

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.304 of 1994

{Against the Judgment of conviction and sentence order dated 28.04.1994 passed by the 8th Additional Sessions Judge, Purnia, in Sessions Trial No.418 of 1988}.

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1. Chhatradhari Paswan, son of Jalebi Paswan.
 2. Surendra Paswan, son of Chatradhari Paswan.
 3. Babu Saheb Paswan, son of Ghultan Paswan.
 4. Chamaklall Paswan, son of Sant Lal Paswan.
 5. Sanchu Paswan, son of Gena Paswan.
- All of village-Arajpur, Police Station-Chousa, District-Madhepura.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellants : Mr. Ankit Katriar, Amicus Curiae.

For the State : Mr. Shivesh Chandra Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

AND

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 25-01-2018

This criminal appeal has been preferred against the Judgment of conviction and sentence order dated 28.04.1994 passed by the 8th Additional Sessions Judge, Purnia, in Sessions Trial No.418 of 1988, by which and whereunder he convicted the appellants for the offences punishable under Sections 302/149 and 201 of the Indian Penal Code and, accordingly, they have been sentenced to undergo rigorous imprisonment for life for the offences punishable under Sections 302 read with Section 149 of the Indian Penal Code. No



separate sentence was awarded for the offence punishable under Section 201 of the Indian Penal code. However, by the impugned Judgment, the learned court below acquitted the four accused persons of the charges framed against them.

2. The brief fact, which lies to file this criminal appeal, is that on 03.08.1980, P.W.18, namely, Sri Prakash Singh alias Gopal Prasad Singh, gave his written report to the Officer Incharge of Mohanpur Phari, Police Station-Rupauli, to this effect that the F.I.R. named accused Gulden Paswan forcibly wanted to take possession of his land appertaining to Khata No.143, area 8 decimal, and an information regarding the aforesaid fact had already been given to the Outpost-Mohanpur and on the aforesaid information, a proceeding under Sections 107 and 116 of the Code of Criminal Procedure was initiated against them and the said proceeding was still pending in the court. He further averred in his written report that on 02.08.1980 at about 01.00 P.M., his brother, namely, Ved Prakash Singh alias Palan Singh along with his guards, namely, Sevi Mandal (P.W.9), Parmanand Mandal (P.W.10) and Parambir Mandal (P.W.13) had gone to Mohanpur due to some urgent work and while he was returning to his home at about 03.00 P.M. and reached near Kankala Basti, all of sudden, 30-40 persons came out from Maize field and encircled him as well as his other companions. He further averred



that his brother was riding on horse at the time of the alleged occurrence and he was caught by the aforesaid persons along with his horse. The aforesaid persons started pressing the neck of his brother and took him towards eastern side. They threatened the P.Ws.9, 10 and 13 not to disclose the aforesaid fact to any other person. The aforesaid prosecution witnesses went to their homes due to fear and did not disclose the aforesaid incident to anyone. However, on 03.08.1980 at about 09.00 A.M., horse of his brother returned to his home without bridle and then the informant and his other family members suspected the some foul and came to Mohanpur in search of his brother and then he learnt that his brother had left Mohanpur yesterday at about 03.00 P.M. The informant went to village-Arajpur in search of his brother and when he met the above stated guards, they were completely under fear, however, after great persuasion, they disclosed the entire incidents. They stated that 30-40 persons had caught hold of the deceased and out of the aforesaid persons, they had identified Gulden Paswan, Babu Saheb Paswan, Umesh Paswan, Chamak Lal Paswan, Chhatradhari Paswan, Surendra Paswan, Jalebi Paswan, Suresh Mandal, Bholu Yadav, Kare Yadav, Shiv Rai, Gonar Sharma, Puran Thakur, Chamak Lal Gorhi, Sanchu Paswan, Kusho and Raje Yadav. The informant averred that he along with the above stated guards went towards the place of the occurrence and,



subsequently, headless corpse was recovered and on the basis of the clothes found on the corpse, the informant identified the dead body as of his brother.

3. On the basis of the aforesaid written report, police case was registered and formal F.I.R. was drawn up. However, after completion of the investigation, the charge-sheet was submitted against the appellants and several other persons. Thereafter, the cognizance of the offence was taken and the case was committed to the court of Sessions where the appellants along with four others, namely, Puran Thakur, Kusho Mandal, Kari Yadav and Suresh Mandal were charged for the offences punishable under Sections 364, 302, 148 and 201 of the Indian Penal Code.

4. In course of trial, the prosecution examined, altogether, 21 witnesses and also got exhibited several documents. The statements of the appellants and others were recorded under Section 313 of the Code of the Criminal Procedure in which they claimed their false implication.

5. The learned court below having scrutinized the evidences available on the record convicted and sentenced the appellants in the manner, as stated above.

