

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 72 of 2015

Arising Out of PS. Case No.-190 Year-2008 Thana- Paroo District- Muzaffarpur

Rajdeo Sahni, son of Late Bhageran Sahni resident of Village - Kamalpura,
Police Station - Paru, District – Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 130 of 2015

Arising Out of PS. Case No.-190 Year-2008 Thana- Paroo District- Muzaffarpur

Babulal Sahni, son of Antu Sahni resident of Village- Kamalpura, Police
Station- Paru, District- Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 132 of 2015

Arising Out of PS. Case No.-190 Year-2008 Thana- Paroo District- Muzaffarpur

Kun Kun Sahni son of Late Badan Sahni resident of village – Kamalpura
Sahni Tola, Police Station - Paroo, District – Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 72 of 2015)

For the Appellant : Mr. Bauxi S.R.P.Sinha, Sr.Adv.
Mr. Ramendra Kumar Bharti, Adv.
Mr. Ramchandra Sahni, Adv.

(In Criminal Appeal (DB) No. 130 of 2015)

For the Appellant : Mr. Ajay Kumar Thakur, Adv.
Ms. Minaxi Kumari, Adv.
Mr. Nilesh Kumar, Adv.

(In Criminal Appeal (DB) No. 132 of 2015)

For the Appellant : Mr. Yogesh Chandra Verma, Sr.Adv.
Mr. Sunil Kumar Pandey, Adv.

For the State in all

aforesaid appeals : Mr. Ajay Mishra (A.P.P.)



CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 13-09-2018

In all the aforesaid three appeals, appellants were tried together in Sessions Trial No. 667 of 2009/Trial No. 499 of 2014 and convicted & sentenced by the same judgment and as such, all the aforesaid three appeals were taken-up together for hearing and are being disposed of by this common judgment.

2. All the appellants in aforesaid three appeals by judgment dated 04-12-2014 were convicted for commission of offence under Sections 341, 342, 427, 307/34, 302/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and by order dated 08-12-2014, under Section 341 of the I.P.C., all the appellants were sentenced to undergo simple imprisonment for one month, under Sections 342, 427 of the I.P.C., they were sentenced to undergo rigorous imprisonment for six months, under Sections 307/34 of the I.P.C., all appellants were sentenced to undergo rigorous imprisonment for ten years with fine of Rs. 5,000/- (Five thousand) each and under Sections 302/34 of the I.P.C., all the appellants were sentenced to undergo imprisonment for life with fine of Rs. 20,000/- (Twenty thousand) each. In default of payment



of fine, they were directed to further undergo simple imprisonment for one year. All the sentences were directed to run concurrently. The appellants were convicted and sentenced in Sessions Trial No. 667 of 2009/Trial No. 499 of 2014 (arising out of Paroo P.S. Case No. 190 of 2008) by learned Additional District & Sessions Judge - IV, Muzaffarpur (hereinafter referred to as 'Trial Judge').

3. Short fact of the case is that on 07-12-2008 at 6.00 hrs. (morning) officer incharge of Paroo Police Station, Sub-Inspector Ramesh Dubey (P.W.9) recorded *fardbeyan* of Kausal Kumar Thakur (P.W.6) resident of village – Lalu Chapra, P.S. - Paroo, District – Muzaffarpur. The said *fardbeyan* was recorded at Government Hospital, Paroo. In the *fardbeyan*, the informant in injured condition stated that in preceding evening (i.e. 06-12-2008), he alongwith his brother-in-law (बहनोई) Pinku Singh (deceased) on a motorcycle from Paroo was going to the house of Pinku Singh (Village Kamalpura). At about 8:00 PM (night), while both of them on motorcycle were moving from the village Kamalpura Sahni Tola, suddenly Babulal Sahni (appellant in Cr. Appeal DB No. 130/15) and his two sons namely Arun Sahni and Arjun Sahni of Sahni Tola stopped motorcycle and caught hold both of them. In the meanwhile, other accused persons of Kamalpura, Sahni Tola namely Kunkun Sahni (appellant in Cr.



