

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 754 of 2023

Arising Out of PS. Case No.-274 Year-2001 Thana- BIDUPUR District- Vaishali

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Ram Snehi Singh @ Ram Snehi Kumar, Son of Chandramauli Singh, Resident
of Village- Madurpur, P.S. Bidupur, District Vaishali

... .. Appellant/Informant

Versus

1. The State of Bihar.
2. Padam Ranjan Singh, Son of Chandramauli Singh, Resident of Village
Madurpur, P.S. Bidupur, District -Vaishali.
3. Om Prakash Singh, Son of Vishwambhar Singh, Resident of VillageMadurpur,
P.S. Bidupur, District -Vaishali.

... .. Respondents

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Indian Penal Code---section 307, 341, 323, 324, 504, 34 ---

*Appeal against acquittal of Respondent no- 2 and 3---allegation
against the Respondent no- 2 and 3 was that, on account of
property dispute, they attempted to murder Appellant by assaulting
him on his head by means of farsa and lathi---argument that the
grounds taken by the learned trial court in acquitting respondent
nos. 2 and 3 for the charged offences are not tenable in the eyes of
law as the evidences of the eye witnesses and the medical evidence
were not appreciated in the right perspective---respondents
countered by submitting that the respondents have been rightly*

acquitted of the alleged offences as no independent person was examined by the prosecution and the prosecution failed to explain the inordinate delay of 7-8 days having taken place in the registration of the formal FIR.

Held:- *the most important circumstance going against the prosecution is an inordinate and unexplained delay in registering the formal FIR---the alleged occurrence took place on 18.10.2001 and informant's fardbeyan was recorded on the same day but the formal FIR was registered on 25.10.2001 and the same was received in the court of C.J.M. on 30.10.2001---the Sub-Inspector who recorded the fardbeyan and the Investigating Officer were not produced by the prosecution as witnesses which adversely affects the prosecution's case--- prosecution failed to establish that the injury which was found at the vital part of the informant was dangerous to the life of the informant---regarding the manner of assault, the allegation made by the informant does not get corroboration from his injury report---trial court correctly held that the prosecution failed to establish its case beyond reasonable doubt---Appeal dismissed. (Para- 9, 10, 12, 19, 20)*

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.754 of 2023

Arising Out of PS. Case No.-274 Year-2001 Thana- BIDUPUR District- Vaishali

Ram Snehi Singh @ Ram Snehi Kumar, Son of Chandramauli Singh,
Resident of Village- Madurpur, P.S. Bidupur, District Vaishali

... .. Appellant/Informant

Versus

- 1. The State of Bihar
- 2. Padam Ranjan Singh, Son of Chandramauli Singh, Resident of Village-
Madurpur, P.S. Bidupur, District -Vaishali
- 3. Om Prakash Singh, Son of Vishwambhar Singh, Resident of Village-
Madurpur, P.S. Bidupur, District -Vaishali

... .. Respondents

Appearance :

For the Appellant : Mr. Pranoy Kumar, Advocate
For the State : Mr. Binod Bihari Singh, Addl. PP
For the Respondent Nos.2 & 3 : Mr. N.K. Agrawal. Sr. Advocate
Mr. Dhananjai Kr. Singh, Advocate
Ms. Jyoti Ranjan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 25-07-2024

The instant appeal has been preferred against the
judgment dated 28.04.2023 passed by learned Additional District
& Sessions Judge -VII, Vaishali at Hajipur in Sessions Trial Case
No. 437 of 2002 arising out of Bidupur P.S. Case No. 274 of 2001
whereby the learned trial court has acquitted the respondent Nos. 2
and 3 of the offences for which they were charged.

2. The substance of the prosecution story is as follows :-



As per the informant, namely Ram Snehi Singh @ Ram Snehi Kumar, on 18.10.2001, he was at his house then his brother Padam Ranjan Singh (respondent No. 2) and his cousin brother Om Prakash Singh (respondent No. 3) equipped with *farsa* and *lathi* came there and started abusing him and when he objected, the respondents got infuriated upon his resistance and thereafter he was assaulted by *farsa* on his head by respondent No. 2 and in following with the direction given by the respondent No. 2, respondent No. 3 also started assaulting him by means of lathi. When he cried, his wife, his uncle Vishambhar Singh, Lalan Singh, co-villager Satendra Kumar Singh and some other persons arrived there and saved him and thereafter, he was taken to the Sadar hospital, Hajipur by his wife and his uncle Vishambhar Singh. As per the informant, a dispute with regard to the construction of the boundary wall around a *latrine* in between both the parties was the main reason behind the occurrence.

