

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.151 of 1994**

Against judgment and order dated 16.02.1994 passed by the learned  
Additional Sessions Judge, Nawadah in Sessions Trial No. 28 of 1990 /54  
of 1987

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1. Brahamdeo Yadav  
2. Rambriksh Yadav, both sons of Baso Yadav, residents of Village  
Mutalifchank, PS Warisaliganj, District Nawadah

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Pramod Kumar

For the Respondent/s : Mrs. Shashi Bala Verma, APP.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-11-2017

Challenging their conviction ordered by the learned  
Additional Sessions Judge, Nawadah in Sessions Trial No. 28 of  
1990/54 of 1987 by judgment dated 16.02.1994 convicting them to  
undergo life imprisonment for committing offence under Section  
302/34 of the Indian Penal Code, this appeal has been filed by the  
appellants.

It is the case of the prosecution that on 16.04.1984 at  
about sunset time in the village Mutalichak a quarrel between the  
informant, Chinta Devi, wife of one Yadu Thakur, and wife of one  
Manu Yadav regarding some dispute between the children took



place. When this was going on, Brahamdeo yadav, appellant herein, came and threatened the informant Chinta Devi that she will be ruined and abused her with filthy language. On this, Arjun Thakur, brother-in-law of Chinta Devi objected and therefore Baso Yadav, Kewal Yadav, Shital Yadav, Rajo Yadav, lalkeshwar yadav, Mahendra Yadav and many others including the appellant no. 2 Ram Briksh Yadav came there armed with lathi and surrounded Arjun Thakur. On the order of Baso Yadav, Brahamdeo Yadav and other accused persons assaulted Arjun Thakur. While Ramanand Thakur came to save Arjun Thakur he was also assaulted. Arjun Thakur was taken to hospital where he is said to have died.

Ten accused persons including the present appellants were put on trial but it is only the appellants herein Brahmdeo Yadav and Ram Briksh Yadav who are found guilty for committing offence under Section 302 IPC and convicted. The other accused persons were discharged as they were not found guilty.

From the material that has come on record, it is seen that the prosecution had examined 16 witnesses. PW 1 Rajendra Prasad Verma is a formal witness and has only proved lodging of the F.I.R. PW 2 Kali Chanran Sharma is also a formal witness who has proved the endorsement in the Fardbeyan Ext. 2. PW 7 Sita Ram Thakur and PW 12 Ram Chandra Yadav are tendered witnesses. PW 9



Banshi Prasad is a witness to the inquest report prepared by Kashi Prasad, Investigating Officer. Pw 13 Arun Kumar has proved the Fardbeyan put in the signature of Sub-Inspector Ram Baran Sharma. PW 14 Ram Swarup Yadav is also a formal witness and has proved the injury report. Interestingly, the Investigating Officer and important witnesses like Dr. B K Roy who has given the injury report Ext. 6 have not been examined. If the statement of informant PW 3 Chinta Devi is taken note of, she speaks about Brahmdeo Yadav and Ram Briksh Yadav assaulting with *lathi* and later on, *saif* in the hands of Brahmdeo yadav which pierced into the right rib of Ghura Devi. However, Ghura Devi has not at all been examined and Arjun Thakur is said to have assaulted by Ram Briksh Yadav with lathi. Arjun Thakur deceased is said to have been assaulted by Brahmdeo Yadav and the other accused including the appellant Ram Briksh Yadav are said to have assaulted Ghura Devi who has not been examined and her injuries are not proved.

Apart from the fact, that there are various discrepancies in the case of the prosecution and important witnesses like Ghura Devi has not been examined. The main witnesses of the prosecution, PW 3, PW 4, PW 5 and PW 6 are interested witnesses and the learned trial court in Paragraph-26 of the judgment admits this position. However, another serious lacuna in this case which cannot be



ignored by this Court. The fact about the manner in which recording of statement under Section 313, Cr.P.C. has been undertaken. As far as appellants Brahmdeo Yadav and Ram Briksh Yadav are concerned, their statements recorded under Section 313, Cr.P.C. are available on record. Apart from the statement of these two accused persons, the statement of all other accused persons who were put on trial are available on record and scanning through the statements of the accused persons recorded under Section 313, Cr.P.C. it is seen that consistently in the case of all 10 accused persons who were prosecuted including the present two appellants, only two questions were put. The first question was that the witness have narrated about the incident that took place on 16.04.1986 in the village under police station indicated therein in which Arjun Thakur was assaulted with lathi and died, what you have to say in this regard? The second question was asked that it is said that you also tried to assault with Brahmdeo Yadav and Ram Briksh Yadav to Arjun Thakur Ghura Devi and injured them, what have you to say in the matter? There are the only two questions put to the accused persons and if the aforesaid compliance of Section 313 Cr.P.C. is analyzed, it is seen that in this regard the law is laid down by the Supreme Court in the case of **Sukhjit Singh vs. State of Punjab [(2014) 10 SCC 270]**. Hon'ble Supreme Court after considering the law laid down in this



regard in the case of **Ranbir Yadav vs. State of Bihar [(2009) 6 SCC 594]**, **Tara Singh vs. State [AIR 1951 SC 441]**, **Hate Singh Bhagat Singh vs. State of Madhya Bharat [AIR 1953 SC 468]** and **Ajay Singh vs. State of Maharashtra [(2007) 12 SCC 341]** holds that compliance of the requirement of Section 313, Cr.P.C. is not an empty formality. This statutory provision mandates that all the incriminating materials that have come on record have to be put to the accused persons and he, given an opportunity, to explaining the circumstance existing against him. Non-compliance with this requirement is tantamount to serious lapse on the part of the trial court making the conviction vitiated in law. It is held by the Supreme Court that the accused must be questioned separately about each material circumstance which is intended to be used against him. It is held that the whole object of the Section is to afford to the accused a fair and proper opportunity for explaining the circumstances which appear against him and if this requirement is not followed the trial stands vitiated. If the totality of the principles laid down by the Hon'ble Supreme Court in the aforesaid cases are analyzed, it would be seen that the requisite materials and evidence are to be put to the accused, in order to give him a chance to explain the circumstances appearing against him and failure thereof causes immense prejudice to accused and the entire trial stands vitiated.



That being the requirement of law, as laid down by the Supreme Court for compliance with the requirement of Section 313, Cr.P.C., and if we analyze the manner in which these compliances have been done in the present case, it is crystal clear that the requirement of law with regard to recording the statement of the accused under Section 313, Cr.P.C. is not properly proved in the present case.

That apart, as indicated hereinabove, certain witnesses have been tendered by the prosecution. In the case of **Sukhwant Singh vs. State of Punjab [(1995) 3 SCC 367]** it has been held by the Supreme Court that tendering of witnesses is not provided for under law. Tendering a defence only for cross-examination is not permissible. This also vitiates the trial.

Accordingly, if the case in hand is analyzed in totality, it is clear that it is a case where the appellants have been convicted under Section 302 IPC without following the mandatory provision of law and once it is established that their prosecution has not been done properly, it stands vitiated for various reasons as are indicated hereinabove and, added to this, when we analyze the discrepancy in the case of the prosecution which have also been taken note of hereinabove, we have no hesitation in holding that in the facts and circumstances of the case the conviction of the appellants cannot be upheld and is a fit case where the appeal should be allowed and



conviction set aside on various grounds as are discussed hereinabove.

Accordingly, we allow this appeal. The conviction and sentence of the appellants are set aside. The appellants are on bail. Their bail bonds shall stand discharged.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

mrl./-

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