

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.168 of 2016

Arising Out of PS. Case No.-144 Year-2008 Thana- BANIAPUR District- Saran

- =====
1. Punit Nath Singh @ Budha Singh
 2. Sukan Singh,
 3. Mangal Singh, All Sons of Late Sheojee Singh, Resident of Village – Harpur, P.S. - Baniapur, District - Saran.

... ... Appellants

Versus

The State Of Bihar

... ... Respondent

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Appearance :

For the Appellants : Mr. Bindhyachal Singh, Sr. Advocate with
Mr. Vipin Kumar Singh, Advocate
Mrs. Smriti Singh, Advocate
Mr. Kumar Awnish Ankit, Advocate
Mrs. Swarnika Singh, Advocate
Ms. Nikita Mittal, Advocate

For the Respondent : Mr. Bipin Kumar, APP

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Acts/Sections/Rules:

- Sections 302/34 and 323/34 of the Indian Penal Code

Cases referred:

- *Bisundeo Mishra and 6 Ors. vs. The State of Bihar* reported in 1989
PLJR 405
- *Lallu Manjhi and Anr. vs. State of Jharkhand* reported in 2003(2)
SCC 401

Appeal - filed challenging judgement whereby the appellants have been convicted for the offences punishable under Sections 302/34 and 323/34 of the Indian Penal Code.

Held - What was the first information given to the police, has not been brought on record by the prosecution. Fardbeyan was recorded only after the death of the deceased and, therefore, sufficient time was available for the informant to implicate the accused because of the land dispute. Even it is a case of the informant himself that there was a land dispute between the

parties and, therefore, there are all chances of false implication of the accused because of the land dispute. (Para 30)

Doctor, who had given the treatment to him, has not been examined by the prosecution. Further, the Injury Report of the said witness was produced by one Purohit, who has no concern with the doctor. (Para 32)

It is true that witnesses' version cannot be discarded simply because they are relatives. If their deposition is considered to be of sterling quality, relying upon the said deposition, conviction can be recorded. However, as observed hereinabove, we are of the view that there are major contradictions, inconsistencies and discrepancies in the deposition given by the so-called injured eye-witnesses. (Para 33)

There is discrepancy with regard to the place of occurrence also, coupled with the defective investigation made by the Investigating Agency. (Para 36)

Appeal is allowed. (Para 40)

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	: Ms. Nikita Mittal, Advocate
For the Respondent	: Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 09-07-2024

The present appeal has been filed under Section-374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the judgment dated 29.01.2016 and order of sentence dated 04.02.2016 passed by learned Additional Sessions Judge-IX, Saran, Chapra in Sessions Trial No. 298 of 2009 New. 2469 of 2014, arising out of Baniapur P.S. Case No. 144 of 2008 G.R. No. 2462 of 2008, whereby the appellants have been convicted for the offences punishable



under Sections 302/34 and 323/34 of the Indian Penal Code (hereinafter referred to as I.P.C.) and sentenced to undergo imprisonment for life and a fine of Rs. 10,000/- each for the offence punishable under Sections 302/34 of I.P.C. and, in default of payment of fine, the appellant in default, shall have further to undergo simple imprisonment for six months. Further, they have to undergo rigorous imprisonment for six months for the offence punishable under Section 323/34 of the I.P.C. Both the sentences have been directed to run concurrently.

2. At the outset, learned senior counsel for the appellants informs that appellant no. 1 namely, Punit Nath Singh @ Budha Singh has died during the pendency of the present appeal.

3. As such, the Appeal stands abated with regard to appellant no. 1 namely, Punit Nath Singh @ Budha Singh.

4. Heard Mr. Bindhyachal Singh, learned senior counsel assisted by Mr. Vipin Kumar Singh, learned counsel for the appellants and Mr. Bipin Kumar, learned A.P.P. for the respondent-State.

5. The brief facts leading to the filing of the present appeal are as under:

“On 23.08.2008, at about 04:00 P.M. when



informant along with his father and his brother was harvesting the maize crop, appellant no.1, namely, Punit Nath Singh @ Budha Singh, appellant no.2, namely, Sukan Singh, appellant no. 3, namely, Mangal Singh and another accused, namely, Amit Singh all came with *farsa* and iron rod and started abusing and shouting. Thereafter, they started assaulting. Punit Nath Singh assaulted informant's father with *farsa* due to which he was injured and blood was oozing out from his head. Further, Amit Singh assaulted on the head of his brother, namely, Harendra Singh by *farsa* and he got injured. Further, appellant no.2, namely, Sukan Singh assaulted the informant with iron rod due to which he got injured and Mangal Singh assaulted the informant's father with *farsa*. Thereafter all the accused persons fled away. Thereafter, villagers came and took all the injured persons to Baniyapur hospital for treatment. The informant's father was referred to Patna, but he died on the way."

6. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused. As the case was exclusively triable by the Court of Sessions, the case was



committed to the Court of Sessions where it was registered as Sessions Trial No. 298 of 2009 New. 2469 of 2014.

7. Learned senior counsel for the appellants, Mr. Bindhyachal Singh, at the outset, submits that there is a delay in lodging the F.I.R. and for the occurrence which took place at about 04:00 P.M, F.I.R. came to be lodged at 11:00 P.M. in Baniyapur Police Station. It is pointed out by learned senior counsel for the appellants from the record that P.W.-1 Harendra Singh, who has sustained injuries in the incident in question, as per the case of the prosecution, has specifically stated in his deposition that when he reached to Baniyapur Hospital, police recorded his statement. The said witness has further stated that after the incident, he reached to Baniyapur Referral Hospital within 20 minutes. At this stage, it is also contended that P.W.-2 has also stated during cross-examination that when the injured were taken to the hospital in a Commander Jeep, they initially went to the police station where the information was given because police station was on the way to the hospital and thereafter the injured persons were taken to the hospital. At this stage, it is also pointed out from the record that the informant himself has deposed before the Court that before his father was taken to Patna, the information was given to the police station



with regard to the incident in question. Learned senior counsel, therefore, submitted that what was the first version given by the informant and/or the so-called injured to the police was not brought on record and the *fardbeyan* of the informant was recorded after the death of the deceased (father of the informant). Learned senior counsel, therefore, contended that the first version was suppressed by the prosecution and the appellants have falsely been implicated because of the dispute with regard to the land between the parties.

8. Learned senior counsel for the appellants thereafter contended that, in fact, the informant and two other so-called injured witnesses are not the eye-witnesses. It is submitted that though it has been projected by the prosecution that P.W.-1 (Harendra Singh) and P.W.-6 (Jitendra Kumar) sustained injuries in the incident in question and they were taken to the hospital for treatment, the Doctor, who had given treatment to the said witnesses, has not been examined by the prosecution and, surprisingly, the injury report was produced before the Court by P.W.-10(11) Sonu Mishra, who has declared himself as *Purohit* and he has never worked in the Government Hospital where Dr. Kaushal Kishore Sinha was working. It is submitted that carbon copy of the injury report was produced



and the said witness had never worked with the doctor, who had issued the injury report. Thus, the injuries, sustained by the so-called injured witnesses, were not duly proved and, therefore, the said witnesses are chance witnesses and, therefore, when they are near relatives of the deceased, the deposition is required to be scrutinized closely and reliance may not be placed upon the deposition of the said witnesses.

9. Learned senior counsel for the appellants further submits that even the prosecution has failed to prove the place of occurrence by leading cogent evidence and there is a discrepancy in the deposition given by the prosecution witnesses with regard to the same. In support of the said contention, learned senior counsel for the appellants has referred to the depositions given by P.W.-6 and P.W.-7. It is also submitted that there are contradictions about the fact with regard to the harvesting in the land in question and, therefore also, the prosecution witnesses are not the eye-witnesses.

10. Learned senior counsel for the appellants lastly submitted that even there is a discrepancy with regard to the land which was in dispute. Learned counsel has referred to paragraph 12 of the deposition given by PW-1, paragraph 18 of the deposition given by P.W.-6 and paragraph 12 of the



deposition given by P.W.-7. It is, therefore, contended that there are different versions of the prosecution witnesses with regard to ownership of the land.

11. Learned senior counsel for the appellants, therefore, urged that the deposition given by the injured witnesses cannot be said to be trustworthy and, therefore, the Trial Court has committed an error while placing reliance upon the said witnesses. It is submitted that though the prosecution has failed to prove the case against the appellants beyond reasonable doubt, the impugned judgment of conviction and order of sentence has been passed by the Trial Court against the appellants and, therefore, the same may be quashed and set aside.

12. Learned senior counsel for the appellants has placed reliance upon the decision rendered by this Court in the case of *Bisundeo Mishra and 6 Ors. vs. The State of Bihar* reported in *1989 PLJR 405*.

