

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.1070 of 2010**

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1. Braj Kishore Sharma, Son of late Ramdayal Sharma  
2. Vibha Devi, wife of Braj Kishore Sharma  
3. Shashi Bhushan Sharma, son of Braj Kishore Sharma  
All resident of village Chhapra Megh, P.S. Musahari, Distt. Muzaffarpur.

... ... Appellants

Versus

The State of Bihar

... ... Respondent

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For the Appellants : Mr. A.K. Thakur, Advocate.  
For the State : Ms. Anita Kumari, APP  
For the informant : Mr. Prafull Chandra Jha, Advocate.  
Mr. Apurva Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**CAV JUDGMENT**

**Date : 11-09-2025**

The present Appeal has been preferred against the impugned judgment dated 06.10.2010 and the order of sentence dated 07.10.2010, passed by learned Additional Sessions Judge, Fast Track Court No. 1 in Sessions Trial No. 790 of 2009, whereby the Appellants have been found guilty under Sections 452, 324, 326 and Section 307 read with Section 34 of the Indian Penal Code and they have been sentenced to undergo R.I. for ten years and fine of Rs.5,000/- each under Section 307 of the Indian Penal Code and R.I for five years and fine of Rs.2,000/- each under Section 452 of the IPC. However, they have not been sentenced under Section 324 and 326 of the IPC. Moreover, in case of default to pay the fine, the Appellants are required to undergo additional R.I for one year. All the sentences have been



directed to run concurrently.

### **Prosecution Case**

2. The prosecution case arises out of Musahari P.S. Case No. 71 of 2008, registered on 29.07.2008 for the offences punishable under Section 452, 324, 326, 307, 120-B read with Section 34 of the IPC against four persons, including the appellants and co-convict, Ram Sanjeevan Singh. The FIR was lodged on the basis of the *fardbeyan* of the victim, namely, Meera Devi by Sub-Inspector B.K. Sharma on 29.07.2008 at 9:15 hrs. at Dr. Rajesh Kumar's Clinic, Muzaffarpur.

3. The prosecution case, as emerging from the *fardbeyan*, is that on the date of the alleged occurrence i.e on 27.07.2008, only the Informant and her seven years old minor daughter, Nishu Kumari was at her home and the other family members, like her husband and son were away from the village. As per the further case of the prosecution, on 27.07.2008, at 9 O' Clock in the evening, she was sleeping alone and her minor daughter was sleeping on adjoining bed and when she was on the verge of sleeping, all of a sudden she felt the arrival of Brajesh Kishore Sharma like a dream and he was sitting on her chest putting his knees on her. His wife, Vibha Devi, was also standing beside her head and pressing her neck and mouth. Ram



Sanjeevan Singh was also standing beside her, carrying a knife in his hand. Shashi Bhushan Sharma was also carrying knife. She started struggling for life (*chatpatane lagi*). On exhortation of Vibha Devi, Sanjeevan and Shashi Bhushan Sharma, Ram Sanjeevan Singh attacked her with his knife, injuring the left side of her stomach and blood started oozing out. Considering her dead, all the accused persons slowly left her room and fled away. It is the further case of the Informant that after the occurrence, she somehow came out of her house in unconscious condition raising *halla* and crying *chor chor*. But nobody came instantly to her rescue. When she was struggling for life at the door, her *Gotini*, Rangila Sharma, (the wife of her brother-in-law) came at her door after half an hour and helped her. She also informed all the concerned by mobile No. 9470307783. She has also claimed that all the accused persons are co-villagers and committed the occurrence on account of previous litigation going on between her husband and the accused Brajesh Kishore Sharma, in the Courts of Ranchi and Muzaffarpur.