6. Sri Ankit Katriar, learned Amicus Curiae, appearing for the appellants, assailed the impugned Judgment of conviction and



sentence order, submitting that the learned court below failed to appreciate and examine the evidence available on the record in its right perspective and that is the reason, the learned court below failed to come to right conclusion. Continuing the submission, he submitted that according to the informant (P.W.18), at the time of the alleged occurrence, the deceased was accompanied by P.Ws.9, 10 and 13 but in course of trial, P.Ws.9 and 10 have not supported the prosecution story and they have turned hostile. He further submits that so far as P.W.13 is concerned, the aforesaid witness stated that on the alleged date of the occurrence, he was with the deceased and identified some persons, who had taken away the deceased, but the statement of this witness is not reliable because some prosecution witnesses, in course of trial, stated that on the alleged date of the occurrence, when they met the deceased, the deceased was alone and, therefore, the aforesaid fact creates doubt about the genuineness of the prosecution story. He further submits that if the testimony of P.W.13 is discarded, then the case hinges upon the circumstantial evidence but the prosecution failed to prove the chain of circumstances to show the guilt of the appellants and, therefore, the learned court below was not right in convicting the appellants.

7. On the other hand, learned Additional Public Prosecutor, appearing for the State, supported the impugned Judgment of



conviction and sentence order, arguing that P.W.13 is an eye witness of the alleged occurrence and he deposed before the trial court that at the time of the alleged occurrence, he was with the deceased and in his presence, the deceased was taken away by the appellants and other accused. Learned Additional Public Prosecutor further submitted that this witness disclosed the name of the appellants before the informant as well as before the trial court. He further submitted that there was land dispute between the parties since long and, therefore, the appellants and other accused had motive to commit the murder of the deceased and on the basis of the documents exhibited in this case as well as the deposition of P.W.13, it can easily be said that the prosecution proved its case beyond all shadows of reasonable doubts.

8. It is obvious from the above stated submissions as well as from perusal of the records that there is only P.W.13, who claims himself to be an eye witness of the alleged occurrence. It is also obvious that it was P.W.13, who claimed to have disclosed the name of the appellants and other accused to the informant (P.W.18) when the informant (P.W.18) went to his home to make enquiry about the whereabouts of his deceased brother. P.W.13 has admitted in his cross examination that the appellants were not known to him prior to the alleged occurrence. It would appear from perusal of the impugned Judgment that the learned trial Judge ignored the aforesaid statement



of P.W.13 on the ground that the appellants and P.W.13 are co-villagers and the aforesaid statement of P.W.13 is a casual statement. Further, the trial judge observed that the evidence of a witness should be appreciated as a whole. No doubt, the evidence of a witness should be read in its totality but from perusal of deposition of P.W.13, we find that the defence asked thrice to the aforesaid witness about his acquaintance with the appellants and each and every time, this witness stated that the appellants were not known to him prior to the alleged occurrence. Therefore, it is clear that if the appellants were not known to him prior to the alleged occurrence, how P.W.13 disclosed the name of the appellants before the informant because according to P.W.13 himself, the appellants were not known to him prior to the alleged occurrence. Therefore, the corroboration of statement of P.W.13 was needed before passing the judgment of conviction solely on the statement of P.W.13.

9. Furthermore, P.Ws.1, 3, 5 and 6 stated before the trial court that on the alleged date of the occurrence, they met the deceased Ved Prakash Singh alias Palan Singh and at that time, the deceased Ved Prakash Singh alias Palan Singh was alone. The above stated prosecution witnesses have, nowhere, stated about the presence of P.Ws.9, 10 and 13 along with the deceased at the time of the alleged occurrence. In the aforesaid circumstance, in our view, no reliance



can safely be placed upon the deposition of P.W.13.

10. It is an admitted position that if the deposition of P.W.13 is discarded, there is no other eye witness to claim to have seen the actual kidnapping and killing of the deceased and the case hinges upon the circumstantial evidence but so far as the circumstantial evidence is concerned, except the previous land dispute and litigation and so-called threatening, the prosecution could not succeed to bring any circumstantial evidence to show the involvement of the appellants. It is the settled principle of law that enmity cuts in both ways and due to enmity, if any offence may be committed, there may be a false implication due to enmity. Therefore, in the aforesaid circumstance, we are of the opinion that the impugned Judgment of conviction and sentence order cannot sustain in the eye of law and are liable to be set aside.

11. Accordingly, on the basis of the aforesaid discussions, this criminal appeal is allowed. The impugned Judgment of conviction and sentence order dated 28.04.1994 passed by the 8th Additional Sessions Judge, Purnia, in Sessions Trial No.418 of 1988, are, hereby, set aside and the appellants are acquitted of the charges giving the benefit of doubt. They are on bail, therefore, they are discharged from the liabilities of their bail bonds.

12. Let the copy of the first page and last page of the



Judgment be handed over to the learned Amicus Curiae, who has given his valuable time to assist this Court, for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.01.2018.
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