

In the Court of Additional District & Sessions Judge XII, Aurangabad

Sessions Trial No. 01/2021(01/2021)

Arising out of Amba P.S. Case No. 14/2020

State of Bihar Versus Rohit Kumar and Ors.

Order dated 08.07.2022

A petition filed on behalf of prosecution on 05.04.2022 under the provision of 311 Cr.P.C. to examine the injured namely Ansh Kumar, Jasawant Kumar, and Kamlesh Kumar who have not made witnesses in the charge-sheet by the I.O. Copy of the petition served to accused-petitioners and two separate rejoinders were filed on behalf of accused-petitioners on 13.04.2022.

Heard the learned counsel for the petitioners namely Awadhesh Roy, Anil Kumar and Ld. Addl. P.P (Banan Prasad).

Ld. Addl. P.P. on behalf of the state has submitted that in the instance case, all charge-sheeted witnesses have already been examined except Chandan Kumar who come into collusion of the accused person, therefore prosecution does not want to examine the Chandan Kumar as prosecution witness. The Ld. Addl. PP has further contended that in the instance case Ansh Kumar, Jasawant Kumar, and Kamlesh Kumar Gupta had also become injured but during investigation, they were not made charge-sheeted witnesses by the I.O. As all above-noted injured are eye-witnesses of the occurrence and they also received injury in the alleged occurrence, therefore, their examination is necessary for the ends of justice and they may be called for their examination as prosecution witnesses.

The Ld. Counsel for accused-petitioners has vehemently opposed the prayer of the prosecution and submitted that in the instance case, this petition has been filed with very delay stage. The Ld. Counsel has further contended that the injured persons as mentioned in the petition of the prosecution, are not charge-sheeted witnesses and their statements have also not been recorded by the IO under the provision of section 161 of Cr.P.C. and they have also not been examined by any Government Medical Doctor and their injuries report are also not on record. In this situation, the aforesaid injured as mentioned in the prosecution's petition cannot be examined. There is no merit in the aforesaid petition of the prosecution and it has been filed with delaying attitude, therefore, the aforesaid petition of the prosecution may be rejected.

Perused the case record. On perusal of the case record, it transpires that on the basis of written report of the informant namely Dharmendra Prasad, FIR bearing Amba P.S. case No. 14/2020 registered under section 341, 323, 307, 302/34 of IPC against three accused persons namely Rohit Kumar, Deepak Kumar and Abhishekh Kumar who are facing trial and on perusal of written report of the informant it transpires that informant has stated in his written report that accused Rohit Kumar, Deepak Kumar and Abhishekh Kumar brutally assaulted her son Ashutosh Kumar @ Shanni Kumar and due to which he died in hospital during the treatment and in the aforesaid occurrence Kamlesh Kumar, Ansh Kumar and Jaiyant Kumar also became injured. On the basis of aforesaid FIR investigation was started and after completion of investigation charge-sheet was submitted under section 341, 302, 341, 323, 307/34 of IPC against the above noted three accused persons. I perused charge-sheet and case diary, on perusal of the case diary, it transpires that during the investigation IO has not recorded the statement of the aforesaid all three injured persons under the provision of section 161 of Cr.P.C. While from the written report of the informant, it appears that above noted three injured persons were present at the time of the alleged occurrence and they received injuries on their heads and other part of body despite of that IO has not recorded the statement under the provision of 161 Cr.P.C. of the above noted injured persons and above noted all three injured persons have not made witnesses in the charge-sheet. I also perused the evidence of witnesses who have been examined by the prosecution during the trial and all of them have stated that when injured Kamlesh Kumar, Ansh Kumar and Jaiyant Kumar went there to rescue the Ashutosh Kumar @ Shanni Kumar, accused persons brutally assaulted the above-noted injured persons and they received injuries in their head and another part of the bodies. Case record further reveals that photographs of the injured persons are on case record and documents regarding treatment of the injured persons are also on case record. From which it appears that on 03.03.2020 injured Kamlesh Kumar Gupta and Ansh Kumar have been got medically treated in Sheela Maternity and surgical Hospital. Prescription of Rahat clinic is also on case record, from which it transpires that Injured Jayant Kumar has also been treated by Dr. Mohammad Sohail. Photograph available on case record also reveals that injured Ansh Kumar and Kamlesh Kumar Gupta received injuries in their heads and other part of the body.

From the above facts, it is clear that injured Ansh Kumar, Kamlesh Gupta and Jayant Kumar received injuries in their heads and other part of the body in alleged occurrence but during the investigation, I.O. has not recorded their statements under the provision of 161 Cr.P.C. It is vital negligence on the part of the I.O. Hon'ble High Court, Patna has been pleased to decide in case of Md. Badruddin & others vs state of Bihar [(Cr. Appl (SJ) No.-182/1999), 2012 (4) ECC (Pat)], None examination of important witness such as the injured by the investigation officer shows his carelessness attitude and failure on his part to fulfill his duty in conducting of fare investigation and due to which the evidence of the witnesses can't be discarded. In the instance case, I.O. has also not recorded the statements of the injured persons under the provision of 161 Cr.P.C. and only on the basis of its ground the injured person, who are also eye witnesses of the occurrence, can't be barred to give evidence before the Court as prosecution witnesses.

Having considered the above facts and circumstances as well as in the view of Hon'ble High Court, Patna as above noted, the aforesaid petition filed on behalf of the prosecution is hereby allowed and prosecution is directed to produce all injured witnesses within three dates. If prosecution fails to examine the injured witnesses and doctor within the stipulated period, prosecution evidence will be closed.

Put up on 21.07.2022 for evidence.

Dictated by

Addl. District & Sess. Judge XII
Aurangabad (Bihar).