

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1140 of 2024**

Arising Out of PS. Case No.-153 Year-2020 Thana- PIPRAHI District- Sheohar

Md. Imteyaz @ Imteyaz Alam, Son of Md. Rahimtullah, Resident of Village -Basahiya Shaikh, PS -Piprahi, Dist -Sheohar

... .. Appellant

Versus

1. The State of Bihar
2. Md. Shabbir @ Jumman, Son of Late Md. Jalil, Resident of Village -Basahiya Shaikh, PS -Piprahi, Dist -Sheohar
3. Md. Ashraf, Son of Md. Shabbir @ Jumman, Resident of Village -Basahiya Shaikh, PS -Piprahi, Dist -Sheohar

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. (Dr.) Alok Kumar Alok, Advocate Mr. Hans Lal Kumar, Advocate
For the State	:	Ms. Shashi Bala Verma, Addl.P.P.
For the Respondent Nos.2 and 3:		Mr. Raj Narayan Mishra, Advocate Mr. Uday 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 : 13-02-2025

We have heard learned counsel for the appellant, learned Addl.P.P. for the State and learned counsel for the respondent nos.2 and 3 as also perused the learned trial court's records.

2. This appeal has been preferred for setting aside the judgment of acquittal dated 20.06.2024 (hereinafter referred to as the 'impugned judgment') whereby and whereunder the learned Sessions Judge, Sheohar (hereinafter referred to as the 'learned



trial court') has been pleased to acquit respondent nos. 2 and 3 of the charges under Sections 307/34, 504/34 and 506/34 of the Indian Penal Code (in short 'IPC') in connection with S.Tr. No. 69 of 2021 arising out of Piprahi P.S. Case No. 153 of 2020.

Prosecution case

3. The prosecution case is based on the *fardbeyan* of Imteyaz Alam who has been examined as PW-2 in the present case. In his *fardbeyan*, recorded by S.H.O. of Piprahi police station, Sheohar on 02.08.2020, the informant has stated that on 30.07.2020 at about 2.00 PM, his father Rahimullah was working in his Khalihan, in the meantime, Md. Shabbir @ Jumman, son of Md. Jalil and Md. Ashraf, son of Md. Shabbir @ Jumman, both resident of Basahiya Sheikh, P.S.-Piprahi, District-Sheohar having armed with spade and iron rod came there and with an intention to kill him, Md. Shabbir assaulted him by spade on his head and Md. Ashraft assaulted him by iron rod behind his back due to which his father became unconscious and fell down. It is alleged that when the informant, her mother Momna Khatoon and other co-villagers came there, the accused persons fled away. Thereafter, the injured was taken to Sheohar Sadar Hospital from where he was referred to SKMCH, Muzaffarpur and thereafter PMCH, Patna where his treatment was going on.



4. On the basis of the written report of the informant Imteyaz Alam (PW-2), the S.H.O., Piparahi P.S. registered Piparahi P.S. Case No.153 of 2020 dated 02.08.2020 under Sections 307, 323, 341, 504 and 506/34 IPC.

5. After completion of investigation of the case, the I.O. of the case has submitted a charge-sheet bearing CS No.194/2020 dated 30.09.2020 under Sections 341, 323, 307, 504 and 506/34 IPC against Md. Shabbir @ Jumman whereas the charge-sheet bearing CS No.268/2020 dated 31.12.2020 under Sections 341, 323, 307, 504 and 506/34 IPC was submitted against Md. Ashraf.

6. The learned J.M.-1st Class, Sheohar took cognizance of the offences alleged vide order dated 08.12.2020 and thereafter case was committed to the court of Sessions on 03.04.2021. The records of the case was received by the office of Sessions Court on 07.06.2021 and the case was registered as S.T. No.69 of 2021.

7. On 08.10.2021, charges were framed against both the accused persons under Sections 307/34, 323/34, 341/34, 504/34 and 506/34 IPC. The charges were read over and explained to them in Hindi which they denied and claimed to be tried.

8. In course of trial, the prosecution examined as many as 8 witnesses and exhibited several documents in support of its



case. The list of witnesses and the documents exhibited on behalf of the prosecution are as under:-

List of Prosecution Witnesses

PW-1	Md. Shahid
PW-2	Imteyaz Alam (Informant)
PW-3	Rahmatullah
PW-4	Rizvana Khatoon (Daughter of Informant)
PW-5	Ajesh Kumar Singh (I.O.)
PW-6	Jitendra Kumar (I.O.)
PW-7	Dr. Ravindra Kumar
PW-8	Rahimullah (injured)

List of Exhibits

Exhibit-1/PW-2	Written report
Exhibit-1/1/PW-2	Endorsement of SHO over written petition
Exhibit-2/PW-4	Formal FIR
Exhibit-3/PW-4	Injury report of Rahimullah @ Nathu
Exhibit-X/PW-4	Injury report of Rahimullah @ Nathu issued by PMCH

9. On completion of the prosecution evidence, the statement of the accused persons were recorded under Section 313 Cr.P.C. in which both of them pleaded not guilty. The defence did not adduce any oral or documentary evidence.

