

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1348 of 2019**

Arising Out of PS. Case No.-33 Year-2016 Thana- KRITYANAND NAGAR District- Purnia

GURUCHARAN RISHI Son of Kamleshwari Rishideo Resident of Village-
Mareli, P.S.-Bounsi, District-Araria.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 508 of 2022

Arising Out of PS. Case No.-33 Year-2016 Thana- KRITYANAND NAGAR District- Purnia

1. KALESHAR RISHI @ KALESHWAR RISHI S/o Late Parmeshwar Rishi R/o village- Baijnath Nagar, P.S.- K. Nagar (Sri Nagar), District- Purnea.
2. Kharchan Rishi @ Kharchandra Rishi S/o Kaleshar Rishi @ Kamleshwar Rishi R/o village- Baijnath Nagar, P.S.- K. Nagar (Sri Nagar), District- Purnea.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1348 of 2019)

For the Appellant : Mr. Gopal Kumar Jha, Advocate

For the Respondent : Mr. Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 508 of 2022)

For the Appellants : Mr. Bijendra Kumar Singh, Advocate

Mr. Kr. Dhananjay Singh, Advocate

For the Respondent : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 06-10-2023

Both these appeals are filed under Section 374(2) of
the Code of Criminal Procedure, 1973 (hereinafter referred to as



‘the Code’) wherein the three appellants-convicts have assailed the judgment of conviction dated 13.02.2019 and order of sentence dated 18.02.2019, rendered by learned 5th Additional District & Sessions Judge, Purnea in Sessions Trial No.412/2016 and 68/2017 (CIS No.422/2016 and 68/2017, Tr. No.368/2016), arising out of K. Nagar (Sree Nagar) P.S. Case No.33 of 2016, whereby the present appellants have been convicted for the offences punishable under Sections 341, 323 and 302/34 of the Indian Penal Code and sentenced to undergo RI for life under Sections 302/34 of the Indian Penal Code and to pay a fine of Rs.2000/- each and in default of payment of fine, the appellants have to undergo RI for two months. The appellants have also been sentenced to undergo SI for one month under Section 341 of the Indian Penal Code. The present appellants have further been sentenced to undergo RI for one year under Section 323 of the Indian Penal Code. All the sentences are directed to run concurrently.

2. The prosecution story in brief is as under:

On 02.02.2016 at 08:00 p.m., when the husband of the informant was returning from Phulauri Chowk to his house, appellants, Kaleshwar Rishi, Kharchan Rishi and Gurucharan Rishi dragged him into the courtyard situated in the house of



Kaleshwar Rishi and assaulted him with *lathi*, *danda* (stick), shoes besides fists and slaps. The husband of the informant sustained injury near his eyes. The husband of the informant anyhow managed to flee and reached to his house and became unconscious. Next morning, the informant brought her husband to Sadar Hospital, Purnea and the doctor referred her husband to Katihar Medical College but, the informant could not bring his husband to Katihar Medical College for treatment as she was not having sufficient money.

3. It is pertinent to note at this stage that for the occurrence which took place on 02.02.2016 at 08:00 p.m., the fardbeyan of the informant came to be recorded on 08.02.2016 and thereafter the FIR came to be registered on 09.02.2016 before the concerned police station. The said FIR was initially registered under Sections 341, 323, 307 and 34 of the Indian Penal Code. However, thereafter the injured succumbed to the injuries and, therefore, Section 302 of the Indian Penal Code was also added by the Investigating Agency.

4. After registration of the FIR, the Investigating Officer carried out the investigation, recorded the statement of the witnesses, collected the necessary evidence and thereafter filed charge-sheet against the appellants-accused before the



concerned Magistrate Court. However, the learned Magistrate committed the case under Section 209 of the Code to the Court of Sessions where the same was registered as Sessions Trial No.412/2016 and 68/2017.

5. Before the Trial Court, the prosecution has examined six witnesses and produced the documentary evidence. Thereafter the statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court passed impugned order and, therefore, the two appellants have jointly filed Criminal Appeal (DB) No.508 of 2022 whereas another appellant-convict has filed Criminal Appeal (DB) No.1348 of 2019.

6. Heard Mr. Gopal Kumar Jha and Mr. Bijendra Kumar Singh for the appellants and Mr. Ajay Mishra, learned APP appearing on behalf of the State.