Appeal DB No. 132/15), Rajdeo Sahni (appellant in Cr. Appeal DB No. 72/15), Jaleshar Sahni, Mahendra Sahni, Shambhu Sahni, Mithu Sahni, Basuki Sahni, Ravan Sahni, Uma Sahni, Ramlal Sahni, Rajendra Sahni, Pappu Sahni, Santlal Sahni, Nandu Sahni, Nand Kishore Sahni, Basudev Sahni and Ram Pravesh Sahni arrived there and all after catching hold of informant/P.W.6 (Kailash Kumar Thakur) and his brother-in-law (Pinku Singh) by way of assaulting carried them in the house of Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15), where both of them were tied by rope and all the accused started assaulting them by लाठी (lathi) and फट्टा (fathha). Amongst them, some of the accused persons went outside and started smashing motorcycle. Due to such brutal assault, both had become semi-unconscious. Even then, the accused persons continued assaulting them. In the said occurrence, his brother-in-law (Pinku Singh) died. He further stated that all the accused persons thinking, as if, both of them had died fled away. After some time, police arrived there and dead body of Pinku Singh and injured (informant) were carried to hospital, where the informant was being treated. The reason for the occurrence was explained by the informant that his brother-in-law Pinku Singh had got settled a जलखर (jalkhar) of the village, which was being opposed by member of Sahni Tola and this was the



reason for animosity of villagers of Sahni Tola with Pinku Singh. The said *fardbeyan* was read over to him and after finding it correct, the informant put his signature on the *fardbeyan*. The said *fardbeyan* was also signed by one Devendra Prasad Thakur (not examined).

4. On the basis of said *fardbeyan*, a formal F.I.R. was registered on 07-12-2008 at 7:30 AM, vide Paroo P.S. Case No. 190 of 2008 under Sections 341, 342, 323, 307, 302, 427, 34 of the I.P.C. against twenty named accused persons, which includes all the aforesaid three appellants. It is made clear that despite the fact that F.I.R. was drawn on 07-12-2008 at 7:30 AM, the F.I.R. was received in the court of learned Sub-Divisional Judicial Magistrate (West), Muzaffarpur (for short “Magistrate”) on 08-12-2008. During investigation, accusation against Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) and Rajdeo Sahni (appellant in Cr. Appeal DB No. 72/15) was found true and as such, on 06-03-2009 chargesheet was submitted against them keeping investigation pending against others. Thereafter, on 10-06-2009 supplementary chargesheet was submitted against three accused persons namely Babulal Sahni (appellant in Cr. Appeal DB No. 130/15), Ravan Sahni and Arjun Sahni and still investigation was kept pending against others. After submission of chargesheet, on 06-07-2009



learned Magistrate took cognizance of the offence and after completion of all the formality under Section 207 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") on 13-08-2009 the case was committed to the court of sessions and after commitment, the case was numbered as Sessions Trial No. 667 of 2009. After commitment, on 11-09-2009 charge was jointly framed against appellants for offence under Sections 302/34, 307/34, 341, 427/34 and 342 of the I.P.C.

5. During the trial, to prove its case, from the prosecution side, altogether 11 (eleven) witnesses were examined. Out of 11 witnesses, P.W.1 Prabhu Dayal Singh, P.W.2 Sundeshwar Singh, P.W.4 Subodh Kumar (brother of the deceased), P.W.6 Kaushal Kumar Thakur (informant) and P.W.7 Basant Sharma were examined claiming to be eye-witnesses to the occurrence, whereas, P.W.3 Om Praksh Singh is witness to seizure list relating to seizure in respect of blood soaked soil & green colour nylon rope. P.W.5 Rajendra Singh (father of the deceased) is hearsay witness and his statement under Section 164 of the Cr.P.C. was recorded during investigation. P.W.8 Dr. Om Prakash, who was posted as Medical Officer at Primary Health Centre, Paroo, had examined the injuries of informant (P.W.6). P.W.11 Dr. Bipin Kumar at the relevant time was posted as Tutor in F.M.T.