Submissions on behalf of the appellant

10. Learned counsel for the appellant submits that the learned trial court has not properly considered the oral and documentary evidences brought by the prosecution. It is submitted



that the learned trial court has failed to consider that the informant's father was brutally assaulted by the private respondents causing serious injury on the vital parts of the body and consequently he was forced to remain in hospital for a period of one month. The medical evidence clearly suggests that the injured sustained two injuries on his 'person' which are grievous in nature. It is submitted that the injured (PW-8) has clearly supported the allegation of assault. The Doctor (PW-7) has examined the injured and held the injuries to be grievous in nature. It is submitted that the evidence produced by the prosecution is consistent as regards the assault made with the iron rod and the "*pasa*" of spade.

11. Learned counsel submits that the informant (PW-2), PW-1, PW-3 and PW-4 have supported the factum of occurrence. Learned counsel submits that the prosecution has successfully established the fact that the assault was made on injured Md. Rahimullah @ Nathu aged 70 years with an intention to commit his murder due to which he received grievous injury on the vital part of the body. Thus, it is submitted that the prosecution successfully established the charge against the accused persons.



Submissions on behalf of State and Respondent Nos. 2 and 3

12. Learned Additional Public Prosecutor for the State as well as the learned counsel representing respondent nos.2 and 3 have defended the impugned judgment of acquittal of the learned trial court. It is submitted that there is vital inconsistency in the statement of witnesses so examined on behalf of the prosecution and they could not even establish the place of occurrence by giving the correct description thereof. It is submitted that the informant alleged that after the occurrence the injured was taken to Sadar Hospital, Sheohar but the doctors finding his condition precarious referred him to SKMCH, Muzaffarpur and from there he was referred to PMCH, Patna. The medical report of injured issued by SKMCH, Muzaffarpur and PMCH, Patna has not been brought on record by prosecution. It is submitted that on the alleged date of occurrence injured Rahimullah was forcibly getting the cow dung removed there from and in that course he got slipped and received injury on his head. The Doctor attended the injury has not observed any lacerated or incised wound on the person of the injured rather only bleeding nose and the bruise on head was found on the person of injured. Except the two aforesaid injuries the doctor did not observe any other injury on the person of



Rahimullah. Learned counsel submits that testimony of Rahimullah that he remained hospitalised for 26 days does not find support from any medical report in that regard. Learned trial court has rightly come to the conclusion that in absence of appropriate material, trial court is not convinced as regards the finding of the nature of injury of injured so deposed by the Doctor (PW-7).

13. Learned counsel submits that the learned trial court has rightly reached to a conclusion that the prosecution has failed in establishing charge under Sections 307/34, 504/34 and 506/34 IPC and therefore the accused persons have not been held guilty of the said charges.

Consideration

14. It is evident from the impugned judgment that the charges were framed against the respondent nos.2 and 3 under Sections 307/34, 324/34, 341/34, 506/34 and 506/34 IPC. The learned trial court has, upon analysis of the evidences available on the record, found that the prosecution has been able to prove charges under Sections 324/34 and Section 341/34 IPC beyond all reasonable doubts but at the same time the prosecution failed in establishing charges under Sections 307/34, 504/34 and 506/34 IPC.



15. In this case the prosecution case is based on the written application (Exhibit-1) submitted by Imteyaz Alam (PW-2) on 02.08.2020 with regard to the occurrence which took place on 30.07.2020 at 2.00 PM in the '*Khalihan*' of the informant/injured. In his written application, he has not claimed that he is an eye witness to the occurrence. All that he has stated is that when he and his mother Momna Khatoon and other villagers reached then both the accused persons fled away. In course of evidence, it has transpired that '*Khalihan*' which is the place of occurrence is at a distance of one kilometer from the house of the informant. In this regard while some of the witnesses have stated that the distance is one kilometer, the informant who has been examined as PW-2 has stated in paragraph '5' of his deposition that the place of occurrence is at a distance of half kilometer from his house.