7. Learned counsel for the appellants have mainly submitted that there are major contradictions in the deposition of the prosecution witnesses and in fact there is no eye witness to the occurrence in question. It is further submitted that PW-2, PW-3, PW-4 and PW-5 are in fact not eye witnesses to the occurrence in question. However, they are projected as the eye witnesses. Learned counsel appearing for the appellants, at this



stage, have referred the deposition of the aforesaid witnesses and thereafter also referred the deposition given by PW-6, the Investigating Officer.

8. Learned counsel thereafter would submit that though the alleged occurrence took place on 02.02.2016 at 08:00 p.m., the informant who is the wife of the deceased has lodged the FIR on 08.02.2016. Thus, there is delay in lodging the FIR in which the present appellants-accused have falsely been implicated. At this stage, it is also contended that even the prosecution has also failed to prove the motive on the part of the appellants to commit the alleged offence. Learned counsel, therefore, urged that this appeal be allowed and thereby the impugned order of conviction passed by the concerned Trial Court be quashed and set aside.

9. On the other hand, the learned APP has opposed these appeals. Learned APP has referred the deposition of the prosecution witnesses and thereafter contended that the independent witness, i.e., PW-2 Prakash Mukhia, the wife of the deceased and the father of the deceased have supported the case of the prosecution. The said witnesses have specifically narrated the manner in which the occurrence took place, the role played by each of the appellants and the said version of the prosecution



witnesses has been supported by the medical evidence and, therefore, the Trial Court has rightly passed the order of conviction against the present appellants. Learned APP, therefore, urged that when the prosecution has proved the case against appellants-accused beyond reasonable doubt, the Trial Court has not committed any error. Hence, both these appeals be dismissed.

10. Having heard the learned counsel appearing for the parties and having gone through the materials placed on record, it would emerge that PW-5 Anita Devi is the informant. Her *fardbeyan* was recorded by the concerned police authority on 08.02.2016. In her *fardbeyan*, the informant has stated that the occurrence took place on 02.02.2016 at 08:00 p.m. near Phulauri Chowk opposite to the house of Ashok Rishi. It is alleged in the *fardbeyan* that all the accused gave blows with *lathi* and *danda* (stick) etc. The said occurrence took place near the house of Kaleshwar Rishi. The husband of the informant was dragged and thereafter he came to the house and became unconscious. In the morning, the injured was taken to Sadar Hospital, Purnea where the concerned doctor examined him and the injured was referred to Katihar Medical College. However, the informant was not having sufficient money for the treatment



of her husband and, therefore, he was not taken to the said Medical College.

10.1. At this stage, deposition of PW-5 before the court is examined. It is stated by her in examination-in-chief that she was preparing food at 08:00 p.m. in her house and her husband had gone to purchase the vegetable in co-operative market. When her husband reached near the house of Ashok, all the three accused dragged her husband and he was taken to the *Aangan* (courtyard) of Kaleshwar and assault was made with brick and rod. She also reached at the place of occurrence after hearing *hulla* and she has seen the accused making the assault on her husband. Thereafter her husband was taken to Sadar Hospital, Purnea for treatment. However, he was referred to Katihar. It is also stated that she was not having sufficient money for the treatment and, therefore, the injured was not taken to Katihar for further treatment and in the Sadar Hospital, Purnea, her husband died and thereafter on the same day, she lodged the FIR.

10.2. The said witness in her cross-examination stated that her husband died in Sadar Hospital, Purnea and in the same day morning her husband was taken to the said hospital. She has further stated that at the time of occurrence, 10-20



persons of the *Muhalla* were present. However, she did not know the name of such persons.

11. At this stage, we would also like to refer the deposition of PW-4 Ramvilash Rishi who is father of the deceased. The said witness has stated in his examination-in-chief that the occurrence took place at about 08:00 p.m. At that time, he was present in his house. He heard *hulla* near the house of Kaleshwar and, therefore, he alongwith his daughter-in-law, Anita and younger son Jaikant reached at the place of occurrence and thereafter they saw that all the accused were giving stick and fists blow to Manoj Rishi (son of the witness). It is further stated that because of the said occurrence, Manoj Rishi became unconscious at the spot. Manoj Rishi was kept in the house during night hours. However, in the morning, he was taken to Sadar Hospital, Purnea. The concerned doctor referred the patient to Katihar Medical College. However, the injured was not taken to Katihar as they were not having sufficient fund. During course of treatment, the injured died in Sadar Hospital, Purnea. Thereafter police came to the hospital and dead body of the deceased was sent for post-mortem.

