

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 555 of 2016

Arising Out of PS. Case No.-86 Year-1996 Thana- MAHUA District- Vaishali

Dinesh Das S/o Yogendra Das R/o village- Mahua Singh Rai, P.S.- Mahua,
District- Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 693 of 2016

Arising Out of PS. Case No.-86 Year-1996 Thana- MAHUA District- Vaishali

Binod Das S/o Yogendra Das Resident of Village- Mahua Singh Rai, P.S. -
Mahua, District-Vaishali

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance:

(In CRIMINAL APPEAL (DB) No. 555 of 2016)

For the Appellant/s : Mr. Ram Shankar Das, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 693 of 2016)

For the Appellant/s : Mr. Raj Shekhar, Advocate

Mr. Sanjay Kumar, Advocate

Mr. Ajeet Kumar, Advocate

Mr. Ram Shankar Das, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 12-11-2025

The aforesaid appeals preferred under Section 374 (2) of
the Code of Criminal Procedure, 1973 (hereinafter referred to as
“the Cr.P.C.”) arise out of the same judgment of conviction and



order of sentence dated 13.05.2016 and 16.05.2016 respectively, hence the aforesaid appeals have been heard together and are being disposed off by the present common judgment. By the said judgment of conviction dated 13.05.2016, passed by the learned Additional Sessions Judge-V, Vaishali at Hajipur (hereinafter referred to as “the Ld. Trial Judge”) in Sessions Trial No. 348 of 1998 (arising out of Mahua P.S. Case No. 86 of 1996), the appellants have been convicted under Sections 302/149 of the Indian Penal Code (hereinafter referred to as the ‘IPC’) and have been sentenced to undergo rigorous imprisonment for life with fine of Rs. 25,000/- each and in default thereof they have been directed to undergo further simple imprisonment for four months. All the sentences have been directed to run concurrently.

2. At the outset it may be pointed out that as far as Devendra Sah (one of the appellant of the first case, i.e. Criminal Appeal (DB) No.555 of 2016) is concerned, a co-ordinate Bench of this Court, in its order dated 09.02.2018, has noted the fact that the Juvenile Justice Board vide letter no. 538 dated 31.7.2017 has sent a report mentioning therein that the said Devendra Sah was juvenile at the time of the alleged occurrence and accordingly, he has been declared juvenile. In such view of the matter, the



said co-ordinate Bench of this Court, by the aforementioned order dated 09.02.2018 has been pleased to set aside the sentence awarded to the said Devendra Sah vide judgment dated 16.5.2016 in Sessions trial no. 348/1998, has granted bail to him and the Office of this court has been directed to separate the case of the said Devendra Sah from this record as well as from lower court record and send the same to Juvenile Justice Board, Vaishali at Hajipur within two weeks for passing order on the point of sentence qua the said Devendra Sah, with a direction to the said Devendra Sah to appear before the Juvenile Justice Board, Vaishali at Hajipur within a fortnight from today.

3. The short facts of the case are that the fardbeyan of the informant Surendra Singh was recorded by the Assistant Sub-Inspector of Police, Pirbahore Police Station, District-Patna, namely, Sri R.P. Singh on 05.05.1996 at 09:45 a.m. at the PMCH, Emergency Ward, Patna. In the fardbeyan, Surendra Singh (who later on died in the month of August, 2008), has stated that his nephew, namely Ajay Kumar Singh (deceased) aged about 20 years used to study in R.N. College, Hajipur in the final year of B.A. course. He has further stated that his niece Pratima Kumari (PW-7) used to study at Vaishali Vidyalaya, Mahua in class-10 and used to go to village Mahua Singrai for



taking tuition from Jha Ji sir. The informant has next stated that on the previous day at about 05:30 in the evening the Chaukihdar of the police station informed that the nephew of the informant, namely Ajay Kumar Singh is admitted in Mahua Government Hospital where he is lying unconscious and has received injuries on his forehead and body. Immediately, the niece of the informant Pratima Kumari informed the informant that when she was returning from Mahua Singrai after having taken tuition and had reached at the tea shop of Yogendra Das, there in front of the shop, Binod Das and Yogendra Das had engaged in eve teasing with her, whereafter she had returned home and disclosed about the same to Ajay Kumar Singh, whereupon Ajay Kumar Singh, for making enquiry from Binod Das and Yogendra Das, had gone to the shop of Yogendra Das, where Mahendra Das, Yogendra Das, Ram Briksh Das and Binod Das had assaulted Ajay Kumar Singh on his forehead by a sharp weapon as also by rod and lathi. Upon receiving information police had arrived there and taken Ajay Kr. Singh to the hospital. He has stated that the occurrence was witnessed by the local people. The informant has next stated that thereafter, he along with other related persons had gone to Mahua Hospital where they found Ajay Singh to have been grievously injured



and was lying in an unconscious condition. The doctor had then referred the said Ajay Kumar Singh on 04.05.1996 itself and at about 7:00 in the evening they had taken him for treatment to PMCH where he was admitted, however he died during the course of treatment in an unconscious state on 4.5.1996 itself at about 10:45 p.m. The informant has also stated that it is his claim that Mahendra Das, Yogendra Das, Ram Briksh Das and Binod Das have assaulted Ajay Kr. Singh by sharp cutting weapon, lathi and rod with an intention to kill him, resulting in him being injured grievously and he died while he was unconscious and was being treated at PMCH.

