

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.654 of 2015

(Arising out of Judgment and order of conviction dated 17.6.2011/20.6.2011 in connection with Sessions Trial No. 239 of 2008, Trial No. 85 of 2011, arising out of Katoria P.S. Case No. -79 of 2006, G.R. Case no. 647 of 2006, District- BANKA)

=====

Brahmadeo Das, Son of Suresh Das, resident of Village- Adra, P.S:- Katoria,
District:- Banka.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ram Sumiran Rai, Adv.
Ms. Anita Kumari, Adv.

For the State : Mr. S.N. Prasad, A.P.P.

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 09-02-2016

Heard learned counsel for the Appellant and learned
Additional Public Prosecutor.

2. The Appellant has been convicted for the offence
under Sections 302/34 Indian Penal Code read with Section 120B of
the Indian Penal Code and sentenced to rigorous imprisonment for life
and a fine of Rs.5,000/- in default of which further imprisonment for
six months by the Additional Distt. & Sessions judge, F.T.C. 3rd,
Banka, in Sessions Trial No. 239 of 2008, Trial No. 85 of 2011 arising
out of Katoria P.S. Case no. 79 of 2006.

3. The case of the Prosecution according to the



Informant Lilawati Devi (PW-2), the wife of the deceased is that on 11.6.2006 at about 7:00 A.M. the accused Suresh Das and Brahmadeo Das (Appellant), brother-in-law of Suresh Das (Bigan Das) came to the house of the Informant and called her husband Kurchhu Das and, thereafter, her husband went along with them. The Informant at about 11:00 A.M. saw the accused wandering in the village but her husband did not return and, therefore, she started looking for him and then she found him in an injured and unconscious condition at which, she sprinkled water. He regained consciousness and stated that Suresh Das, Brahmadeo Das, appellant herein, Indradeo Das, Mohan Das and son of Bigan Das had assaulted him and, thereafter, fled away. Appellant Brahmadeo Das along with others was put on Trial.

4. During Trial, the Prosecution has examined only four witnesses, out of whom Karu Yadav (PW-3) and Surendra Kumar Mauar (PW-4) are formal Police witnesses who did no part of investigation.

5. PW-1, Murari Das, is the brother of the deceased who stated that on the date of occurrence, his brother had been called away by Jagun Das, Suresh Das, Khepan Das and Indradeo Das, and, thereafter, Churku was found injured. He disclosed to his wife on gaining consciousness that Suresh Das and Indradeo Das had climed on his chest and assaulted him whereas Khepan Das, Jagun Das and

Bhutka had assaulted him. We, thus, find that he did not name the Appellant and, is irrelevant for his purpose.

6. PW-2 Lilawati Devi, wife of the deceased and the Informant stated that on the date of occurrence at about 7:00 A.M. Jagun Das and Suresh Das had come to call her husband and on such invitation, initially, he refused to go but left with them. At about 10:00 A.M., she saw Jagun Das, Suresh Das and Indradeo Das in the village, so, she went looking for her husband, where she learnt that her husband had refused to drink liquor but, Jagun and Khepan pulled him and administered wine to him and threw him from the Hill. She found him injured and unconscious and, so, she sprinkled water on him at which he disclosed everything. We find from this evidence also that she does not disclose the name of the Appellant in her evidence.

7. In the aforesaid circumstances, evidently, the conviction of the Appellant on the basis of his name having been disclosed in the First Information Report, which is not substantive evidence, is totally perverse, hence, we are inclined to acquit the Appellant.

8. In the result, the Appeal is allowed and the Judgment and order of conviction dated 17.6.2011/20.6.2011 passed by the Additional District and Sessions Judge, F.T.C.-III, Banka, in connection with Sessions Trial No. 239 of 2008, Trial No. 85 of 2011

arising out of Katoria P.S. Case No. 79 of 2006, G.R. Case No. 647 of 2006, is hereby, set aside.

23. The Appellant Brahmadeo Das, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

U		T	
---	--	---	--