

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.390 of 1995

1. Ram Babu Sah
2. Shyam Babu Sah
3. Shambhu Sah
4. Prabhu Sah
All sons of Jaldhar Sah
All residents of Village- Dumri Khurd, Police Station- Majorganj, District-
Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s :

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-11-2017

The four appellants herein in this appeal under Section 374(2) of the Code of Criminal Procedure challenge their conviction for offence under Section 302, 302/34 I.P.C. vide judgment dated 24th of November, 1995 ordered by the learned Sessions Judge, Sitamarhi. Appellant No. 4 Prabhu Sah is convicted for an offence under Section 302 I.P.C. and sentenced to undergo R.I. for life whereas the other three appellants Ram Babu Sah, Shyam Babu Sah and Shambhu Sah are convicted for offence under Section 302/34 I.P.C. and sentenced to undergo R.I. for life.



It is the case of the prosecution that one Shyam Chandra Sah gave a fardbeyan to the effect that in the night intervening 30th and 1st of December, 1993 he was sleeping in his house with his family members after taking meal when at about 1:00 A.M. Appellant No. 1 Ram Babu Sah called the name of Ram Swaroop Sah and asked him to come out of the house. The family members woke up. Ram Swaroop Sah was going out. The informant followed him and in the night at 1:00 A.M. in the lane it is seen that Prabhu Sah, the appellant, pulled his brother and gave him one lathi blow on the head. He fell down unconscious. The informant raised hulla when the others came there. It is said that the informant saw his brother in an unconscious state. He was taken to the hospital where he died. Based on the aforesaid, the prosecution was launched and the appellants convicted.

In the trial in question apart from examining the informant, 9 witnesses were examined. P.W. 9 Jitenra Jha was a formal witness to the recording of the First Information Report. P.W. 1 Gopal Sah is a witness to the Inquest Report, P.W. 2 Ram Narayan Thakur came to the spot hearing the hulla, does not speak anything about the incident. Similarly P.W. 3 Bhola Sah also speaks about sleeping in his house and coming out.



However, he speaks about Prabhu Sah assaulting the deceased with a lathi on the head. P.W. 4 Ajay Sah speaks about seeing the accused persons in the spot but does not say anything about the occurrence. Similarly, P.W. 5 Chandeshwar Sah also speaks about coming out of the house and seeing the accused persons. It is only P.W. 6 Shyam Chandra Sah is the informant who is also a witness to the same who speaks about Appellant No. 4 Prabhu Sah assaulting the deceased with a lathi and giving one blow. P.W. 8 Dr. Om Prakash Chaurasia has conducted the post mortem and has given the medical report and he speaks about one injury on the head of the deceased which caused the death. However, from the statement of P.W. 3, P.W.5 and P.W. 6 and other witnesses, it is clear that it is only Pabhu Sah who gave one lathi blow. However, the witnesses also say that it was in the night and they had identified Prabhu Sah with the help of a torch. That apart, in the elaborate cross-examination undertaken of these witnesses, the family tussle, dispute and the ongoing enmity between the families has been established. That apart, the witnesses do not say anything about any role of the other appellants namely Ram Babu Sah, Shyam Babu Sah and Shambhu Sah. All the appellants belong to the same family, are related to each other and there is a family dispute between the



parties concerned.

Apart from all these factors, there is a vital error which vitiates the entire prosecution and the same is non-compliance with the mandatory requirement of Section 313 Cr.P.C. If the statement of accused persons recorded under Section 313 Cr.P.C. are taken note of at page 61, 62, 63 and 64 it is seen that only one question is put to each of the witness i.e. evidence has come against you that on 01.12.1993 you assaulted Ram Swaroop Sah and caused his death. Except for asking this one solitary question to each of the appellants, which is denied by them, the exonerating circumstances and the material that has come against the appellants have not been put to them and they have not been granted any opportunity to explain the circumstances against them.

Thus, we find that in the statement of the accused recorded under Section 313 Cr.P.C. the requirement of law as laid down in the case of **Sukhjit Singh Vs. State of Punjab- (2014) 10 SCC 270** and the judgments relied upon in the aforesaid case- **Tara Singh Vs. State-A.I.R. 1951 SC 441, Hate Singh Bhagat Singh Vs. State of Madhya Bharat- AIR 1953 SC 468, Ajay Singh Vs. State of Maharashtra- (2007) 12 SCC 341 and Ranvir Yadav Vs. State of Bihar- (2009) 6**



SCC 595 have not been fulfilled.

In the aforesaid cases it has been held by the Supreme Court that examination of an accused under Section 313 Cr.P.C. is not an empty formality. It is a statutory and mandatory requirement which has to be complied with in its letter and spirit. All the circumstances existing against the accused and all exonerating circumstances based on the evidence are required to be put to them and they be granted an opportunity to explain the same. It is held by the Supreme Court in the aforesaid cases that non-compliance with the aforesaid statutory requirement vitiates the entire trial, it causes serious prejudice to the accused person and their conviction based on such a compliance of Section 313 Cr.P.C. is unsustainable.

That being so, apart from the lacunae indicated in the discussion made by us hereinabove, we find that the entire trial stands vitiated on account of non-compliance with the mandatory requirement of Section 313 Cr.P.C. as held by the Supreme Court and even if the entire case of the prosecution, as is made out, is accepted, it is a case where the only evidence available, at best, would be against Appellant No. 4 Prabhu Sah of his assaulting the deceased with a lathi a single blow, evidences of family enmity and because of which false



prosecution cannot be ruled out and the Appellant Prabhu Sah has already undergone a jail sentence of more than 4 ½ years. The incident took place in the year 1993 and, therefore, now in our considered view, it is a fit case where benefit of lacunae in the trial should go to the appellants. The prosecution has failed to prove the charges levelled against the appellants beyond all reasonable doubts and on account of violation of the provisions of Section 313 Cr.P.C. the trial itself stands vitiated.

Accordingly, this appeal stands allowed. The judgment of conviction and order of sentence awarded to the appellants set aside, the appellants are acquitted of the charges levelled against them and they are discharged from the liability of their respective bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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