13. Learned senior counsel for the appellants has also placed reliance upon para 12 & 13 of the decision rendered by Hon'ble Supreme Court in the case of *Lallu Manjhi and Anr. vs. State of Jharkhand* reported in *2003(2) SCC 401*.

14. On the other hand, learned Additional Public



Prosecutor has opposed the present appeal. Learned APP submits that there are two injured eye-witnesses who have sustained injuries in the incident in question. The injury reports are brought on record and, therefore, the version given by the injured witnesses cannot be discarded. It is further submitted that the Doctor, who has conducted the *post mortem* of the dead body of the deceased, has also supported the case of the prosecution and, therefore, when the medical evidence also supports the version given by the eye-witnesses, the Trial Court has not committed any error while passing the impugned judgment and order. Learned APP, therefore, urged that the present appeal be dismissed.

15. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

16. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.

17. Before the Trial Court, prosecution examined 11 witnesses.

18. P.W. 1 (Harendra Singh) has stated in his



examination-in-chief that the incident occurred on 23.08.2008 at about 03:00 P.M. He further stated that he was harvesting the maize crop with his father, namely, Ramrit Singh and brother, namely, Jitendra Kumar Singh. Thereafter, all the accused persons came and started assaulting him, his father and his brother. At the time of the incident, villagers came and took the injured persons to hospital from where his father was referred to P.M.C.H. but his father died on the way. Further, he deposed that the maize field was sold by Gyanti Kuar, who is the aunt of the accused. He further deposed that when he reached at Baniyapur hospital, police recorded his statement.

18.1. In his cross-examination, P.W.-1 has stated that he has no knowledge about the case of kidnapping of Sonu, who is the son of Punit Singh. Bhagirath is his uncle and Jitendra is his own brother. He further deposed that he has no knowledge about the case of kidnapping against his brother, namely, Jitendra as he lives separately. Land was registered one month before the incident in the month of Ashadh, 2008. Further, when his father was crying, villagers, P.W.-1 and his brother came and saw that blood was oozing out from his head. Thereafter, all the injured persons were taken to hospital in a Commander van. Baniyapur police station is on the way of



hospital. P.W.-1, his brother and father were treated there. It is further deposed that no statement was recorded as the doctor referred them to Chapra Hospital. Further, he deposed that he reached at the Baniyapur Referral Hospital after 20 minutes of the incident. The statement of his brother Jitendra was recorded at Baniyapur police station. P.W.,-1 is a Rojgar Sevak in Baniyapur Block. He has come today for depositing after taking leave. He had neither taken leave at the time of occurrence nor before the occurrence. His statement was recorded next day of the incident in the hospital. He got his hand plastered in the clinic of a local doctor Pramod Kumar and he does not know where the copy of X-ray plate is kept.

19. P.W. 2 Bagirath Singh has stated in his examination-in-chief that the incident occurred on 23.08.2008 at about 03:00 P.M. He deposed that when the maize crop was being harvested by Ramrit Singh, Jitendra Singh and Harendra Singh were in their own field, accused Punit Nath Singh, Mangal Singh, Amit Singh and Sukan Singh all came with farsa and iron rod in their hand and started abusing and assaulting. Punit Nath Singh assaulted Ramrit Singh with farsa which hit his head and blood started oozing out. Further, Mangal Singh assaulted the deceased with farsa which hit his left cheek below



the eye. Sukan Singh assaulted Ramrit Singh with rod which hit his body. Amit Singh assaulted Harendra Singh with farsa which hit his forehead and blood started oozing out. Sukan Singh assaulted the right hand of Harendra due to which his hand was broken. Thereafter, Sukan Singh assaulted Jitendra Singh with iron rod which hit nose and thumb. Further, he deposed that all injured were taken to Baniyapur Hospital where the doctor referred Ramrit Singh to Chapra Hospital and thereafter he was referred to P.M.C.H, Patna.

19.1. In his cross-examination, he has stated that Ramrit Singh (deceased) is his own brother. He deposed that neither he tried to save his brother nor did he try to stop the accused as they were armed with farsa and iron rod. All injured were together taken to hospital in a Commander jeep. Apart from the injured, four to five persons were present in the Commander jeep. Police Station is situated on way to hospital. He further deposed that after giving information about the incident, they went to hospital. Police has recorded his statement in the field on the next day of the occurrence. He showed Daroga Ji the place of occurrence.