3. The informant/appellant recorded his fardbeyan (Ext.-1/1) on 18.10.2001 upon that basis the formal FIR was registered on 25.10.2001 under sections 341, 323, 324 and 504 read with section 34 of the Indian Penal Code (in short 'IPC') and the same was sent to the court of learned Chief Judicial Magistrate (in short 'C.J.M.') on 30.10.2001. After the completion of the investigation,



the respondent Nos. 2 and 3 were chargesheeted for the alleged offences. After the cognizance, the case of the respondents was committed to the court of Sessions. The respondents stood charged for the offences punishable under sections 341/34, 504/34 and 323/34 of IPC and the respondent No. 2 stood charged separately for the offences under sections 307 and 324 of IPC. Respondent No. 3 also stood charged separately for the offence under section 307 read with 34 of IPC.

4. During the trial, the prosecution examined four witnesses who are as under : -

	Name	
P.W. 1	Karuna Devi	Wife of the informant
P.W. 2	Satendra Kumar Singh	Hearsay witness
P.W. 3	Ram Snehi Singh	Informant
P.W. 4	Dr. Rajendra Kumar	Medical Officer

5. In documentary evidence, the prosecution proved the fardbeyan of the informant as well as signature of the informant’s wife on fardbeyan and also, proved the injury report of the informant and got them marked as Exhibits which are as under : -

Exhibit 1	Signature of Karuna Devi (wife of the informant) on fardbeyan
Exhibit 1/1	Fardbeyan
Exhibit 2	The injury report

6. After completion of the prosecution evidence, the statements of the respondent Nos. 2 and 3 were recorded as per



section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.'), in which the main circumstance appearing against them from the prosecution evidence was denied by them and they claimed themselves to be innocent but they did not take any specific defence in their statements.

7. In defence evidence the respondents proved an order sheet of the Partition Suit No. 195 of 2005 (Ext.-A) related to a civil case pending before the court of learned Sub-Judge-IV, Vaishali at Hajipur.

8. After hearing both the parties and having analyzed the evidences, the learned trial court mainly took into account that the father of the informant, who was physically present at the place of occurrence during the alleged incident, was not produced as a prosecution witness and an inordinate delay of around 7-8 days took place in the registration of the FIR without any explanation and the prosecution failed to produce any independent person to substantiate the allegations. The learned trial court further observed in the judgment impugned that there was a civil dispute with regard to partition issue in between the parties and the informant, the most important witness of the prosecution, did not remain consistent to his allegations and also made contradictory



statements. Considering these facts the learned trial court acquitted the respondent Nos. 2 and 3 of the charged offences.

Submissions : -

9. Mr. Pranoy Kumar, learned counsel appearing for the appellant submits that the informant/appellant is the sole victim/injured who recorded his own *fardbeyan*, upon which basis the FIR was registered and he fully supported the allegations made by him in the FIR and his wife, who witnessed the entire occurrence, also supported his case. The medical evidence with regard to the injuries found on the person of the informant, particularly in respect to inflicting an injury on the head of the informant by means of *farsa*, corroborates the allegation made by the informant/appellant against the respondent no. 2. It is further argued that the grounds taken by the learned trial court in acquitting the respondent nos. 2 and 3 for the charged offences are not tenable in the eyes of law as the evidences of the eye witnesses and the medical evidence were not appreciated in the right perspective, hence, the learned trial court erred in acquitting the respondent nos. 2 and 3 and the judgment impugned is liable to be set aside.

10. On the contrary, Mr. N.K. Agrawal, learned senior counsel appearing for the respondent nos. 2. and 3 has vehemently



opposed this appeal and submitted that the respondents have been rightly acquitted of the alleged offences as no independent person was examined by the prosecution despite the several persons other than the informant and his wife being present at the place of occurrence who are said to have witnessed the alleged occurrence and the informant's father, who is also said to be a material witness, did not turn up to record his evidence. It is further submitted that the prosecution failed to explain the inordinate delay of 7-8 days having taken place in the registration of the formal FIR despite the *fardbeyan* of the informant having been recorded by a police officer on the same day of occurrence and during trial, the investigating officer Rameshwar Singh and Sub-Inspector Sanjeev Kumar Singh, who recorded the *fardbeyan* of the informant, were not produced and examined, so the respondents could not have got an opportunity to elicit relevant and actual facts by cross-examining the said witnesses with regard to the incriminating materials which are said to be present at the place of occurrence at the relevant time. As such, the learned trial court has not committed any error in acquitting the respondents and there is no force in this appeal and the same is liable to be dismissed.



11. We have heard both the sides, perused the judgment impugned, evidences available on the case record of trial court and also gone through the statements of the accused/respondents. The instant matter relates to an attempt to murder allegedly committed by the private respondents on the informant (appellant) who is said to be the sole injured. The FIR was registered on the basis of the *fardbeyan* of the informant who recorded his *fardbeyan* at Sadar hospital, Hajipur on 18.10.2001.