11.1. During cross-examination, the said witness has stated that he reached to the place of occurrence. He had seen



the scuffle and 50-100 persons gathered at the said place. The scuffle had taken place in the courtyard surrounded by *Taati* (bamboo plate structure). The said witness further stated during cross-examination that nobody had lifted Manoj Rishi from the spot and Manoj became unconscious at the place of occurrence. After 10-15 minutes, he ran away from the place of occurrence. At the time of scuffle, nobody has tried to hold the accused persons. It is also stated that during night hours, he did not inform the police. Manoj Rishi was taken to the hospital in the morning. However, in the morning also police was not informed. Manoj Rishi died after eight days in the hospital.

12. PW-2 Prakash Mukhia is the witness who has stated in his examination-in-chief that the occurrence took place prior to two years from the date of his deposition. At that time, he was returning after taking medicine to his house. When he reached near the house of Kaleshwar Rishi, he saw that all the three accused were giving blows with *lathi* to Manoj Rishi.

12.1. During cross-examination, the said witness stated that he had not met brother-in-law of Kharchan Rishi prior to the date of occurrence and he had seen the scuffle which took place on the road. He has specifically admitted in the cross-examination that at the time of occurrence, 2-4 persons were



present and it was dark night at about 08:00 p.m. and, therefore, he had not seen that who is giving blow to the injured. He has further admitted that police has not inquired from him.

13. PW-3 Bina Devi has stated in her examination-in-chief that at the time of occurrence, she was sleeping in her house. She heard *hulla* and saw that the accused were giving blow with *lathi* and also giving stick and fists blow to Manoj Rishi. The said witness also narrated about the injuries sustained by Manoj Rishi. She further stated that thereafter the accused fled away from the spot. She further stated that after the injured was taken to the hospital after 3-4 days when he was brought back to his house, Manoj Rishi died.

13.1. During cross-examination, she has admitted that it was a dark night and, therefore, it was difficult for her to see that who has given the blow with the weapon to the injured. She has also admitted that the police has not inquired from her about the occurrence.

14. PW-1 Dr. Vishnu Prasad Agarwal is the doctor who was posted as Medical Officer at Sadar Hospital, Purnea on 11.02.2016. The said witness has stated that at about 10:10 a.m., he had conducted the post-mortem on the dead body of the deceased Manoj Rishi. The said witness found following ante-



mortem injuries on external examination:

“(i) Rigor Mortis was present on all four limbs.

(ii) Linear abrasion of size 1” in light of left infraorbital area was black in colour.

(iii) Abrasion 1/2” x 1/4” on right knee joint black in colour.

On dessection Head & Neck – NAD.

Chest- Heart right chamber was full of blood and left chamber was empty.

Lungs- both were pale.

Abdomen- Peritoneal cavity contains foul smelling deep straw colour fluid about 1.5 litre in amount.

Liver, Spleen, Kidney were conjoined reaptured of transverse colon.

Stomach was empty small and large intestine contains gas and fecal matter

Urenary bladder was empty.

Time elapse since death within 24 hours, cause of death in my opinion the cause of death due to peritonitis due to large intestinal perforation caused by hard and blunt weapon because there was sign of physical assault.”

15. PW-6 Gopesh Kumar Yadav is the Investigating Officer who has carried out the investigation of the present case. The said witness has stated that on 08.02.2016, he was In-charge of the concerned police station and the investigation of the said case was taken over by him. He has recorded the statement of the witnesses and collected the necessary evidence. The dead body of the deceased was sent for post-mortem. Prior to that, the



inquest report was prepared and after the investigation was over, he had filed the charge-sheet against the accused persons.

15.1 During cross-examination, the said witness has stated that he had not recorded the statement of Dhiren Rishi, Narayan Rishi who were residing near the place of occurrence. The said witness also not recorded the statement of the injured who was in the hospital. He has also stated that witness Ramvilash has not stated before him while giving the statement that when he reached at the place of occurrence, his daughter-in-law has also accompanied him. The said witness further stated that Anita Devi has also not stated in her statement given before the police that she reached at the place of occurrence after hearing *hulla*.