Department, S.K.Medical College, Muzaffarpur, conducted *post-mortem* examination on the dead body of deceased. P.W.10 Raj Kumar Singh on 22-12-2008 was officer incharge of the Paroo Police Station, who got recorded statement of some of the witnesses under Section 164 of the Cr.P.C., whereas, P.W.9 Ramesh Dubey, officer incharge of Paroo Police Station is the main investigating officer, who had recorded *fardbeyan* and investigated major part of the case.

6. After examination of the prosecution witnesses, the circumstances and evidences, collected during the trial, were explained to the accused persons and statement of accused under Section 313 of the Cr.P.C. was recorded on 21-04-2011, in which, they claimed to be innocent and in defence, three witnesses were examined, who were D.W.1 Meghu Sahni, D.W.2 Sanjay Kumar Sahni and D.W.3 Mayashankar Sahni. Virtually, the defence witnesses had primarily claimed that the deceased and informant had come alongwith others for committing डकैती (*dacoity*) and they were apprehended and assaulted by the villagers.

7. After placing entire evidence, learned counsel for the appellants in all the aforesaid three appeals have precisely argued that the manner of occurrence is not like the case of prosecution, which has come out during the trial. It has been argued that



surprisingly, the alleged occurrence had taken place at about 8:00 on 06-12-2008 in densely fogged evening merely at a distance of 445-450 *laghi* from the house of the deceased and it is case of the prosecution that while occurrence was going on, the father of the deceased, who was examined as P.W. 5 (Rajendra Singh), got information that occurrence was going on. At the door of Rajendra Singh (P.W. 5), most of the eye witnesses were present including P.W. 4 Subodh Kumar, who was none else but own brother of the deceased, however, none of the witnesses either at the time of occurrence or even after the occurrence bothered to inform the police regarding the occurrence. Even till next morning, none had come forward to become informant of the case and this was the reason that the investigating officer, who after getting information regarding some occurrence, had arrived at the place of occurrence at 9:30 PM, carried both deceased & injured, prepared inquest report, but did not record *fardbeyan* of either of the witnesses. In the case, injured and deceased were found tied in the house of appellant Kunkun Sahni (in Cr. Appeal DB No. 132/15), at the same time, Kunkun Sahni, who was present in his house, was not arrested, rather he was only asked to come to the police station. According to learned counsel for the appellants, this conduct itself creates serious doubt regarding the prosecution case. It has been



argued that in normal course, had the father or brother of the deceased noticed such occurrence, they would have immediately gone to the police station for either rescue of his son or he would have gone to the place of occurrence with number of villagers to save the deceased, but till next morning, none had come forward to become informant of the case.

8. Learned counsel for the appellants further, by way of referring to *post-mortem* report i.e. Ext. 11, submits that *post-mortem* report contains number of police case i.e. Paroo P.S. Case No. 190 of 2008, but to the reasons best known to the prosecution, the prosecution has not brought on record the inquest report. It has been argued that this was the reason that attention of investigating officer was drawn to such fact. Though inquest report has not been brought on record by way of exhibiting the same, in the case diary in paragraph-4, fact of inquest report was incorporated and in case diary, inquest report was containing case number as Paroo P.S. Case No. 190 of 2008 dated 06-12-2008, whereas *fardbeyan* was shown to be recorded on 07-12-2008 at 06:00 in the morning. Regarding the evidence of so-called eye-witnesses, it has been highlighted that since from 08:00 PM of 06-12-2008 till next morning i.e. on 07-12-2008, none of the so-called eye-witnesses had come forward before the police to state regarding the



occurrence, certainly no reliance can be placed on such evidences. It has been argued that those persons were introduced as ocular witness to the occurrence. Learned counsel for the appellants has also highlighted the fact that during evidence, this fact has come that deceased Pinku Singh was having criminal antecedent and he was having animosity with number of his own villagers and he was not liked even by his own villagers and this was the reason that during evidence, suggestions were given to eye-witnesses that deceased was killed by someone else but due to village politics, the appellants were fabricated as accused in the present case. On aforesaid grounds, it has been argued that prosecution has not been able to establish its case beyond all reasonable doubt and as such, appellants deserve to be acquitted by way of extending the benefit of doubt.