16. This Court finds that the informant (PW-2) is an illiterate person who has stated that he did not remember the day and date of the occurrence. He claimed that he left his house at 1.30 PM and he was present at the place of occurrence at 1.30 PM. In the evening he had gone to Piprahi. It appears that in his examination-in-chief, PW-2 has categorically stated that by the time he reached, the accused persons had fled away. It is evident from the deposition of PW-2 that he is not an eye witness to the



occurrence. In paragraph '22' of his deposition, he has stated that the case was written by his brother and he had only put his signature thereon. He has further stated in paragraph '22' that his statement was recorded by the police one day after the occurrence. As regards the genesis of the occurrence, it is found from his deposition that the cause of occurrence is a land dispute. While, the informant claims that the land of '*Khalihan*' is his land and he had not taken the same on '*Batai*' from anyone, the accused persons were storing cow dung on the said land and they were claiming that this land is a government land, for this reason a quarrel had taken place. The defence suggested this witness that in his statement before police he had not stated that at the time of occurrence he, his mother and sister were present in *Khalihan*. PW-2 denied this suggestion. It is, however, evident that the genesis of the occurrence is a land dispute and the quarrel had taken place between the parties over the storage of cow dung on the said land.

17. As regards the place of occurrence, PW-1 has stated that in south there is a road, in west it is Sanaullah, in north Attaullah and in east it is his house.

18. In this case, Md. Shahid (PW-1) is a chance witness who claims that at 2 O' clock he was going on way passing



through *Khalihan* of Imteyaz where he had heard quarrel taking place among Shabbir @ Jumman, his son Ashraf and Rahmullah (the injured). Shabbir was having a spade in his hand and Ashraf was carrying an iron rod. He has stated that Jumman had assaulted Rahmullah on his head from front side, his son Ashraf had assaulted Rahmullah by iron rod from the back side in temporal region in between the ear and the eyes whereafter Rahmullah had fallen down. He claims that when he reached there the accused persons fled away. Although, in his examination-in-chief, he claims that the mother of Imteyaz, sister Rizwana Khatoon and Imteyaz were present in the *Khalihan* but it would appear from the deposition of this witness that he is cousin brother of Imteyaz and he has left his house at 2 O' clock and returned his house in night at 8.00 PM. This witness would not fall in the category of fully reliable witness inasmuch as his conduct shows that even though he is the cousin brother of the informant, he did not stop at the place of occurrence and intervene to save the injured. He has given the boundary of the place of occurrence, according to him, in north it is the land of Basir Sahab, in south it is SH-54 road, in west it is land of Hunaid and in east there is land of Master Hijbulla. His house from the place of occurrence is at a distance of half kilometer and he has left his house at 2.00 PM. It is further evident



that the time of occurrence as disclosed by PW-2 is 2.00 PM in the *Khalihan* which is at a distance of half kilometer from the house of PW-1, PW-1 himself states that he left his house at 2.00 PM, therefore, his presence at the place of occurrence is highly doubtful. The boundary of place of occurrence is provided by him is different from the boundary given by PW-2.

19. Rahamtullah (PW-3) is another prosecution witness who is uncle of Imteyaz (PW-2) and brother of Rahimullah (injured). He has stated in his examination-in-chief that the occurrence took place in between 1.45-2.00 PM when he was engaged in washing his motorcycle at some distance from the *Khalihan* of Rahimullah. He heard hulla from Khalihan whereafter he reached there. Shabbir and Ashraf had assaulted Rahimullah as a result whereof Rahimullah had fallen down and became unconscious. There were 4-5 persons who took Rahimullah to Sheohar. PW-3 does not say about the presence of PW-1 and PW-2 at the place of occurrence. He has stated that the place where he was engaged in washing the motorcycle is at a distance of less than one kilometer from his house. He reached the place of occurrence when Rahimullah was bleeding from his head and had fallen down on the earth. He could not say the length and width of the spade and the butt of the spade. He did not get any opportunity to



intervene in the quarrel. He has stated in paragraph '22' that one blow of spade was given. He has stated that he had not given the evidence in this case earlier and was deposing for the first time.

20. Rizwana Khatoon (PW-4) is the daughter of injured who is married at Sugia Pipar which is at a distance of Two *Kosh* (one *Kosh* is equal to 1.8 kilometers). She claims to have arrived in her *Naihar* ten days back. She has stated in paragraph '7' that the house of her father is at a distance of one kilometer from the place of occurrence. She has given different description of boundary of place of occurrence. In paragraph '10', she has stated that in north to the place of occurrence is a *Khalihan*, in south there is a land on which cow dung were stored, in east there are orchard and in west there is a house of another person. She claims that Jumman was storing cow dung on her land which was purchased by her father. She has stated that because of land dispute the occurrence has taken place. She had not seen spade.