20. P.W. 3 Ramesh Kumar Singh has stated in his examination-in-chief that the incident took place on 23.08.2008



at about 03:00 P.M. He along with his father was working in his sweet potato's field which is adjacent to Ramrit Singh's field. Further, he deposed that Ramrit Singh (deceased) was harvesting the maize crop with sickle and Harendra and Jitendra had also a sharp sickle. He has stated that his father has also given deposition in this case. Further, he deposed that he had not seen as to whether blood was found on the Commander jeep or not. Further, the dead body of Ramrit Singh (deceased) was brought to Baniyapur Police Station, who had died while on way to hospital. He got the information about the death of Ramrit Singh on phone.

21. P.W. 4 Suman Prasad has stated in his examination-in-chief that inquest report was prepared at 12:00 noon in Baniyapur Police Station. He got the information about the incident on mobile and he reached at the place of occurrence within 45-60 minutes. Thereafter, he reached at Baniyapur Police Station at about 07:00 P.M.

22. P.W. 5 Bharat Prasad has stated in his examination-in-chief that he has signed on the said inquest report. He got the information about the incident from others. He got information of death of Ramrit at 04:30 P.M by the son of the deceased, namely, Jitendra. When he reached at the



hospital, his brother-in-law (sadhu) was unconscious.

23. P.W.-6 Jitendra Kumar Singh has stated in his examination-in-chief that the incident took place on 23.08.2008. They were harvesting the maize crop at about 03:00 P.M. and incident occurred at 04:00 P.M. He further deposed that at 04:00 P.M., all accused, namely, Punit Nath Singh, Sukan Singh, Mangal Singh and Amit Singh, armed with farsa and iron rod, came and started abusing and assaulting. Punit Singh assaulted with farsa on the head of his father and Mangal Singh assaulted with farsa which hit on the left cheek and Sukan Singh also assaulted with iron rod on his father. Further, Amit assaulted with farsa on the head of Harendra, Sukan Singh assaulted Harendra with rod due to which his right hand got fracture. Sukan assaulted with iron rod on the P.W.-6 due to which his nose, leg and thumb were injured. His father was taken to Chapra Sadar Hospital from where he was referred to Patna. He was also present with his father. His father died on the way to Patna. Thereafter, the dead body of the deceased was brought to Baniyapur Police Station where the *fardbeyan* was recorded. The maize field was sold by Gyanti Kuar, who is an agnate of the accused. Sonu Kumar is the son of appellant no.1 Punit Nath Singh. He saw Sonu Kumar in village 4-5 months ago. He has



no information with regard to the case of kidnapping of Sonu Kumar against his uncle which was pending in Baniapur Police Station. After the incident, he went to Baniapur Hospital. Baniapur Police Station is on the way of Baniapur Hospital. He has no knowledge about the number of persons present in the Commander Jeep. It is further deposed that he has given the information about the incident to police before taking his father to Patna. Blood had fallen on the ground, maize leaves and grass. Blood had fallen on the ground in a radius of one hand. There was no blood on the heap of harvested crop. He further stated that his father was directly taken to hospital after the incident. Inquest report was prepared on the bedding. He had shown the place of occurrence and blood to Darogaji. Darogaji had not seized the blood stains on leaf and soil. The disputed land was registered three months ago in *Ashadh* month. He has no information of the case with regard to the said land which is pending in the Court of Sub-Judge, Chapra. He has no information whether he had given application to add party in Partition Case No. 67 of 2008. He didn't complain to any senior officer with regard to lodging the FIR before the death of his father. He further deposed that Shiv Narayan Singh is the local doctor. He didn't get treatment from Dr. Shiv Narayan Singh.



He does not remember to have gone to Chapra Hospital with his father and brother. Further, his father was unconscious. Harendra was injured and he was conscious. He has no documentary evidence that his father was admitted to hospital in unconscious situation. His mother was also present at the Baniyapur Hospital with his father.

