

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.123 of 2023

Arising Out of PS. Case No.-71 Year-2014 Thana- SAHARGHAT District- Madhubani

Hariom Kumar, male, aged about 28 years, S/o Late Shiv Shankar Prasad, R/o Village- Kerwa, P.S.- Saharghat, Distt.- Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Kishan Kumar, male, aged about 28 years, S/o Manoj Prasad, R/o Village- Kerva, P.S.- Saharghat, Distt.- Madhubani.
3. Manoj Prasad Sah, male, aged about 52 years, S/o Late Chandeshwar Prasad Sah, R/o Village- Kerva, P.S.- Saharghat, Distt.- Madhubani.
4. Madhu Kumar, male, aged about 28 years, S/o Ganesh Prasad, R/o Village- Kerva, P.S.- Saharghat, Distt.- Madhubani.
5. Amit Kumar, male, aged about 31 years, S/o Umesh Prasad, R/o Village- Kerva, P.S.- Saharghat, Distt.- Madhubani.

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 4403 of 2022

Arising Out of PS. Case No.-71 Year-2014 Thana- SAHARGHAT District- Madhubani

Madhu Kumar, male, aged about 28 years, Son of Ganesh Sah, R/o Village- Kerwa, Gangaur, P.S.- Saharghat, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 182 of 2023

Arising Out of PS. Case No.-71 Year-2014 Thana- SAHARGHAT District- Madhubani

1. Manoj Prasad Sah @ Manoj Prasad, aged about 52 years, male, S/o Late Chandeshwar Prasad Sah;
2. Kishan Kumar, aged about 28 years, male, S/o Manoj Prasad Sah @ Manoj Prasad.



R/o Village- Kerva, P.S.- Saharghat, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 123 of 2023)

For the Appellant/s : Mr. Prince Kumar Mishra, Adv.

For the Respondent Nos.2-5 : Mr. Praveen Kumar, Adv.
Mr. Jagjit Roshan, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (SJ) No. 4403 of 2022)

For the Appellant/s : Mr. Praveen Kumar, Adv.

Mr. Jagjit Roshan, Adv.
Mr. Om Prakash Singh, Adv.

For the Informant : Mr. Prince Kumar Mishra, Adv.

For the State : Mr. Ramchandra Singh, APP

(In CRIMINAL APPEAL (SJ) No. 182 of 2023)

For the Appellant/s : Mr. Praveen Kumar, Adv.

Mr. Jagjit Roshan, Adv.
Mr. Om Prakash Singh, Adv.

For the Informant : Mr. Prince Kumar Mishra, Adv.

For the State : Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-12-2023

Hariom Kumar, the appellant in Cr. Appeal
(DB) No. 123 of 2023, seeks a re-look at the judgment
and order of conviction of appellants/Madhu Kumar,
Manoj Prasad Sah @ Manoj Prasad and Kishan Kumar
[Cr. Appeal (SJ) Nos. 4403 of 2022 and 182 of 2023],



for a lesser offence under Section 304(II) of the I.P.C. instead of Section 302 of the I.P.C. The further challenge to the judgment and order impugned is with respect to acquittal of one of the respondents, namely, Amit Kumar on the ground of his *alibi* of being located in *Gujrat* at the time of the occurrence.

2. We have heard Mr. Prince Kumar Mishra, the learned Advocate for the appellant/Hariom Kumar [Cr. Appeal (DB) No. 123 of 2023], who is the informant of the case, and Mr. Praveen Kumar & Mr. Jagjit Roshan for the appellants/Madhu Kumar, Manoj Prasad Sah @ Manoj Prasad and Kishan Kumar [Cr. Appeal (SJ) Nos. 4403 of 2022 and 182 of 2023] respectively. The State is represented by Mr. Dilip Kumar Sinha, Mr. Ramchandra Singh and Mr. Mukeshwar Dayal, the learned Addl. Public Prosecutors respectively.

