

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

**Criminal Appeal (SJ) No.231 of 2002**

Arising Out of PS.Case No. -22 Year- 1988 Thana -Hayaghat District- DARBHANGA

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1. Ram Das Yadav, Son of Bhalar Yadav.

2. Prem Paswan, S/o Sukhichand Paswan

Both of them resident of village – Bharwasi, P.S.-Hayaghat, District-Darbhangha

.... .... Appellants

Versus

State of Bihar

.... .... Respondent

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**Appearance:**

For the Appellant/s : Mr. Prabhat Kumar Singh, Advocate.

Mr. Pramod Kumar Singh, Advocate.

For the State : Mr. Binod Bihari Singh, APP.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA  
JAISWAL**

ORAL JUDGMENT

**Date: 11-10-2017**

Heard learned counsel for the appellants as well as  
learned APP for the State in this appeal and perused the record.

2. This criminal appeal has been preferred against the  
Judgment and Order of conviction dated 12.04.2002 and order of  
sentence dated 15.04.2002 passed by the Additional Sessions Judge,  
Fast Track Court-III, Darbhanga in Sessions Trial No. 43 of 1990  
arising out of Hayaghat P.S. Case No. 22 of 1988, whereby the



learned trial court convicted the appellants Ram Das Yadav and Prem Paswan for the offence punishable under Section 307/34 of the Indian Penal Code and sentenced them to undergo R.I. for seven years each and also slapped them with fine of Rs. 5000/- each and in default of payment of fine, to further undergo R.I. for 6 months.

**3.** The factual matrix of the case is that Hayaghat P.S. Case no. 22 of 1988 was instituted under Sections 341/323/324/307/34 of the Indian Penal Code against the accused persons, namely, Ram Das Yadav and Prem Paswan on the basis of the statement of the informant Dasrath Lal, Son of Jamuna Lal, Resident of Village-Bharwari, P.S.- Hayaghat, District- Darbhanga recorded by S.I. Surendra Prasad Singh of P.S. Hayaghat on 16.05.1988 at 08:15 AM with the allegation in succinct that on 16.05.1988 at around 1 AM, he had gone to his field to see the pumping set and machine kept there and in the course of regressing when he arrived near the bamboo cluster located in front of Thakurbari, Ram Das Yadav and Prem Paswan abruptly emerged there and caught him hold. Ram Das Yadav assaulted on his forehead by means of dagger. Sustaining injury, he fell down on the ground. Then Prem Paswan assaulted on his hand, chest, back and thigh by means of lathi. On alarm made by him, Bisheshwar Paswan, Dayaram Paswan and Nathuni Sharma rushed there and intervened



the occurrence. The bone of contention is that the she buffalo of the accused Prem Paswan had grazed his field upon which he had made complain in the Panchayat and organized a Panchayati. The accused persons committed the aforesaid occurrence out of the aforesaid grudge.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused persons, namely, Ram Das Yadav and Prem Paswan under Sections 341/323/324/307/34 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of the Additional Sessions Judge, Fast Track Court-III, Darbhanga for trial.

6. Charges against the aforesaid accused persons were framed under Sections 341/34 and 307/34 of the Indian Penal Code. Charges were read over and explained to them in Hindi to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether five prosecution witnesses



namely, Bisheshwar Paswan as PW-1, informant Dasrath Lal as PW-2, Harendra Kishore Lal as PW-3, Dayaram Paswan as PW-4 and Dr. Surendra Prasad Singh as PW-5. Out of the aforesaid witnesses, PW-4 happens to be the hostile witness. In documentary evidence, the prosecution has filed and proved several documents.

**8.** The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. In buttress of their case, in ocular evidence the accused persons have examined only one witness, namely, Jhingur Paswan as DW-1.