#### **Evidence of the Parties**

4. During the Trial the following witnesses were examined on behalf of the Prosecution:

(i) **P.W.1-** Sarita Devi, who is *Nanad* of the



Informant, (ii) **P.W.2-** Smt. Rangila Sharma, who is the *Gotini* of the Informant, (iii) **P.W.3-** Mukesh Kumar, who is a co-villager of the informant, (iv) **P.W.4-** Kamni Devi, who is the Sister of the Informant, (v) **P.W.5-** Rishikesh Kumar, who is the son of the Informant, (vi) **P.W.6-** Arun Kumar Sharma @ Chaitanya Sharma, who is a co-villager of the informant, (vii) **P.W.7-** Nishu Rani, who is 7 year old daughter of the Informant, (viii) **P.W.8-** Girish Kumar Sharma, who is the husband of the Informant, (ix) **P.W.9-** Meera Devi, who is the Informant herself, (x) **P.W.10-** Dr. Rajesh Kumar, who conducted medico-legal examination of the victim, (xi) **P.W.11-** Surendra Mandal, who is the second I.O of the case and (xii) **P.W.12-** Vinay Kumar Sharma, who was the S.H.O. and the first I.O of the case.

5. The prosecution has also brought on record the following documentary evidence:

(i) **Ext.1-** Signature of Girish Kumar Sharma, (P.W.8) as a witness on the *fardbeyan*, (ii) **Ext.2-** Signature of Girish Kumar Sharma (P.W.8) on the seizure list, (iii) **Ext.2/1-** Signature of Girish Kumar Sharma (P.W.8) on the seizure list, (iv) **Ext.3-** Signature of Meera Devi, Informant (P.W.9) on the seizure list, (v) **Ext.4-** Injury Report of the victim, (vi) **Ext.5-** Fardbeyan, (vii) **Ext.6-** Endorsement and signature of Surendra Mandal



(P.W.11) on the fardebayan, (viii) **Ext.7** and (ix) **Ext.8** are Seizure lists.

**Statement under Section 313 Cr.PC**

**6.** After closure of the prosecution evidence, the appellants were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated.

**No evidence adduced by the Appellants**

**7.** However, no witness was examined on behalf of the accused persons in their defence, nor was any document brought on record in defence.

**Findings of the Trial Court**

**8.** Learned Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence, whereby the appellants and one co-accused were found guilty and sentenced and hence, the present appeal was filed.



**Death of the Appellant No.1,  
during Pendency of the Appeal**

**9.** However, during the pendency of this Appeal, the appellant/Braj Kishore Sharma died. But his son, Shashi Bhushan Sharma, who has been already co-appellant, is continuing the appeal on behalf of his father.

**Submissions on behalf of the Appellants**

**10.** Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence passed by learned Trial Court are not sustainable in the eye of law or on facts. Learned Trial Court has failed to appreciate the evidence on record and erroneously passed the impugned judgment of conviction and order of sentence.

**11.** Learned Trial Court has failed to appreciate that the earliest version of the prosecution case as disclosed by the seven year old Nishu Rani (daughter of the Informant/Victim) has been withheld by the prosecution. The Investigating Officers of the case, Vinay Kumar Sharma and Surendra Mandal have clearly admitted that after six hours of the occurrence on 27.07.2008, the statement of Nishu Rani, was recorded. Even Nishu Rani has admitted in her deposition that her statement was recorded in the night of 27-28.07.2008 and it is also admitted by the I.O., Vinay Kumar Sharma, (P.W.12) that the said statement



of Nishu Rani was handed over to the next I.O., Surendra Mandal, (P.W.11) at the time of handing over the charge of investigation to him. It is however admitted by the I.O., Surendra Mandal (P.W.-11) that the said statement of Nishu Rani was not on record.

**12.** He further submits that the suppression/withholding of the first version of the prosecution case is deliberate on the part of the prosecution for the reason that in the initial version of the prosecution, no accused/Appellants were named in the statement, because they were not aware who assaulted the victim. This ignorance about the names of the real culprits also gets reflected from the attending circumstances. As per the prosecution case, after occurrence, when Rangila Sharma (P.W.-2)/*Gotini* of the Informant, reached the house of the victim, she informed all the family members including the husband and sister of the Informant/Victim about the occurrence. But as per the evidence of such persons, who got information from (P.W.-2) about the occurrence, they were not informed about the names of the culprits. They were simply informed that the victim had got injured and they should come immediately.