3. On the *fardebayan* of Hariom Kumar, a case *vide* Saharghat P.S. Case No. 71 of 2014, dated



15.12.2014, was registered for investigation for the offences under Sections 341, 323, 302, 504 and 34 of the I.P.C. against the respondents. It was alleged by him that at about 07:30 P.M. on 14.12.2014, while he along with his mother/Sudha Devi (P.W. 2) was present in his house, the deceased (his father) came back home and narrated to him and his mother that respondents/Kishan Kumar and Amit Kumar had attempted to mow him down on way back home by a motorcycle. He also disclosed that he could anyhow save himself from being injured. While he was talking to Hariom Kumar and his mother, all the four respondents arrived on two motorcycles, armed with *lathi* and bamboo sticks, and started abusing the deceased. Both, he and his mother, forbade them from being so combative, but to no avail. The deceased ran for his life to his neighbour's house, namely, Bishwanath Prasad (P.W. 1), who is the nephew of the deceased. The respondents chased the deceased and assaulted him.



Respondent/Madhu Kumar is alleged to have caught Hariom Kumar and respondents/Kishan Kumar, Manoj Sah and Amit Kumar assaulted the mother of Hariom Kumar, as a result of which she was injured. Thereafter, all the respondents assaulted the deceased, as a result of which he became unconscious and fell down. The respondents, thereafter, fled away. Persons of the neighbourhood had also witnessed the occurrence. After the respondents had left the scene, the deceased was taken to the clinic of Dr. Amar Nath Jha (P.W. 8), where he was declared dead. The dead-body was then brought back to the house of Hariom Kumar.

4. On the basis of the afore-noted *fardebayan* statement, the case was lodged, which went into investigation, whereafter *charge-sheet* was submitted and the respondents were put on Trial.

5. The Trial Court, after having examined eleven witnesses on behalf of the prosecution and five on behalf of the defense, acquitted respondent/Amit



Kumar, but convicted the rest of the respondents under Sections 341, 323 and 304 Part-II/34 of the I.P.C. and sentenced them to undergo S.I. for one month for the offence under Section 341 I.P.C.; to undergo S.I. for six months for the offence under Section 323 I.P.C. and to undergo R.I. for seven years, to pay a fine of Rs. 25,000/- each and in default of payment of fine, to further suffer S.I. for a period of six months for the offence under Section 304 Part-II/34 of the I.P.C. All the sentences were directed to run concurrently.

6. Hence, the appeals on behalf of the respondents as also the appeal on behalf of the appellant/Hariom Kumar, who is the son of the deceased. The appeal under Section 372 of the Cr.P.C. has to be listed before a D.B. That is the reason for the hearing of the appeals of the respondents also by the D.B. Normally, the appeals on behalf of the respondents would have been heard by a Single Bench as the sentence imposed is less than 10 years.



7. In order to examine the correctness of the allegation against the appellants, it would first be necessary to see the deposition of appellant/Hariom Kumar, who has been examined as P.W. 4 at the Trial. The time, place and the manner of occurrence as narrated by him in the *fardbeyan* has been reiterated at the Trial.

8. However, we have noticed that he claims to have informed the police about the occurrence after the dead-body of his father was brought back home from the clinic of Dr. Amar Nath Jha (P.W. 8). This was sometimes before the police party had arrived at the scene of occurrence. If he had informed the police about the death of his father, it is expected that he would also have spoken about the names of the assailants as everything had happened before his eyes. Unfortunately, the first Investigator of this case, namely, Kumar Brajesh (P.W. 6) only claims to have learnt about the occurrence in the night of 14.12.2014 by way of a



rumour. He admits in his deposition that he had received a telephonic call, but without any details about the caller or about the names of the assailants. This, therefore, presupposes that either P.W. 4 had not called the police or that he was too brief in his communication with the police and only talked about the death of his father and not the names of the assailants or that he did not know by then that the respondents were the assailants. The learned Advocates for the respondents would therefore be justified in raising this presumption; more so for the reason that Bishwanath Prasad (P.W. 1) before whose house the final part of the assault had taken place, has also admitted before the Trial Court that P.W. 4 had informed the police about the occurrence.