24. P.W.-7 Upendra Kumar has stated in his examination-in-chief that on 23.08.2008, he was posted as the S.H.O. of Baniyapur Police Station. On that date he had recorded the statement of Jitendra Singh at the police station and raid over the same to him (Exhibit-3). The same day he inspected the dead body Ramrit Singh and prepared the inquest report through carbon process. He has identified the same (Exhibit-4). Thereafter, he sent the dead body for post mortem to Sadar Hospital, Chapra. He then visited the place of occurrence which is the maize field of deceased Ramrit Singh in village Harpur in which maize crop was standing and some heaps of harvested crops were there. He also found blood on the leaves of maize and on grass. He has given the boundary of the place of occurrence and stated that the land in dispute is about a quarter to three khattas. He collected the blood stained soil and grass from the spot. Thereafter, he recorded the statements of



Harendra Singh, Bharat Prasad, Suman Prasad, Satyanarayan Prasad, Bhagirath Singh, Ramesh Singh and Janak Thakur. He obtained the P.M. Report of deceased Ramrit Singh. He also received injury reports of injured Jitendra Singh and Harendra Kumar Singh from Baniyapur Hospital. He had produced the attested photocopy of the injury reports and he had not done correspondence for obtaining the original injury report from the doctor.

24.1. In his cross-examination, he has stated that he had not noted the khatta number and plot number of the land nor he had prepared any sketch map of the same. There is no mention of blood stained soil and grass in the case diary. He had not recorded the statements of the owners of adjacent plots namely, Ramjit Singh, Sugriv Singh, Kamla Singh, Patthar Shah and Rajnarayan. He has also stated that he had not seized blood stained maize leaves. There is no mention in the station diary that injured Ramrit Singh, Harendra Singh, Jitendra Singh had come to Baniyapur Referral Hospital for treatment and they were issued injury reports by S.I. Ramdev Singh. In paragraph-38 of the case diary, he has recorded that the land in dispute was in possession of the accused persons and was being cultivated by them. He has denied to have recorded in the case diary that



during the course of investigation, he had seen blood stained clothes or bed-sheet (*leva*). In paragraph-14, he has denied that Harendra Singh had told him that Amit Kumar Singh also assaulted his father with farsa. Rather Harendra Singh had said that Punitnath Singh had assaulted his father with farsa on his head. Bhagirath Singh had not said that Punitnath Singh, Mangal Singh, Amit Singh had a farsa in their hand and Sukan Singh was having an iron rod and they came to the spot and forbade to harvest Maize crop. Bhagirath Singh had not told him that Punitnath Singh assaulted Ramrit with farsa on his head causing fracture. He has also detailed the statements given by the witnesses to him.

25. P.W.-8 Dr. Vijay Kumar has stated in his examination-in-chief that on 24.08.2008, he was posted as Medical Officer, Sadar Hospital Chapra. On that date at 08:40 AM, he held PM examination of the dead body Ramjeet Singh s/o Ramsingar Singh aged 52 r/o Harpur, P.S. Baniyapur Distt. Saran and found the following antemortem injuries.

I. Sharp cutting injuries on the left parieto occipital region size 2"x1/2"x deep to bone.

II. Sharp cut wound of left side of forehead below hair line 1/2" x 1/6" muscle deep.



III. Sharp cutting wound on left side of cheek
1/2"x1/6" x muscle deep.

IV. Swelling and blacking eye of left eye size 4"
x2.1/2"

V. Lacerated wound of occipital region 1-1/2"x1/2"
x muscle deep.

VI. Sharp cutting wound on left Palm. 1/2"x1/6"x
Muscle Deep.

On dissection

Fracture in left parieto occipital region and blood
clot present.

Fracture in left second & third meta carpal bone.

He has opined that the cause of death to be
hemorrhage and shock caused by sharp cutting weapon such as
Farsa, Iron rod. Time elapsed of death 12 to 18 hours.

He has identified the post mortem report to be in
his pen and signature and the same is marked as Ext. 5.

25.1. In his cross-examination he has stated that
there was no X-Ray report before him. Rigor mortis is the basis,
it was present in chest and abdomen. In absence of column, he
has not mentioned the rigor mortis. He was assisted by the
fourth class assistant, so the name and signature is not



mentioned. Injury 1 & 2 is possible by hard and blunt substance. It is wrong to say that report is collusive.

26. P.W.-9 (Harish Ojha) has stated not stated anything about the incident in question. His deposition is confined to the registry of the land in dispute.

27. P.W.-9(10) Kashinath Singh is a formal witness. He has only identified Ext.7 which he had got typed and which bears the signature of advocate Brajesh Kumar Singh.

28. P.W.- 10(11) Sonu Mishra is also a formal witness. He has identified the handwriting and signature of Dr. Kaushal Kishore Sinha who had treated injured Jitendra Singh and Harendra Singh and prepared their injury report.

