradiction between the postmortem report or injury report and the statements of the prosecution witnesses in the FIR are bound to be taken into consideration.

20. We fully agree with the above discussions and observations of the learned trial court. We find that Rishi Kumar (PW-3) had gone to the Primary Health Center, Bajpatti on the same day i.e. 08.11.2020 at 07:30 PM where he was examined by PW-8 but no information was given to Bajpatti Police Station with regard to the occurrence. PW-3 has stated in his examination-in-



chief that a large number of people had assembled at the place of occurrence whereafter all the five accused persons fled away with their bicycle and in the meantime, one unknown person came on a motorcycle who took Murari Kumar to Bajpatti Hospital and Anish Kumar (PW-1) sat behind him. PW-3 has further stated that he was also being taken towards Bajpatti on a motorcycle. Sujit Kumar was called over telephone then people from the village came and then he was also taken to Bajpatti Hospital on motorcycle. At Bajpatti Hospital, both the brothers were treated and given first aid. The statement of PW-3 clearly shows that Sujit Kumar and several persons from the village had come and the deceased as well as the injured both were taken to Bajpatti Hospital. PW-8 had found the injuries on the body of PW-3 as simple in nature, still PW-3 has stated in his examination-in-chief that he had become unconscious but in his cross-examination in paragraph '9', he has stated that when he reached Bajpatti Hospital, he was conscious. He did not lodge any case in Bajpatti Police Station. He stayed in Bajpatti Hospital for half an hour where both the brothers were treated and they were given injection whereafter he became unconscious and after 5-6 days in Sitamarhi Hospital, he had regained consciousness. The prosecution has not brought on record any evidence to show that PW-3 was treated in



Sitamarhi Hospital and that he was unconscious for 5-6 days. The prosecution has not proved any evidence showing admission of PW-3 in the hospital and his discharge from the hospital. In paragraph '10', PW-3 has stated that after 24-25 days of the occurrence, his statement was recorded by Police. It is evident from the deposition of PW-3 that his statement in the examination-in-chief that he was also assaulted by all the five accused by knife does not withstand the test of cross-examination. The fact that neither PW-3 nor the other persons who had come from the village informed the Bajpatti Police Station with regard to the occurrence would only lead to conclude that the prosecution was availing opportunity to incorporate the names of the persons against whom they wished to lodge the FIR. The learned trial court has not committed any error in taking a view that it was at the risk to bring such facts which might have been intentional and not the actual fact as occurred at the place of occurrence because the informant is not an eye witness.

21. We have also found that the I.O. (PW-10) had recorded the restatement of the informant Yogendra Sah at the place of occurrence. He recorded the statement of Rishi Kumar (PW-3) on 05.12.2020. On the same day, he examined Sujit Kumar (PW-7) and Fekan Sah (not examined). In course of his cross-



examination on behalf of the accused Shankar Sah and Thaga Sah, PW-10 has stated that the fardbeyan of Yogendra Sah was not recorded in his presence and the officer who had recorded the fardbeyan is still alive and is in service. He has stated that he had not sent Rishi Kumar (PW-3) to the hospital. He had not recorded any Sanha with respect to the information of the occurrence received in the police station. He had also not recorded the statement of the neighbouring villagers who are living nearer the place of occurrence because they were not ready to give their statements but this fact was not mentioned by PW-10 in the case diary. Prior to 05.12.2020, Rishi Kumar (PW-3) had not contacted him.

22. In his cross-examination on behalf of the accused Bachan Sah, this witness has stated that for the first time he had recorded the statement of Sujit Kumar on 05.12.2020. He had not recorded the statement of Ramji Sah. Sujit Kumar (PW-7) has stated that he got information about the occurrence from the villagers and from the grandfather of the deceased. None of the witnesses has stated that Bachan Sah had assaulted the deceased by dagger. PW-10 has further stated that the witness Anish Kumar (PW-1) had not stated before him that all the accused persons were armed with dagger and had attacked on Murari. He had also not



stated that all the accused persons assaulted Rishi by dagger and injured him. We find from the evidence I.O. (PW-10) that he has contradicted Rishi (PW-3) saying that he had not stated before him that all the accused persons had indulged in quarrel with Murari and all of them were abused in the name of the mother and all the accused persons had taken out dagger and started assaulting Murari.

23. Having examined the entire evidence on the record, we are of the opinion that the learned trial court has not committed any error in acquitting respondent no.3 to respondent no.6 of all the charges. No fault may be found in acquittal of respondent no.2 of the charges under Sections 307, 341, 323 and 324 IPC.

24. At the end, we would remind ourselves of the settled principles governing an appeal of acquittal. There are catena of decisions of the Hon'ble Supreme Court in which it has been held that with the acquittal of an accused the innocence of the accused gets affirmed and the appellate court need not interfere with an order of acquittal unless it comes to an irresistible conclusion as to the guilt of the accused. In a recent judgment in the case of **H.D. Sundara vs. State of Karnataka (2023) 9 SCC 581**, the Hon'ble Supreme Court has been pleased to reiterate the principles in



paragraph '8' which we reproduce hereunder for a ready reference:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

25. Before, we part with this judgment by way of abundant caution we reiterate that no part of the observations and

1. *State of Karnataka v. H.K. Mariyappa*, 2010 SCC OnLine Kar 5591



findings of this Court in present case shall prejudice either parties in the pending appeal, if any, against conviction of respondent no.2.

26. In result, we find no merit in this appeal. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	15.02.2025
Transmission Date	15.02.2025