9. Not taking the names of the assailants on telephone appears to us to be rather strange.

10. The respondents are the co-villagers. If they had assaulted the informant (P.W. 4), his mother



(P.W. 2) and had killed the deceased, it was imperative for the informant to have told the police about them so that they could have been nabbed without letting them have sufficient time to escape.

11. Apart from this, it has been argued on behalf of the respondents that there are other serious fault-lines in the prosecution version, which make the case redolent with doubt and suspicion. If the deceased was attempted to be trammled down by two of the respondents and he could save his life and come back to his house, the most normal conduct of the family members would have had to usher him inside the house. More so, when P.W. 2, during his deposition, claims that while he was talking to his father in front of his house, he saw the respondents coming on two motorcycles armed with bamboo sticks and *lathi* and he also harboured an apprehension that some occurrence might take place. But even then, he did not go inside the house or take his mother and father inside the house and close



the gate from inside.

12. A person who is being chased would first look for cover in his own house, if he is in front of his house. Going to his nephew's house situated nearby, appears to be rather strange but then, impulsive decisions are taken by people under times of distress. Even if this be given, in between the houses of the informant and Bishwanath Prasad (P.W. 1), the house of one Hare Krishna was situated, which had an iron grill. If the intention was to save themselves, the best way out was to get inside the iron grill-door. It has also to be kept in mind that none of the respondents were armed with any firearms or lethal weapons. If there were four of them, there were as many number of people who could have taken up the gauntlet and prevented the respondents from committing the attack. All this, then, appears to be cringe-worthy.

13. Going forward, P.W. 4 has further stated that in the past, there was some dispute with respect to



clientele of the flour-mills belonging to the deceased and respondent/Manoj Sah. Incidentally, the flour-mill of Manoj Sah is situated in the house of Hare Krishna, a person who is directly related to the deceased and the informant. Because of such dispute, a *panchayati* was held some two months' ago in which the appellant was made to expiate for the wrongs committed by him. One of the members of the *panchayat* was Umesh, who is the father of Amit Kumar, who had been made accused in this case, but acquitted by the Trial Court on his *alibi*.

14. With this background fact and the reason ascribed for the respondents to have come to the house of the deceased to attack him, one wonders what would have been the immediate cause or the *casus belli* for the attack. The parties had been residing in the village after the *panchayati*. The assault, if at all it had taken place, cannot be said to be the fall out of that earlier commercial dispute and the afore-noted *panchayati* to resolve such dispute. Something must have happened



for conflagrating the issue and the respondents to have come to the house of the deceased to attack him.

15. The gaps, therefore, remain wide open for anyone to speculate.

16. In this context, non-examination of one Babloo, brother of Bishwanath Prasad (P.W. 1), assumes importance. According to P.W. 4, the deceased, after being assaulted in front of the house of P.W. 1, was taken to Dr. Amar Nath Jha on the vehicle of Babloo. It is expected that the same vehicle would have been used to bring him back home after his death. Babloo has conveniently been left out from the list of prosecution witnesses. The inside of the vehicle of Babloo would have had blood stains. It appears that the Investigator completely forgot about checking that vehicle in which the injured was taken to the doctor and was brought back home dead.

17. Was the deceased really taken to the clinic of Dr. Amar Nath Jha (P.W. 8)?



18. There are doubts for the reason that Dr. Amar Nath Jha has only talked about his having examined the wife of the deceased in the night intervening between 14th and 15th of December, 2014. He had found a number of simple injuries on her person. Had he declared the deceased dead sometimes before he had examined P.W. 2, he would have said that in his examination-in-chief. Dr. Jha not mentioning anything about his declaring the deceased dead in the night, really puts a question mark on the truth in the narration of events by the prosecution.

19. The daughter of deceased, namely, Bandana Kumari (P.W. 3) has also alleged at the Trial that the respondents assaulted the deceased, her mother and Hariom Kumar.

20. Be it noted that Hariom Kumar alleges that he too was injured and was treated by a village doctor, but no injury report has been brought on record. The doctor, who had examined him, also has not been



brought to the witness-stand.