**13.** Learned counsel for the Appellants further brought to the notice of this Court that the FIR was not lodged on



the basis of the first version of the prosecution case. As per Nishu Rani, her statement was recorded in the night of the occurrence itself. But on the basis of that statement, no FIR was lodged. After two days of the occurrence, when the husband of the victim/informant came to his house, the victim gave her *fardebayan* to the police in the presence of her husband after consultation and deliberation with her family members and falsely implicated the appellants on account of the previous enmity between the Informant's family members and the accused persons.

**14.** It is only Mukesh Kumar (P.W.3), who has deposed in his examination-in-chief that when he reached the house of the victim/informant on her crying, he came to know on inquiry from the Informant/Victim that the accused/Appellants had assaulted the Informant. But the I.O., Surendra Mandal, (P.W.-11) has clearly deposed in his cross-examination that Mukesh Kumar (P.W.-3) had not stated in his statement under Section 161 Cr.PC that he had enquired from Meera Devi and she had disclosed the names of the appellants as assailants.

**15.** He furthers submits that only the Informant/ Meera Devi (P.W.-9) and Nishu Rani (P.W.-7) are eye witnesses and undisputedly other private witnesses are only hearsay



witnesses.

**16.** He further submits that P.W.-7/Nishu Rani was seven years old at the time of the occurrence and at the time of her examination, she was nine years old. But before her examination as a prosecution witness, her competency test to depose, as required under Section 118 of the Evidence Act, was not conducted. Hence, for want of such competency, the evidence of Nishu Rani has no evidentiary value.

**17.** He further submits that the victim/Informant (P.W.-9) is also not reliable in view of the fact that her *fardbeyan* was recorded after two days after consultation and deliberation with her husband and other family members and there was strong motive of the Informant to falsely implicate the Appellants on account of admitted previous enmity.

**18.** He further submits that as a matter of fact, some unknown persons, for reasons not known to the Appellants, have committed the alleged occurrence, but on account of previous enmity, the Appellants have been falsely implicated by the Informant.

#### **Submissions on behalf of the State and the Informant**

**19.** However, learned counsel for the State and learned counsel for the informant defend the impugned judgment



and order of sentence submitting that the prosecution has proved its case beyond all reasonable doubts and the appellants have been appropriately sentenced.

**20.** They further submit that the case has been well proved by the Informant and her daughter, Nishu Rani, who are the eye-witnesses to the occurrence. The prosecution case is also supported by the seizure lists and the injury report.

**21.** Learned counsel for the Informant also submits that the informant/victim is entitled to get compensation under the Bihar Victim Compensation Scheme, 2014, because she has been clearly found to be victim in the case, because she has suffered grievous injury on account of the offence committed by the culprits.

#### **Appreciation of the evidences and finding of this Court**

**22.** From perusal of the evidence on record, I find that altogether twelve prosecution witnesses have been examined and only the Informant (P.W.-9) and her minor daughter, Nishu Rani (P.W.-7) are eye-witnesses and all other private witnesses are hearsay witnesses. Moreover, out the total nine private witnesses, one is the Informant herself and six other witnesses are her close family members including her husband, son, daughter, sister, *Nanad* and *Gotini*. Other two private witnesses



are co-villagers.

**23.** I further find that (P.W.-12) was the S.H.O. and the first I.O. of the case. I further find that this witness has deposed that just after six hours of the occurrence, he had recorded the statement of Nishu Rani/the seven years old daughter of the Informant/Victim. Such evidence of P.W.-12 is also supported by the deposition of Nishu Rani herself (P.W.-7), who has clearly deposed that her statement was recorded in the night of the occurrence at 3:00 am. Such evidence is also supported by the second I.O., Surendra Mandal (P.W.-11). But it is also admitted by P.W.-11 that the said statement of Nishu Rani is not on record.