Consideration : -

12. As per the prosecution story, the alleged occurrence took place at the door of the informant's house. The occurrence took place on 18.10.2001 at about 8:00 A.M. when the informant was sitting at the door of his house and as per the allegation, the respondent no. 2, Padam Ranjan Singh, brother of the informant and respondent no. 3 Om Prakash Singh came equipped with *farsa* and *lathi* and initially they started abusing him and when he objected, they became furious and assaulted him on his head by means of *farsa* which resulted in his falling down and thereafter, on receiving direction from the respondent no. 2 to assault the informant, the respondent no. 3 started assaulting him by means of *lathi* and consequently, the informant cried for help. Upon hearing his *hulla*, some persons namely, Vishambhar Singh, Lalan Singh,



Satendra Kumar Singh, informant's wife Karuna Devi and some other villagers came rushing at the spot and saved him from the assault. As per the prosecution, the reason behind the murderous attempt allegedly committed by the respondent nos. 2 and 3 on the informant/appellant was the hindrance and denial caused by him in the construction of a boundry wall around a latrine and the same was being constructed by the respondent no. 2. As per the informant, after the occurrence he was taken to Sadar Hospital, Hajipur by his wife and his uncle Vishambhar Singh where he was treated.

13. From the above prosecution story, it appears that the appellant's wife, his uncle Vishambhar Singh, his relative Lalan Singh and his co-villager Satendra Kumar Singh witnessed the occurrence, so they can be deemed to be important persons to prove the alleged occurrence. But amongst them, the prosecution produced and examined only informant's wife and his co-villager Satendra Kumar Singh apart from the informant. So, the case of the prosecution completely depends upon their evidence.

14. The informant's co-villager, Satendra Kumar Singh, was examined as PW-2. He deposed in the cross-examination that he had not seen the occurrence by his own eyes. From this statement, it is evident that the witness was not present at the time



of occurrence at the alleged place, so, he was falsely shown as an eye-witness of the alleged occurrence by the informant. The witness stated in his examination-in-chief that he and others took the informant to the hospital and found the respondent no. 3 being present at the hospital. The said statement of this witness makes the allegations levelled against the respondent no. 3, Om Prakash Singh, to be less believable as according to this witness, respondent no. 3 was found present at the hospital where the victim/informant was also taken for treatment after the occurrence. Accordingly, the evidence of this witness is not sufficient to substantiate the allegations made by the appellant in the FIR.

15. Informant's wife Karuna Devi was examined as PW-1. She stated in her examination-in-chief that the alleged occurrence took place on 18.10.2001 at about 8:00 A.M. and at that time, she was present at the door of her house. From this statement, it can be deemed that the said witness saw the alleged occurrence from beginning to its end. The witness deposed in paragraph no. '10' of her cross-examination that in the morning of 08.05.2000, one *Panch* came at her residence and on that very day the accused/respondent nos. 2 and 3 abused her and her husband and an incident of *Marpit* took place. She further stated in the same paragraph that the incident of *Marpit* occurred often and on



the day of alleged occurrence i.e. 18.10.2001, it occurred in a more serious manner and the incident concerned to the present matter relates to the occurrence of the day of 08.05.2000. From these statements of this witness, who is said to be a material witness, the alleged occurrence did not take place on 18.10.2001 rather the same is said to have taken place on 08.05.2000 and in between both the parties, the occurrences of assault oftenly took place. The contradiction with regard to the date of occurrence appearing in between the evidence of this witness and the facts of the FIR, seriously affects the case of the prosecution. Furthermore, the witness was standing at a distance of one *laggi* (2.743 meter) from the place of occurrence when the incident started taking place and in this regard, the statement of this witness made in paragraph no. 13 of her cross-examination is relevant and she stated in the same paragraph that her husband was surrounded from all sides by the accused. From this evidence, it appears that at the place of occurrence more than two persons were present and she was standing near the place of occurrence and saw the accused having surrounded her husband from all sides which was not possible for two persons while as per the FIR only two persons, respondent Nos. 2 and 3, were involved in the commission of the alleged occurrence. P.W.-1 deposed that the respondent no. 3 is a co-sharer



with whom there is no dispute. As the respondent no. 3 had no dispute with the informant, so there was no reason for him to be involved in the commission of the alleged offence of *marpit*, though there was some property dispute in between the appellant and respondent no. 2 but the evidence of the prosecution's witnesses does not show any motive of the respondent no. 3 to be involved with respondent no. 2 in the alleged occurrence. As per P.W.-1, two persons namely, Lalan Singh and Satendra Kumar Singh also witnessed the occurrence who seem to be independent persons but only one of them was produced and examined by the prosecution who denied to have seen the occurrence.