21. The I.O. of this case appears to have given a short-shrift to the statement made by P.W. 3 and stated that she did not give the details of the attack by the respondents.

22. It further appears from the records of the case as also from the judgment of the Court below that respondent/Amit Kumar had taken the plea of *alibi*. He was at *Gujrat (Surat)* and was undergoing treatment for his illness. The records, however, indicate that respondent/Amit Kumar did not ever present himself for medical examination before the Board which was especially constituted for the purpose.

23. That Hariom Kumar was confronted with a tape-record of his talks with the father of Amit Kumar and his agreeing for compounding the case if ten lacs rupees was given in return, is not backed by any tangible and admissible evidence.

24. We find that the Trial Court rightly did



not accord any weightage to such statement recorded in a chip and played in the open Court.

25. Then, where was the justification of the Trial Court to have accepted the *alibi* of respondent/Amit Kumar?

26. On that account, we find fault with the Trial Court's reasoning and its extreme reliance on the deposition of defense witnesses with respect to Amit Kumar not being present at the time of the occurrence. But then, if his presence at the scene of occurrence is confirmed by the deposition of the witnesses, we do not find any overt act attributed to him, except for general allegation of all the accused persons/respondents assaulting the deceased, his wife and his son.

27. Mr. Mishra, the learned Advocate for the appellant/Hariom Kumar has taken us to the deposition of the eye-witnesses to the occurrence and has submitted that even the I.O. of this case has found blood stains in front of the house of P.W. 1.



28. However, we have found from the records and the deposition of the Investigator (P.W. 6) that even though the blood stained earth was seized, but was not never sent for any chemical examination.

29. This has taken the investigation to nowhere.

30. True it is that for the ineptitude and the cavalier approach of the Investigator, the entire case cannot be discarded; but in the present set of facts, when the entire genesis of occurrence is doubted, such lapses weaken the prosecution case.

31. Mr. Mishra has then submitted that the principles relating to interference in appeals against acquittal are trite and well settled. The entire evidence has got to be reviewed by the Court and the Court has to arrive at its own conclusions. If there are strong reasons based on evidence, which can dislodge the findings arrived at the Trial Court, which was the basis for the acquittal of respondent/Amit Kumar, the same



must be gone into in a dispassionate manner and not be left like that on the plea that due importance has to be given by the High court to the conclusions of the Trial Court.

32. Lastly, it has been submitted that it would be a matter of strange coincidence that the deceased would receive two injuries on his person caused by hard and blunt substance, one of which proved to be fatal and his wife also, simultaneously, would receive injuries, though simple in nature.

33. An occurrence must have then taken place in front of the house of the deceased and of P.W. 1 and the afore-noted minor lapses in the investigation ought not to be over-exaggerated or given undue importance.

34. As opposed to the afore-noted contentions, Mr. Praveen Kumar assisted by Mr. Jagjit Roshan, the learned Advocates has submitted that the *post-mortem* report and the evidence of the Doctor



(P.W. 7), who conducted the autopsy, would certify that there was one injury on the person of the deceased which was on the head and as a result of such injury the frontal/parietal bone had been fractured and the meninges were lacerated. The prosecution case however is of the deceased having been assaulted a number of times by four able-bodied respondents.

35. A poser, therefore, has been put before us. *viz.*, that with the evidence on record that the brick enclosure of a tree, in front of the house of the deceased was found to have been demolished and scattered and the deceased having received only one injury on his head and another, perhaps, on his eyes which was not fatal, would the chances of the deceased having received injury by a fall could be totally side-lined or ignored?

36. It has thus been argued that it would not be completely off-line to suggest that some occurrence might have taken place in front of the house of the deceased or P.W. 1 and in the process, the deceased



might have fallen down on the brick enclosure, hurting himself and his wife also got injured.

37. It has further been submitted that this would only be in the realm of imagination; but looking at the other background facts, such a possibility can be thought of. The respondents were not at all armed with any fire-weapons or any lethal/sharp weapons of any kind. They could well have been kept at bay, if so many people were present at the place of occurrence.