**9.** After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

**10.** Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts have preferred the present Criminal Appeal.

**11.** The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

**12.** It is submitted by learned counsel for the appellants that the statement of the informant happens to be in quite



contradiction to the prosecution case regarding occurrence, manner of occurrence, etc and also happens to be in quite contradiction with the statement of another independent witnesses of the occurrence. The independent witnesses examined by the prosecution do not happen to be the eye witness of the occurrence. Other material independent witnesses of the occurrence have not been examined by the prosecution rather withheld by it without assigning any reason for their non-examination. PW-3 is said to have seen the accused persons escaping from the place of occurrence in the torch light but the source of identification has not been proved by the prosecution as the said torch light has not been exhibited as material exhibit. The ocular evidence of the prosecution also does not stand corroborated by the medical evidence. I.O. of this case has not been examined by the prosecution. Hence, for want of examination of I.O., the place of occurrence does not stand established. It is further submitted that as the accused persons were armed with lathi and dagger and the informant was alone at the place of occurrence, but he sustained only simple injury which rules out the intention on the part of the appellants to do away with the life of the informant. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and the appellants are entitled to get the benefit of doubt.



**13.** On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that the informant and other independent witnesses namely, Bisheshwar Paswan (PW-1) and Harendra Kishore Lal (PW-3) have supported the occurrence. The ocular evidence also stands corroborated by the medical evidence and there is repetition of blow by the sharp cutting weapon on the head of the informant. The learned lower court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

**14.** From perusal of the record, it appears that as per F.I.R., Bisheshwar Paswan (PW-1), Dayaram Paswan (PW-4) and Nathuni Sharma rushed at the place of occurrence responding halla made by the informant and intervened the occurrence. Out of the aforesaid witnesses, Nathuni Sharma has not been examined by the prosecution while Dayaram Paswan turned hostile. Though Bisheshwar Paswan examined in this case as PW-1 has made an abortive bid to support the prosecution case by stating in his examination-in-chief that responding halla when he arrived at the place of occurrence, he witnessed Ram Das Yadav and Prem Paswan



assaulting Dasrath Lal. Ram Das Yadav was assaulting the informant by means of dagger while Prem Paswan by means of Lathi. But from perusal of Para-3 of his cross-examination, it appears that he does not happen to be the eye witness of the occurrence. As in the said Para, he has stated that he had divulged to the police that at the time of occurrence, he was sleeping in his house and on halla he woke up and rushed to the place of occurrence. Dasrath Lal divulged him that Ram Das Yadav and Prem Paswan had assaulted him by means of dagger and lathi and made him injured. He had divulged the occurrence to the police as per the revelation of the same to him by the informant. The aforesaid statement of PW-1 candidly indicates that he appears to be hearsay witness. But the informant Dasrath Lal in his examination-in-chief has not divulged the factum of occurrence of assaulting him by Ram Das Yadav and Prem Paswan by means of dagger and lathi to PW-1. Hence, the aforesaid statement of PW-1 does not stand corroborated by the informant. Hence, the aforesaid hearsay evidence of PW-1 for want of corroboration by the informant is also not admissible in evidence in the eye of law.

**15.** PW-3 Harendra Kishore Lal who happens to be the own brother of the informant also does not appear to be the eye witness of the occurrence. As in his examination-in-chief he has



stated that at the time of occurrence when he rushed to the place of occurrence responding halla, he witnessed Ram Das Yadav armed with dagger and Prem Paswan armed with lathi escaping. Dasrath Lal was lying there stained with blood. On quizzing Dasrath Lal, he divulged him that the aforesaid accused persons have assaulted him. The aforesaid statement of PW-3 candidly indicates that he has not witnessed the occurrence of assaulting the informant by the aforesaid accused persons rather he had arrived at the place of occurrence and seen the accused persons escaping from the place of occurrence. Thus, the said witness happens to be the hearsay witness of the occurrence. He has stated that the informant had divulged him the occurrence of assaulting him by the accused persons by means of dagger and lathi, but the informant has also not corroborated the factum of divulgence of the occurrence of assaulting him by the accused persons to PW-3. Thus, the aforesaid uncorroborated hearsay evidence of PW-3 is not admissible in evidence in the eye of law. In Para-9 of his cross-examination, he has stated that he was having a torch and he flashed the torch and witnessed the accused persons escaping in the torch light, but the aforesaid torch has not been exhibited as material exhibit. Thus, the source of identification also does not stand established by the prosecution. Moreover, the informant in his statement recorded in Fardbeyan has also ruled out



the presence of PW-3 at the place of occurrence at the time of occurrence as he has stated that responding halla, only Bisheshwar Paswan, Daya Ram Paswan and Nathuni Sharma had arrived at the place of occurrence and intervened the occurrence.