21. Ajesh Kumar Singh (PW-5) is the I.O. of this case who had taken up investigation of the case on 30.08.2020 but had not conducted any investigation.

22. Jitendra Kumar (PW-6) is sub-inspector of police who was posted at Piprahi police station on 02.08.2020. He had lodged the formal FIR. He has proved the formal FIR (Exhibit-2)



and the endorsement thereon in his handwriting. He has given the boundary of the place of occurrence, in north SH-54 Pucci Road, at the north-west corner there is a Bharat Petroleum pump, in south it is the land with boundary of Md. Imteyazul and in east it is the land of SH-54 whereafter there is *Sahan* of Master Hijalbullla. PW-6 has stated that he reached the place of occurrence on 02.08.2020 but he had not prepared the ‘topography’ of the place of occurrence. He had not seized the spade and iron rod or the bloodstained clothes during investigation. He has stated that the occurrence took place on account of land dispute. Regarding the nature of land, he has stated that it is a government land.

23. Dr. Ravindra Kumar (PW-7) is the Medical Officer posted at Saroja Sitaram Hospital, Sheohar on 30.07.2020 at 3.30 PM. He has recorded to have examined the injured Rahamullah who had complained of vomiting and headache. He had found the following injuries on his person:-

“ On Face bruise 2”X1”, on nose bleeding opinion was reserved patient was referred to SKMCH, Muzaffarpur for needful.

Xerox CT scan report of Patan Medical College and Hospital was received in the Sheohar Hospital, through Memo No. 9764 dated 05.09.2020.

2. Investigation report of NCCT of Brain which I have de-scribed in injury report shows:-

Investigation Report Details:-

Sl.	Investiga-	Shows	Remarks
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No	tion		
1	NCCT OF BRAIN	.Biconvex hyperdense collection seen only left from parietal and temporal lobe cavities and extradural hematoma. . Few bubbles are seen in cranial cavity .Fracture of left temporal, parietal and frontal bone seen are bone window. . Mass effect in the forms of compression of left lateral ventricle and midline shift towards right side noted. . Scalp hematoma the left frontoparietal and temporal region.	Injury Report from PMCH Patna

On the basis of CT Scan report of P.M.C.H. Patna I have given my opinion both injury are grievous caused by hard and blunt substance such as back portion of Kudal and Iron Rod.

24. In his deposition, he has stated that on the basis of CT Scan report of P.M.C.H., Patna he has given his opinion that both the injuries are grievous caused by hard and blunt substance such as back portion of *Kudal* and iron rod but CT scan report of the P.M.C.H., Patna has not been exhibited on behalf of the prosecution. The xerox copy of the P.M.C.H., Patna collected from Saroja Sitaram Hospital, Sheohar has been marked as ‘X’ for identification. It is evident from the evidence of PW-7 that his report is based on the CT scan report of P.M.C.H., Patna which has not been proved in course of trial.



25. Injured Rahimullah has been examined as PW-8. In his examination-in-chief, he has stated that Md. Shabbir had assaulted him by the back side of *Kudal* spade on his head and Ashraf had assaulted him by iron rod on his neck whereafter he had fallen down and became unconscious. PW-8 has not stated about the presence of the witnesses such as his son, daughter and wife at the place of occurrence. His attention was drawn towards the previous statement made before police. What is to be noticed in the deposition of PW-8 is that according to him he was at his Dera at the time of occurrence at 2.00 PM when he was assaulted by R-2 and R-3. In his deposition, he does not say that the place of occurrence is the *Khalihan* and the prosecution has not brought any evidence by way of explanation to show that the *Khalihan* and *Dera* is the same and one place. He has claimed that the land on which Shabbir was storing cow dung is his private land. He was suggested that the cow dung were stored on the government land and when he went there to remove them he slipped and fell down as a result whereof he suffered the injuries.

26. From the evidence of the prosecution witnesses present on the record, we find that while the prosecution has proved that Jumman and Ashraf both had assaulted PW-8 but the reason behind the occurrence was a sudden quarrel between the



parties over storage of cow dung on a piece of land which both of them were claiming against each other. The occurrence took place in spur of moment and it does not appear from the materials on the record that the occurrence was pre-planned. The kind of weapon used by the R-2 and R-3 are said to be the spade and iron rod which are normally available in households in the village where people are involved in agriculture work. In such circumstance, we are of the opinion that the learned trial court has not committed any error in appreciation of the evidence on the record and no fault may be found in discharging the accused R-2 and R-3 of the charges under Sections 307/34, 504/34 and 506/34 IPC.

27. We find no merit in this appeal. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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