29. We have considered the submissions canvassed by the learned counsels for the parties. We have re-appreciated the entire evidence led by the prosecution before the Trial Court and also perused the documentary evidence exhibited.

30. It *prima facie*, emerges from the evidence that the *fardbeyan* of informant (PW-6) was recorded on 23.08.2008 at 11:00 PM (23 hours) at Baniyapur Police Station. In the said *fardbeyan*, the informant has narrated the incident which took place at about 04:00 PM (16 hours). If the said *fardbeyan* is carefully examined, it would reveal that in the incident in



question, the father of the informant (deceased), informant himself and PW-1 (Harendra Singh) sustained injuries and, therefore, all the injured persons were taken to the Baniyapur Hospital where primary treatment was given and father and brother of the informant were taken to Chapra Sadar Hospital. Thereafter, father of the informant was referred to Patna Medical College and Hospital for further treatment. However, when he was being taken to the Patna Medical College in ambulance, on the way, he died. The cause of incident shown in the *fardbeyan* is 03 *kattha* land purchased by father of the informant from Mostt. Gyanti Kuar wherein they cultivated Maize. Thus, from the aforesaid *fardbeyan*, it can be said that informant (PW-6) and his brother, namely Harendra Singh (PW-1) are shown as injured witnesses. However, it is pertinent to note, at this stage that PW-1, in his deposition, has specifically stated in paragraph 7 that when he reached to Baniyapur Hospital, his statement was recorded by the police. Further, from the deposition given by PW-4, namely, Suman Prasad, it is revealed that the said witness got information that quarrel had taken place and some persons had sustained injuries, therefore, he reached at the place of occurrence and thereafter he reached to Baniyapur Police Station at 07:00 PM. Further, from the



deposition given by PW-6 (informant), it is revealed that in paragraph-12, he has specifically stated that before his father was taken to Patna, information with regard to incident was given to the police station. At this stage, it is required to be recalled that *fardbeyan* was recorded at Baniyapur Police Station after the death of the father of the informant. However, from the deposition given by the prosecution witnesses, it is clear that before the injured were taken to the hospital, firstly, they went to Baniyapur Police Station and thereafter they were taken to Baniyapur Hospital. At Baniyapur Hospital also, statement of PW-1 (injured) was recorded. Even, thereafter, as per the version of PW-6 (informant), when his father was referred to Patna from Chapra Sadar Hospital, information was given to the police station. However, what was the first information given to the police, has not been brought on record by the prosecution. *Fardbeyan* was recorded only after the death of the deceased and, therefore, sufficient time was available for the informant to implicate the accused because of the land dispute. Even it is a case of the informant himself that there was a land dispute between the parties and, therefore, there are all chances of false implication of the accused because of the land dispute.



31. The prosecution has projected PW-1 and PW-6 as injured eye-witnesses. Ordinarily, the version given by the injured witnesses can be believed without any corroboration and merely because the witnesses are close relatives of the deceased, the deposition cannot be discarded, if the witnesses are trustworthy. In the present case, PW-1 and PW-6 are sons of the deceased. It is a case of the informant that PW-1 (Harendra Singh), who is his brother, has sustained injury in the incident in question. However, it is relevant to note that the said witness has stated in paragraph-17 that he is working in Panchayat (Baniyapur Block) as a *Rojgar Sevak*. He had come to the Court for giving deposition after taking leave. He has further stated that on the date of incident or prior to that, he had never taken any casual leave.

32. At this stage, it is also relevant to note that though PW-1 was taken to Baniyapur Hospital and thereafter to Chapra Hospital, the Doctor, who had given the treatment to him, has not been examined by the prosecution. Further, the Injury Report of the said witness was surprisingly produced by one *Purohit*, who has no concern with Dr. Kaushal Kishore Sinha, who was working at Baniyapur PHC at the relevant point of time. The said witness has never worked in the Government



Hospital nor the Injury Report was prepared in his presence nor the said witness has worked with the Doctor, who had issued the Injury Report.