4. On the basis of the said fardbeyan of the informant, a formal FIR bearing Mahua P.S. Case No. 86 of 1996 was drawn on 05.05.1996 at 10:45 a.m. against Mahendra Das, Yogendra Das, Ram Briksh Das and Binod Das under Sections 302/34 of the IPC. The police had then conducted investigation and upon finding the case to be true, had filed chargesheet against Mahendra Das, Yogendra Das, Ram Briksh Das, Binod Das, Dinesh Das, Devendra Sah and Nathuni Das. The learned Trial Court upon considering the chargesheet and the materials on record had taken cognizance of the offence under Section 302/34 of the IPC vide order dated 24.07.1997 against all the



aforesaid seven accused persons, whereafter the case was committed to the Court of Sessions vide order dated 03.12.1998 and was numbered as Sessions Trial No. 348 of 1998. The learned Trial Court had then framed charges against the aforesaid accused persons including the appellants vide order dated 21.09.2002 under Section 302/149 of the IPC.

5. During the course of trial, the prosecution has examined 11 witnesses. While PW-2 Shila Nath Sahni, PW-9 Akhilesh Kumar, PW-10 Awadhesh Kumar and PW-11 Amarnath Das are formal witnesses, PW-3 Mukesh Kumar Singh, PW-5 Hare Ram Singh and PW-6 Fudeni Rai claim to be eye witnesses to the alleged occurrence. The prosecution has also examined PW-1 Upendra Singh and PW-7 Pratima Kumari, who are stated to be hearsay witnesses. PW-4 Dev Narayan Jha has been declared hostile while PW-8 Dr. Arvind Kumar Singh has conducted the postmortem examination of the dead body of the deceased Ajay Kumar Singh.

6. The learned counsel for the appellant of the second case namely, Binod Das has submitted that though the date of occurrence is 04.05.1996 at around 05:00 p.m. in the evening, however, there is no evidence on record to show as to who had informed the police and how the police had arrived at the place



of occurrence inasmuch as no diary entry at the police station has been brought on record. It is also submitted that how the deceased was taken to Mahua and then to PMCH has not been explained inasmuch as neither any document showing that the deceased was treated at Mahua Hospital has been produced nor any evidence showing that the police had taken the deceased to the hospital, has been produced. In fact, no evidence has been produced to prove the date and time of taking the deceased from Mahua Hospital to PMCH. The prosecution has failed to bring on record any document to show that the doctor at Mahua Hospital had referred the deceased for further treatment to PMCH nor any document has been brought on record to show that the deceased was treated at PMCH. The learned counsel for the appellant of the second case has next submitted that though the deceased had succumbed to his injuries at 10:45 p.m. in the night of 04.05.1996, however the fardbeyan was recorded only on 05.05.1996 at about 09:45 a.m., hence in between the said period the prosecution had hatched a conspiracy to falsely implicate the accused persons including the appellants. It is also submitted that there is in fact no eye witness to the alleged occurrence and as far as PW-3, PW-5 and PW-6 are concerned, who claim to be eye-witnesses, they can at best said to be



chance witnesses. It is also submitted that neither the author/scribe of the fardbeyan nor that of the FIR has been examined which has caused grave prejudice to the prosecution. It is contended that all the witnesses have suppressed the factum of Yogendra Das having been injured and in fact the injury sustained by the accused Yogendra Das has also stood unexplained by the prosecution.

7. The learned counsel for the appellant of the second case has referred to paragraph no. 11 of a judgment rendered by the Hon'ble Apex Court in the case of ***Lakshmi Singh vs. State of Bihar***, reported in ***AIR 1976 SC 2263*** to submit that non-explanation of the injuries sustained by the accused at the time of the occurrence or during the course of altercation is a very important circumstance & where the prosecution fails to explain the injuries sustained by the accused, two results follow:-

- (1) *The evidence of the prosecution witnesses is untrue;*
- (2) *The injuries probabilise the plea taken by the appellants.*

8. Thus, it is submitted that in the present case reference has though been made to the injuries sustained by Yogendra Das by PW-6 (Fudeni Rai), however the prosecution has failed to prove the cause of such injury. Therefore, the said witness is obviously