9. Sri Ajay Mishra, learned Addl. Public Prosecutor, opposing the aforesaid appeals, submits that the case is based on evidence of injured informant, who was alone with deceased, and he is the best person to depose as to how the occurrence had taken place and who were involved in the present case. According to Sri Mishra, learned Addl. Public Prosecutor, in view of Section 106 of the Indian Evidence Act, 1872, at least presumption would be that the appellant Kunkun Sahni (in Cr. Appeal DB No. 132/15), in



whose house both the deceased and the injured were tied, cannot get any escape. Besides this, it has been argued that the learned Trial Judge has passed the judgment of conviction on the basis of evidence of number of eye-witnesses and case has been corroborated by the medical evidence. Accordingly, as per learned Addl. Public Prosecutor, this Court may not interfere with the judgment of conviction and sentence.

10. Besides hearing learned counsel for the parties, we have minutely examined the evidence on record and after going through the same, *prima facie*, we are satisfied that prosecution has not been able to establish its case beyond all reasonable doubt. Before proceeding, it would be necessary to examine as to what the informant (P.W. 6) has deposed during the trial.

11. The informant is none else but injured, namely, Kaushal Kumar Thakur, who was brother-in-law of deceased Pinku Singh. In his evidence, he has stated that his *fardbeyan* was recorded on 07-12-2008 at 06:00 in the morning and in his *fardbeyan*, he put his signature, which was marked as Ext. 6. He further deposed that on 06-12-2008 at 08:00 in the night, he alongwith Pinku Singh (deceased) on a motorcycle was moving through the village Kamalpura and while they reached near Sahni Tola, Kamalpura, appellant Babulal Sahni (in Cr. Appeal DB No.



130/15), Arjun Sahni and Arun Sahni stopped his motorcycle and caught both of them and thereafter, other accused persons arrived there and started assaulting by means of *lathi*, *danda*, rod, bricks etc. and by dragging them, brought in the house of Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) and due to said injury, Pinku Singh died. Subsequently, police arrived, untied the rope and carried the deceased & informant to the hospital. In paragraph-6 of his evidence, he stated that occurrence had taken place due to settlement of village *jalkar* in favour of Pinku Singh (deceased). In cross-examination, several questions were asked about the *jalkar*, however; no cogent fact was brought on record to establish regarding the settlement of *jalkar* in favour of the deceased.

12. P.W. 4 Subodh Kumar (brother of the deceased) was examined claiming to be eye-witness to the occurrence. He further stated that during investigation, his statement under Section 164 of the Cr.P.C. was recorded and he identified his signature on the said statement, which was marked as Ext. 4 and 4/a. In paragraph – 1 of his evidence, he stated that occurrence had taken place on 06-12-2008 in the night at 8.00 and at that very time, he was near his house door. He heard the cry of his brother Pinku Singh as well as Kaushal Thakur. Thereafter, he alongwith Sundeshwar Singh (P.W.2) and Basant Sharma (P.W.7) runningly went to the house of



Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) and saw that number of accused persons including appellants were assaulting both of them. However, in paragraph 21 of this cross-examination, he stated that on 06-12-2008 he had gone to police station and seen the dead body of Pinku Singh lying on the police vehicle. He further stated that at the place of occurrence, police had arrived at 9:15/9:30 in the night itself, however; police recorded his statement on 7th (i.e. 07-12-2008) at 01:00 PM. On examination of evidence of P.W.4 Subosh Kumar, who was own brother of the deceased, it is difficult to perceive as to under what circumstances, once in his presence, immediately after the occurrence, police had arrived, why he did not come forward to become informant of the case. No plausible explanation has been given by this witness, which creates serious doubt on his evidence.

13. Similarly, P.W.1 Prabhu Dayal Singh, P.W.2 Sundeshwar Singh and P.W.7 Basant Sharma have deposed, as if, at the time of occurrence itself, they had arrived there, but in their evidence, there is no explanation as to why they did not inform the police nor their statement was recorded by the police in the same evening.

