

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.377 of 2007

**Against the judgment of conviction and order of sentence dated
19.01.2007 passed in Sessions Trial No.494 of 2004 by 5th Additional
Sessions Judge, West Champaran, Bettiah.**

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Suraj Prasad @ Suraj Kumar Sonkar

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi (AC)

For the Respondent/s : Mr. S. N. Prasad, A.P.P..

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-11-2017

The sole appellant herein Suraj Prasad alias Suraj Kumar Sonkar has filed this appeal through the jail authorities and calls in question his conviction for an offence under Section 302/34 of the Indian Penal Code recorded on 19th of January, 2007 in Sessions Trial No.494 of 2004 by the 5th Additional Sessions Judge, West



Champaran, Bettiah. By the aforesaid judgment, he has been sentenced to undergo imprisonment for life.

It is the case of the prosecution that one Brajesh Kumar Jaiswal, was brother of the informant Rajesh Kumar Jaiswal. He was a servant in the shop of Bhuneshwar Prasad and on 23.3.2004 at about 8 in the night, the informant on hearing halla, went to the shop of Bhuneshwar Prasad where he saw his brother lying in the pool of blood. He immediately took his brother to M.J.K. Hospital with the help of Bhuneshwar Prasad in a rickshaw and while going to the Hospital in the rickshaw, his brother Brajesh Kumar Jaiswal died, but in the way, his brother told him that when he had gone to discharge urine near the bus stand, Suraj Prasad stabbed him with a Chhura. It is said that Suraj Prasad was selling fruit with his brother-in-law Raju Prasad and some other persons who committed the offence.

On the basis of the ferdbeyan lodged, Ext.-2, formal FIR was drawn and the investigation proceeded. In the investigation, it is said that Suraj Prasad confessed about guilt and based on his testimony, Hawai Chappal and a paint of Suraj Prasad, the appellant, were recovered which was blood stained and the conviction has been recorded based on the statement of the



informant P.W.6 Rajesh Kumar Jaiswal and the recovery said to have been made with regard to incident in question.

Even though the prosecution has examined about 8 witnesses, it is surprising that none of the witnesses, P.W.1 Rajendra Prasad Khatik, P.W.2 Bhuneshwar Prasad, P.W.3 Prem Chandra Sah, speak about the deceased telling them about the incident while he was lying in the shop. He only narrates about the incident to his brother while going in the rickshaw. According to P.W.1 Rajendra Prasad Khatik, he was told about the incident that happened with Brajesh and when he went there he saw Brajesh lying in the pool of blood. He does not say anything going about the place of incident and he also says that nobody gave the name of the assailant while he was in the shop.

P.W.2 Bhuneshwar Prasad is the owner of the shop where the Brajesh was employed. He speaks about Brajesh taking leave going for 10 minutes and returning back in a pool of blood. Even though, he speaks about Brajesh telling him that Suraj Prasad has stabbed him, but he does not say about this to anybody else.

P.W.3 Prem Chandra Sah also speaks about Brajesh that certain people in the area telling him that Suraj had stabbed Brajesh.



P.W.4 is a witness to the seizure from the house of Suraj Kumar. However, in his cross-examination, he says that nothing was recovered from the house of Suraj and Mukesh and he does not support the case of the prosecution with regard to seizure.

P.W.5 Sita Ram Kushwaha is also a hear-say witness and says that it was informed generally to him that Suraj had stabbed Brajesh Kumar Jaiswal.

Even though the incident, as it occurred, is established and except for the statement of the informant that his brother told him in the rickshaw that Suraj had stabbed him, P.W.2 Bhuneshwar Prasad, who had accompanied the informant to the hospital does not support the story. That apart, entire case of the prosecution is based on the confession of Suraj Prasad and the so-called recovery which is not proved as the seizure witnesses have not supported the case of the prosecution.

Apart from the aforesaid lacuna if the statement of the accused under Section 313 of the Code of Criminal Procedure which is at page 50, is taken note of, it would be seen that only two questions were put to him. The first question is that as per the evidence that has come on record, it is alleged that on 23.03.2004 you assaulted Brajesh Kumar Jaiswal with a Chhura, what you have to say? And the second is what you have to say in defence?



With the regard to examination of an accused under Section 313 of the Code of Criminal Procedure, the Hon'ble Supreme Court in the case of **Sukhjit Singh v State of Punjab** [(2014) 10 SCC 270] after relying upon the judgments in the case, namely **Ranvir Yadav v. State of Bihar** [(2009) 6 SCC 595]; **Tara Singh v State** [AIR 1951 SC 441]; and **Hate Singh Bhagat Singh v. State of Madhya Bharat** [AIR 1953 SC 468] and **Ajay Singh v. State of Maharashtra** [(2007) 12 SCC 341], has held that the whole object of Section of 313 Cr.P.C. is to afford to the accused a fair and proper opportunity of explaining the circumstances which appear against him and, therefore, the questions put to him must be fair and must be couched in a form that he is able to appreciate and understand them and explain them. The purpose of this section is to draw an attention of the accused to the specific point in the charge and in the evidence which has come against him and he should be granted an opportunity to explain the same. The Hon'ble Supreme Court holds that if this requirement of law is not met, the entire trial stands vitiated and conviction unsustainable.

In this case, if the examination of the appellant is analyzed in the backdrop of the aforesaid principle of law, it is clear that the same does not meet the requirement of law and on account of this



alone, the entire case of the prosecution fails as the trial stands vitiated.

In view of the above, the appeal is allowed. The conviction against the appellant is set aside and he is acquitted of the charges levelled against him. His bail bond be discharged and he be set free.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
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