16. From the aforesaid evidence led by the prosecution before the Trial Court, it would emerge that the prosecution has projected PW-2 Prakash Mukhia, PW-3 Bina Devi, PW-4 Ramvilas Rishi and PW-5 Anita Devi as the eye witnesses to the occurrence. However, if the deposition of the aforesaid witnesses including the cross-examination is carefully examined, it is revealed that there are major contradictions in the deposition of the aforesaid witnesses. In the *fardebayan*, the informant has given one story whereas in the deposition given



before the court, the said witness has narrated other story. From the evidence produced on record, it is revealed that the informant Anita Devi was not present at the place of occurrence. Even the Investigating Officer has admitted in his cross-examination that Ramvilas Rishi who is father-in-law of the informant has also not stated before the police while giving the statement under Section 161 of the Code that Anita Devi was present alongwith him at the place of occurrence. In the *fardbeyan*, the informant has stated that her husband came to the house and thereafter he became unconscious whereas Ramvilas Rishi has stated before the court that his son Manoj Rishi became unconscious at the place of occurrence. Even there is also discrepancy with regard to the place of occurrence. The so called eye witness PW-2, Prakash Mukhia who is projected as independent witness by the prosecution has admitted during cross-examination that it was dark night at about 08:00 p.m. and, therefore, he is not sure that which accused has given blow with which weapon to the injured. The so called eye witness PW-2 Prakash Mukhia has stated that only 2-4 persons were present at the place of occurrence when the occurrence took place whereas PW-4 Ramvilas Rishi has stated that 50-100 persons were gathered at the place of occurrence. Similarly,



informant Anita Devi, PW-5 has stated that only 10-20 persons gathered at the place of occurrence and at the time of occurrence. It is also revealed from the cross-examination of PW-2 Prakash Mukhia that the police did not record his statement and, therefore, it appears that for the first time the said witness was produced before the court by the prosecution. Similar is the case with PW-3 Bina Devi who has also stated during her cross-examination that the police did not inquire with her. She has also admitted during cross-examination that it was a dark night and, therefore, she could not identify or see that which person has given blow with which weapon to Manoj Rishi.

17. It is also not in dispute that the alleged occurrence took place on 02.02.2016 at 08:00 p.m. for which the FIR was lodged on 08.02.2016. Thus, there is a gross delay in lodging the FIR and it is the specific case of the appellants-convicts that they have been falsely implicated in the alleged occurrence. It is also reflected from the record that though the injured became unconscious in the night immediately after the occurrence took place, he was taken to the Sadar Hospital, Purnea for the first time in the morning. Thereafter it is also an admitted position that the concerned doctor at Sadar Hospital,



Purnea referred the injured to Katihar Medical College however, the patient/injured was not taken to the concerned hospital at Katihar for further treatment.

18. From the aforesaid evidence led by the prosecution before the Trial Court, we are of the view that PW-2, PW-3, PW-4 and PW-5 are projected as eye witnesses. However, Pws.-4 and 5 are the near relative of the injured and they are the interested witnesses and, therefore, their testimony is required to be scrutinized carefully. PW-2 and PW-3 are though independent witnesses, their testimony is not required to be believed because of the fact that both these witnesses have specifically admitted during cross-examination that their statements were not recorded by the police during course of investigation and for the first time they have given the deposition before the court. They have also admitted that it was a dark night and, therefore, it was not possible for them to see whether the present appellants-accused only have given blow with particular weapon to the deceased or not.

19. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the present appellants-convicts beyond reasonable doubt and, therefore, the concerned Trial



Court has committed an error while recording the order of conviction and sentence against the present appellants hence, the said order is required to be interfered with.

20. Accordingly, both these appeals stand allowed. The impugned judgment of conviction dated 13.02.2019 and order of sentence dated 18.02.2019 passed by learned 5th Additional District and Sessions Judge, Purnea in connection with Sessions Trial No.412/2016 and 68/2017 (CIS No.422/2016 and 68/2017, Tr. No.368/2016) arising out of K. Nagar (Sree Nagar) P.S. Case No.33 of 2016 is quashed and set aside. The appellant, namely, Gurucharan Rishi in Criminal Appeal (DB) No.1348 of 2019 and appellants, namely, Kaleshar Rishi @ Kaleshwar Rishi and Kharchan Rishi @ Kharchandra Rishi in Criminal Appeal (DB) No.508 of 2022 are acquitted of the charges levelled against them by the learned trial court. Since appellant, namely, Gurucharan Rishi is on bail, he is discharged from the liabilities of his bail bond and appellants, namely, Kaleshar Rishi @ Kaleshwar Rishi and Kharchan Rishi @ Kharchandra Rishi are in jail, they are directed to be released forthwith, if their presence is not required in any other case.

21. It goes without saying that if the appellants have paid the fine imposed by the learned Trial Court, the same shall



be returned to them.

22. Let the LCR of both these appeals be sent back
to the concerned lower court.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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