14. P.W.5 Rajendra Singh (father of the deceased) in his evidence has stated that at the time of occurrence, he was at his



door. Prior to the occurrence, he had received fracture injury on his leg and this was the reason that he did not move after hearing regarding the occurrence. As per his evidence, it appears that his son Subodh Kumar (P.W.4) and some other witnesses, who have claimed to be eye-witnesses, were present there. In his evidence, this fact has come that he was having licensee gun. In normal course, if father of the informant was having a licensee gun and he and his son (P.W.4) had heard the cry of informant and deceased Pinku Singh, who was son of P.W.5, they would have proceeded towards the place of occurrence calling other villagers and even thereafter, they would have informed the police regarding the occurrence, but all those so called eye-witnesses are silent on the point as to why in the night itself they did not inform the police regarding the occurrence and regarding the manner of occurrence. This creates suspicion on the prosecution case. Moreover, the informant's evidence also creates serious doubt. In his evidence, the informant had stated that after the occurrence, all along he was conscious. It is case of the prosecution that immediately after the occurrence, in between 09:15 and 09:30 (night) police had arrived there, then in that situation, the police would have immediately recorded his *fardbeyan*, but in this case, *fardbeyan* was shown to be recorded in the next morning i.e. on 07-12-2008 at 06:00 AM.



15. P.W. 8 Dr. Om Prakash had examined the injuries on the person of the informant and he proved the injury report, which was marked as Ext. 7 and he had noticed following injuries on the person of P.W. 6 (informant):

- “1) Bruise (multiples) 3”x1”, 2”x1” on back of chest.
- 2) Swelling Rt. side of scalp (3”x3”).
- 3) Swelling (4”x2”) of Left jaw.
- 4) Swelling 1½”x ½” below both eye.
- 5) Abrasion 1”x ¼” on lower lip.
- 6) Abrasion 4”x3” on left leg with Lacerated wound ½”x ½”x skin deep with blood clot red colour.”

16. P.W. 11 Dr. Bipin Kumar on 07-12-2008 was posted as Tutor in F.M.T. Department at S.K. Medical College, Muzaffarpur and on the same date at about 02:30, he performed the *post-mortem* examination on the dead body of the deceased (Pinku Singh) and found following *ante-mortem* injuries:

- “(i) One lacerated wound was found over left lower part of leg 8” above left ankle joint over medial ribs 1” x ½” x bone - These was fracture of tibia & fibula bones.
- (ii) Two lacerated wound over right lower leg 1” below right knee joint 1” x ½” muscle deep and 6” below right knee ¼” x ¼” x muscle deep.
- (iii) One lacerated wound below left eye 1” x ¼” x muscle deep.
- (iv) Abrasion over right side of chest below right nipple 3” x 2” on opening the chest cavity, there was fracture of right ribs of ribs - 3rd to 6th with laceration of right leg – chest cavity was filled with fluid blood.
- (v) On opening the abdominal cavity there was laceration of right lobe of liver abdominal cavity was filled with fluid blood.

Opinion: The deceased died due to shock and hemorrhage as result of above mentioned injuries.

Injuries were caused by impact of hard and blunt object.

Time since death:- within 12 to 24 hours.”



In *post-mortem* examination, he noticed that death had occurred within 12 to 24 hours. He proved the *post-mortem* report, which was marked as Ext. 11.

17. P.W. 10 Raj Kumar Singh on 22-12-2008 was officer incharge of Paroo Police Station and after receiving supervision note, he got recorded statement under Section 164 of the Cr.P.C. of some of the witnesses. He had taken charge of investigation from earlier investigating officer i.e. Ramesh Dubey (P.W. 9). In paragraph-6 of his cross-examination, he stated that the first investigating officer was since suspended, he had taken charge of the investigation. On examination of his evidence, it is evident that first investigating officer was put under-suspension and after taking charge of investigation, this investigating officer, even after one month, started to get the statement of some of the witnesses recorded under Section 164 of the Cr.P.C., however no such plausible explanation was given as to what was the reason for recording such statement.