33. We are, therefore, of the view that such type of Injury Report which is not duly proved by the prosecution, cannot be relied upon. Similarly, the Injury Report of PW-6 (informant) is also not duly proved and the Doctor, who had given the treatment to PW-6, is also not examined by the prosecution and, therefore, doubt is raised by the defence that the aforesaid witnesses are not, in fact, injured witnesses and their presence at the time of occurrence, was not natural. Thus, the aforesaid witnesses are chance witnesses. Further, as observed hereinabove, both the aforesaid witnesses are sons of the deceased. That means they are relatives and interested witnesses and, therefore, the version given by the aforesaid witnesses is required to be scrutinized closely. It is true that their version cannot be discarded simply because they are relatives. If their deposition is considered to be of sterling quality, relying upon the said deposition, conviction can be recorded. However, as observed hereinabove, we are of the view that there are major contradictions, inconsistencies and discrepancies in the deposition given by the so-called injured eye-witnesses.



34. At this stage, it is also relevant to note that there are discrepancies and contradictions with regard to the fact of harvesting in the land in question and even there is a dispute with regard to the ownership of the land. From the deposition given by the prosecution witnesses, doubt is also raised with regard to the place of occurrence. We have gone through the deposition in paragraph nos. 14 and 16 of PW-6 and paragraph nos. 4, 8, 9 and 10 of deposition given by PW-7. At this stage, it is relevant to note that PW-7, namely, Upendra Kumar is the Investigating Officer, who has carried out the investigation.

35. In the case of ***Lallu Manjhi and Anr. vs. State of Jharkhand*** reported in **2003(2) SCC 401**, the Hon'ble Supreme Court has observed in paragraph Nos. 12 and 13 as under:

“12. There is another very material aspect of the incident and we cannot resist observing that the investigation in the case has been very defective. The investigating officer did not prepare any site plan of the place of occurrence. Samples of bloodstained earth were not sent for chemical examination. No effort seems to have been made to recover and seize any weapon of offence. No witness of the locality, who could have been present near the place of occurrence at the time of the incident, has been interrogated. It was cultivation time and agriculturists or labourers busy ploughing the fields must have been present in the neighbourhood. The



witnesses referable to the neighbouring piece of land could have deposed as to the question and nature of possession over the land in dispute; as to whether it was cultivated previously and if so by whom — whether the complainant party or the accused persons. The Village Patwari and Chowkidar would have been most material witnesses. Their interrogation and collection of entries in revenue papers would have revealed who was in actual possession of the land prior to the incident. The Court is just left in doubt guessing whether it was the complainant party in possession of the land illegally obstructed by the accused persons or whether the accused persons were in possession of the land which was sought to be trespassed upon by the deceased and his brother Mannu (PW 9) and the attempted trespass was sought to be prevented and pre-empted by the accused persons.

13. It is, therefore, clear that the genesis or the root cause of the incident is not known. The most crucial question as to the factum of possession over the land in dispute immediately preceding the date of the incident cannot be determined and any specific finding in that regard arrived at. The version of the incident given by the sole eyewitness who is also an interested witness on account of his relationship with the deceased and being inimically disposed against the accused persons is highly exaggerated and not fully corroborated by medical evidence. The version of the incident



as given in the Court is substantially in departure from the earlier version as contained and available in the first information report. We cannot, therefore, place reliance on the sole testimony of Mannu (PW 9) for the purpose of recording the conviction of all the accused persons.”

36. Thus, from the aforesaid discussion, it would emerge that the first version of the informant/so-called injured witness is not brought on record and only after the death of deceased (father of the informant), informant has given his *fardbeyan*. Further, PW-1 and PW-6, who are sons of the deceased and projected as eye-witnesses, in absence of any examination of the doctor by the prosecution who has given the treatment to the said witnesses and in absence of injury Reports being duly proved by the prosecution, even the presence of the so-called witnesses at the time and place of occurrence was also doubtful. Further, there are major contradictions and discrepancies in the deposition of the prosecution witnesses. Even, there is discrepancy with regard to the place of occurrence also, coupled with the defective investigation made by the Investigating Agency.

37. We are of the view that the prosecution has failed to prove the case against the accused/appellants beyond



reasonable doubt. Further, there is a specific defence taken by the appellants that they have been falsely implicated because of the land dispute between the parties.

38. Thus, when the prosecution has failed to prove the case against the appellants beyond reasonable doubt, the Trial Court has committed grave error while passing the impugned judgment and order and the same are required to be set aside.

39. Accordingly, the same are quashed.

40. Appeal is allowed.

40.1. Both the appellants are on bail. They are discharged from the liabilities of their bail-bonds.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Gaurav
Kumar/GKS-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.07.2024
Transmission Date	15.07.2024