16. The informant/appellant was examined as P.W.-3 and he is the star witness of the prosecution. He deposed in his examination-in-chief that when he cried for help, his wife who was present there, his uncle Vishambhar Singh and one Lalan Singh came there and saved him. Among these persons who witnessed the occurrence as per the informant, only informant's wife was examined as prosecution witness and others were not produced. P.W.-3 deposed in his cross-examination that after medical treatment, when he reached at his home, he found that his father was also assaulted and ousted from his house. Here, it is relevant to mention that the respondent no. 2 is full brother of the



informant, so regarding the conduct of the respondent no. 2, the evidence of informant's father was very important but he did not appear before the trial court for recording his evidence.

17. P.W.-3, informant, further stated in the cross-examination that he tried to flee away but he was grabbed by the accused persons but he further stated in the same paragraph that no one caught hold of him during the occurrence. As such, the witness did not remain consistent to his stand. As per the evidence of P.W.-3, in the occurrence, bleeding started from his body parts and some blood spots/drops were on his shirt and *lungi* and also on the ground. In the present matter, the prosecution did not produce and examine the Investigating Officer to prove the incriminating materials such as blood stained clothes of the informant and finding of blood at the place of occurrence and also, the respondent nos. 2 and 3 did not get an opportunity to elicit the actual truth regarding the said important material by cross-examining the Investigating Officer. As per P.W.-3/informant, the lathi blows were inflicted on his right thigh, left leg and right hand's finger. But as per the medical evidence given by P.W.-4, who medically examined the informant, bruise on left lower leg and swelling over left ring finger of the informant were found



apart from the other injuries. One of the said injuries does not corroborate the manner of assault as described by the informant.

18. P.W.-3 stated in the paragraph no. '14' of his cross-examination that he wanted a share in a shop situated at Nawanagar, Jamalpur and the said fact was also mentioned by him in the FIR and due to this reason, a dispute always arose. From this statement, it is evident that there was a property dispute in between the appellant and respondent No. 2 and the same is also an admitted position.

Conclusion : -

19. In the present matter, the most important circumstance going against the prosecution is an inordinate delay in registering the formal FIR in connection with the alleged occurrence. As per the prosecution story, the alleged occurrence took place on 18.10.2001 and informant's fardbeyan was recorded on the same day at Sadar hospital, Hajipur but the formal FIR was registered on 25.10.2001 and the same received in the court of C.J.M. on 30.10.2001. The prosecution did not give any evidence to explain the said inordinate delay having taken place in registering the FIR and furthermore, the Sub-Inspector, Sanjeev Kumar Singh, who recorded the fardbeyan of the informant, was also not produced by the prosecution as a witness and the



Investigating Officer also did not turn up for recording his evidence. The said delay and non-examination of the police officers adversely affects the prosecution's case. The respondent No. 2 was charged with the offence under Section 307 and other offences of IPC but the Doctor, P.W.-4 could not have given the final opinion with regard to the main injury, which was allegedly inflicted by the respondent No. 2 at the head of the informant, on account of non-production of X-ray report of the injured and due to this reason, the final opinion with regard to other injuries also could not be given by the said witness. So, the prosecution failed to establish the fact that the injury no. 5, detailed in the injury report of the informant (Ext.-2) which was found at the vital part of the informant, was dangerous to the life of the informant.

20. From the aforementioned discussion of the prosecution evidences, we are of the considered opinion that the informant and respondent No. 2, who are own brothers, used to raise dispute with each other on account of property issues and in respect of the alleged occurrence described in the FIR, some independent persons, including the father of the respondent No. 2, who is also said to be an aggrieved, were not examined by the prosecution despite some of them having witnessed the occurrence. The prosecution mainly relied upon the evidence of the informant (P.W.-3) and his wife (P.W.-1) but regarding the manner of assault, the allegation made by the informant



in his evidence does not get corroboration from his injury report (Ext.-2) and an unexplained inordinate delay of 7-8 days took place in the registration of the FIR while the fardbeyan of the informant had been recorded on the same day of occurrence and during the trial, the prosecution failed to produce the Investigating Officer and one other police officer who recorded the fardbeyan of the informant. In the light of these circumstances which are against the prosecution, we are satisfied with the trial court’s conclusion that the prosecution failed to establish its case beyond reasonable doubt against the respondent Nos. 2 and 3. As such, the respondent Nos. 2 and 3 have been rightly acquitted of the charged offences by the learned trial court. In the result, we find no merit in this appeal, so it stands dismissed.

21. Let the judgment's copy be sent immediately to the trial court concerned for information and needful.

22. Let the LCR be sent back to the trial court forthwith.

(Shailendra Singh, J)

I agree.

(Rajeev Ranjan Prasad, J)

annu/-

AFR/NAFR	AFR
CAV DATE	16.07.2024
Uploading Date	25.07.2024
Transmission Date	25.07.2024