**16.** From perusal of Para-3 of the cross-examination of PW-1, it appears that houses of Punit Sah, Puran Sah, Jiwach Sah and Budhan are located near the place of occurrence and they were present in the house at the time of occurrence. But the aforesaid persons and Nathuni Sharma who has allegedly arrived at the place of occurrence and intervened the occurrence and who happens to be independent witnesses of the occurrence have not been examined by the prosecution. No plausible reason has been assigned by the prosecution for their non-examination. Hence, adverse inference is drawn against the prosecution. Thus, from perusal of the aforesaid testimony of PW-1, PW-3 and PW-4 and aforesaid aspect of the case, it appears that the prosecution case does not stand corroborated by the independent witnesses of the occurrence.

**17.** The informant appears to have supported the prosecution case, as alleged in the F.I.R, in his examination-in-chief. But from perusal of the statement of the informant recorded in the cross-examination, it appears that his statement is in quite contradiction to the prosecution case and statement of other



witnesses. As in Para-6 of his cross-examination, he has stated that sustaining injury, he fell senseless, but in F.I.R., he has not stated so. In Para-8 of his cross-examination, he has stated that sustaining one dagger blow, he fell senseless and he cannot disclose as to how many lathi blow was given to him. Thus the aforesaid statement of the informant rules out witnessing the occurrence of assaulting him by Prem Paswan as as per the prosecution case and statement of the informant in his examination-in-chief after assaulting him by means of dagger by Ram Das Yadav, Prem Paswan assaulted him on various parts of his person by means of lathi but as per the aforesaid statement of the informant in his cross-examination when he fell senseless after sustaining dagger blow given by accused Ram Das Yadav, he had no occasion to see the assault made to him by the accused Prem Paswan by means of lathi and arrival of the witnesses at the place of occurrence and intervening the occurrence as stated by him in his Fardbeyan and examination-in-chief. The informant in Para-9 of his cross examination has stated that after the occurrence he was rushed to his house and regained sense after two-three hours and after regaining sense, he rushed to the hospital along with his brother Harendra Kishore Lal on rickshaw on the following morning at 6 AM. But the said Harendra Kishore Lal examined in this case as PW-3 has stated in Para 7 and 8 of his cross-examination that he had



rushed the informant to the hospital directly from the place of occurrence. As per the prosecution case and the statement of the informant, the informant has sustained only one dagger blow on his forehead. But in quite contradiction to the aforesaid prosecution case, PW-3 has stated in Para-13 of his cross-examination that the informant had sustained three dagger blow, two on forehead and one dagger injury was on the shoulder. Thus, there appears to be vital contradiction between the prosecution case as alleged in the F.I.R. and the statement of the witnesses and the statement of the witnesses *inter se* regarding occurrence, manner of occurrence, assault, injuries, assailant, etc.

**18.** The informant (PW-2) and Harendra Kishore Lal (PW-3) who happens to be own brother of the informant happens to be interested witness of the case. It is settled principle of law that testimony of the interested witness should not be discarded outrightly rather it should be scanned and scrutinized cautiously and carefully. On careful and cautious scanning and scrutiny of the testimony of the aforesaid interested witness, I find that the aforesaid testimonies are full of contradiction regarding occurrence, manner of occurrence, assault, injuries, assailant, etc. with the prosecution case and testimony of the witnesses *inter se* and the testimony of the informant also does not stand corroborated by any independent



witnesses of the occurrence. Thus, in the aforesaid circumstances, testimony of the aforesaid interested witnesses do not appear to be trustworthy, reliable and worth credence and do not inspire my confidence to hold conviction relying upon the same.

**19.** As per the prosecution case and statement of the informant, the informant had sustained only one dagger blow on his head, but from perusal of the injury report and statement of the Dr. Surendra Prasad Singh (PW-4), it appears that the doctor has found two sharp cut injury on the head of the informant, one on the forehead and other on the vault of skull. Thus, the aforesaid ocular evidence of the prosecution also does not stand corroborated by the medical evidence. I.O. of the case has not been examined by the prosecution and for non-examination of the I.O., the place of occurrence does not stand established by the prosecution.

**20.** In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate prosecution case and bring home the charges levelled against the appellants beyond all reasonable doubts by adducing consistent, trustworthy, worth credence and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellants are acquitted from the charges levelled against



them. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, this appeal is allowed.

**(Prakash Chandra Jaiswal, J)**

Mishra/-

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