**24.** As such, I find that the first version of the prosecution case has been withheld by the prosecution. Previous enmity between the Informant and the Appellants is also admitted in the *fardbeyan* of the Informant herself when the Informant has stated in her *fardbeyan* that the occurrence had taken place on account of litigation going on between her husband and Braj Kishore Sharma. I also find, as per the evidence on record that P.W.-2 is the first person to reach the place of occurrence on the cry of the Informant/victim and she informed about the occurrence to the husband and sister of the Informant/victim, but



the husband, Girish Kumar Sharma (P.W.-8), and sister, Kamini Devi (P.W.-4) has clearly deposed that she was only informed that the Informant was injured by knife. The names of the culprits were not stated to them. Had the Informant or her daughter been knowing the names of the culprits, they must have disclosed them to the husband of the victim and other close family members of the Informant. As such, serious doubt is created in the prosecution case against the Appellants, particularly, in the background of admitted previous enmity between the husband of the Informant and the accused/Appellants and strong motive on the part of the Informant to falsely implicate the appellants. All the Appellants were previously known to the Informant and her family and had they been involved in the alleged occurrence, their names must have been disclosed since the beginning itself, but their names were not immediately disclosed to anybody. In fact, (P.W.-4), the sister of the Informant has clearly deposed in her examination-in-chief that she got information about the occurrence in the next morning of the occurrence that her sister/Informant has been grievously injured by someone by knife. Only one witness, (P.W.-3)/ Mukesh Kumar has deposed that when he reached the house of the Informant, the Informant disclosed to him the name of the Appellants as culprits of the



occurrence. But as per the I.O., Surendra Mandal/(P.W.-11), Mukesh Kumar/P.W.-3 had not given such statement to him under Section 161 Cr.PC during investigation.

**25.** In view of the aforesaid facts and circumstances, I find that there is serious doubt about the involvement of the accused/Appellants in the occurrence which led to the grievous injury to the informant/victim (Meera Devi). Hence, the prosecution has failed to prove its case against the Appellants beyond all reasonable doubts. It would be travesty of justice to uphold the impugned judgment of conviction and order of sentence against the appellants.

**26.** Hence, the appeal is allowed setting aside the impugned judgment and order of sentence, acquitting the appellants of all the charges, giving them benefit of doubt.

**27.** The Appellants are already on bail. Hence, they are discharged from the liability of their bail bonds.

#### **Compensation to the Victim**

**28.** Though the appellants have been acquitted of the charge, it is well proved as per the evidence on record that the informant/Meera Devi was grievously injured by a sharp edged weapon during the occurrence. Hence, she is victim of this case and entitled to get compensation as per Bihar Victim



Compensation Scheme, 2014 as made under Section 357A Cr.PC.

**29.** In this regard, it would be relevant to refer to **Sunil Kumar Jha Vs. State of Bihar, 2024 SCC OnLine PAT 960**, delivered by a Division of this Court of which I was a part, wherein subject of compensation to the victims has been dealt with in great detail adverting to relevant statutory provisions and case laws, holding as follows:-

**“105.** It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr.PC, irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation. In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr.PC, whether victim is entitled to compensation under Section 357 and Section 357 A Cr.PC and if yes, how much and from whom.

**106.** The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.

**107.** Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under Section 357A Cr.PC even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.

**108.** In case of conviction of the Accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr.PC and if the compensation directed to be paid under Section 357 Cr.PC is not sufficient to rehabilitate the victim, the Court



is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under Section 357A Cr.PC. In case of acquittal of the Accused-Appellant, the Court is duty bound to resort to Section 357A Cr.PC to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section 357A Cr.PC.”

**30.** Accordingly, I recommend Bihar State Legal Services Authority to pay compensation to the victim/Meera Devi as per Bihar Victim Compensation Scheme, 2014 within a period of two months from the date of receipt of this order.

**31.** Office is directed to send a copy of this judgment to the Secretary of Bihar State Legal Services Authority, for information and needful.

**32.** Pending applications, if any, stand disposed of.

**33.** L.C.R. be sent back to the Court concerned forthwith along with a copy of this judgment.

**(Jitendra Kumar, J.)**

S.Ali/Shoaib

Chandan/-

<b>AFR/NAFR</b>	N.A.F.R
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