38. There is yet another aspect to it. There would have had been no intention of the respondents to kill the deceased with bamboo sticks. What was the immediate cause of the anger and the fallout skirmish also remains unknown.

39. It does not appear to be plausible that for a *panchayati* which had taken place two months' ago, the respondents would conspire to avenge the enmity and would come to the house of the deceased to attack him. This does not reflect any planning, if at all it were



there.

40. Would it then be completely illogical to suggest that because the deceased died unfortunately as he had received a grievous injury on his head, it was the most convenient thing for the informant to blame their commercial adversaries including Amit Kumar, whose father was part of the *panchayati*.

41. We do reckon that under normal human conduct, it is not expected that the real assailants would not be named and only in order to avenge the enmity, persons with whom the informant is at loggerheads would be named as the assailants. That the wife of the deceased also simultaneously received injuries, convinces us that for some reason or the other, for an immediate cause, an occurrence had taken place at the place which has been suggested by the prosecution.

42. That there is no record of the deceased having been taken to a Doctor where he was declared dead and non-examination of the person, who had



carried the deceased in an injured condition to the Doctor, provides space for anyone to speculate that the occurrence may not have taken place in the manner suggested by the prosecution.

43. We do not find it necessary to examine the deposition of the defense witnesses for the reason that the reasoning given by the Trial Court for acquitting respondent/Amit Kumar can be faulted by the very nature of evidence which has been collected in this case; but, at the same time, we are of the view that the Trial Court was not at all justified in convicting the other respondents under Section 304 Part-II of the I.P.C.

44. As noted by us, there does not appear to be any foreseeable intention of killing the deceased, much less harming him in such a manner which would kill him. The weapon used was bamboo stick; the medical testimony is not at all in sync with the ocular version of the deceased having been assaulted a number of times. There is no gainsaying that even one assault



on the vital portion on the deceased would clearly attract the mischief of Section 302 of the I.P.C., but then, the attendant circumstances and the background facts would be important to be noted.

45. Under such circumstances, we set aside the judgment of the Trial Court, acquitting respondent/Amit Kumar [Cr. Appeal (DB) No. 123 of 2023] and convicting and sentencing the rest of the respondents under Section 304 Part-II of the I.P.C.

46. We convert the conviction of appellant/Kishan Kumar [Cr. Appeal (SJ) No. 182 of 2023] to one under Section 325 of the I.P.C. as he has consistently been described as the person who gave the fatal blow on the deceased and the other respondents under Section 323 of the I.P.C.

47. Appellant/Kishan Kumar is, accordingly, sentenced to undergo R.I. for one year. We have been informed that he is in custody post-conviction for one year and prior to that, he was in jail for seven months.



48. Appellants/Manoj Prasad Sah @ Manoj Prasad [Cr. Appeal (SJ) No. 182 of 2023] and Madhu Kumar [Cr. Appeal (SJ) No. 4403 of 2022] are sentenced to undergo R.I. for six months for the offence under Section 323 of the I.P.C.

49. Both of them are stated to be in jail for the last one year.

50. Respondent/Amit Kumar [Cr. Appeal (DB) No. 123 of 2023] is convicted and sentenced to undergo R.I. for four months for the offence under Section 323 I.P.C. About him, it has been informed at the Bar that he has also remained in jail for more than six months during the period of investigation, which stands set-off against the sentence now imposed upon him.

51. All the appeals are thus disposed off accordingly.

52. The appellants, viz., Manoj Prasad Sah @ Manoj Prasad & Kishan Kumar [Cr. Appeal (SJ) No. 182



of 2023]; Madhu Kumar [Cr. Appeal (SJ) No. 4403 of 2022] and respondent/Amit Kumar [Cr. Appeal (DB) No. 123 of 2023] have already served out their sentences. They, thus, are directed to be released forthwith from jail, if not required or detained in any other case.

53. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

54. The records of these appeals be returned to the Trial Court forthwith.

55. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Praveen-II/Manoj

AFR/NAFR	NAFR
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