18. P.W. 9 Ramesh Dubey is the main investigating officer and as such, his evidence has got much relevance for adjudication of the present case. In his evidence, P.W.9 stated that on 07-12-2008, he was officer incharge of Paroo Police Station and he recorded *fardbeyan* of Kaushal Kumar Thakur (P.W.6) on



07-12-2008 and he proved the *fardbeyan*, which was marked as Ext. 8. In paragraph-3 of his evidence, he stated that he got information regarding the occurrence on 06-12-2008 at 09:00 in the night. Thereafter, he recorded station diary entry no. 127 dated 06-12-2008 and thereafter, with other police official and police force, he rushed to village Kamalpura and he found that in the house of Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) in his courtyard, two persons were tied and they were assaulted. Out of two persons, one Pinku Singh had already died and another person was semi-conscious. Thereafter, for *post-mortem*, the inquest report of dead body of Pinku Singh was got prepared by Sub-Inspector Ramanand Tiwari and this fact was mentioned in paragraph-3 of the case diary. For the purposes of treatment, the injured was sent to government hospital. Thereafter, Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) was brought to the police station for inquiry. He also inspected the place of occurrence. The place of occurrence was discussed by P.W. 9 in his evidence at paragraph-10. Police also found the damaged motorcycle on the village road. The police also found green colour rope, for which, a seizure list was prepared, which was marked as Ext. 9 and damaged motorcycle was also seized, in respect of which, a seizure list was prepared, which was marked as Ext. 10. In



paragraph - 20 of his cross-examination, he stated that F.I.R. was drawn on 07-12-2008 at 07:30 in the morning at police station, whereas inquest report was prepared by S.I. Ramanand Tiwari on 06-12-2008 at 22:00 hrs (10:00 PM). In paragraph - 22 of his cross-examination, the investigating officer stated that on 06-12-2008, he had brought Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) for interrogation, however he had not mentioned the time. He further clarified in paragraph - 25 of his cross-examination that he had not locked appellant Kunkun Sahni in the police station, however he was arrested after the F.I.R. was lodged. This suggests that till the *fardbeyan* was recorded, even police was not of definite opinion that Kunkun Sahni (appellant in Cr. Appeal DB No. 132/15) was involved in the crime. In paragraph - 23 of his cross-examination, the investigating officer denied the suggestion that on three occasions he prepared F.I.R. and thereafter, torn the same.

19. Ofcourse during the trial, inquest report was not brought on record by way of exhibiting, since it was emphatically argued by learned counsel for the appellants that the gist of inquest report was incorporated in the case diary, which suggests that the inquest report was containing F.I.R. number and this was the reason that we were persuaded to examine the case diary and after



examining the case diary, there is no difficulty in coming to the conclusion that the fact regarding inquest report was incorporated in the case diary and in the column of the inquest report, F.I.R. number was mentioned as Paroo P.S. Case No. 190 of 2008 dated 06-12-2008, however no plausible explanation has been given by the prosecution. We are conscious of the fact that we may not place reliance on the case diary, but at the same time, if the Court is satisfied with other evidences that some mischief was played by the prosecution, certainly in that event, the Court is not debarred from examining the case diary, particularly in a case, in which the Court is *prima facie* of the opinion regarding the innocence of the accused, certainly such fact can be examined at the time of hearing of the appeal.

20. During the trial, from defence, three witnesses were examined, who were D.W. 1 Meghu Sahni, D.W. 2 Sanjay Kumar Sahni and D.W. 3 Mayashankar Sahni. From the evidence of the defence witnesses, which has been brought on record, suggests as if, the injured and the deceased were apprehended by the villagers while the accused persons had arrived for committing some crime and they were assaulted by the villagers. Since the prosecution has come out with completely a different story and has not come with



clean hands, it would not be appropriate for us to place much reliance on the prosecution evidence.

21. On examination of the entire evidence, it is evident that there is no explanation by the prosecution as to why in a case, in which, occurrence had taken place in the evening at 08:00 on 06-12-2008 at a place, which was not far away from the house of the deceased and brother of deceased had claimed that he had heard the cry of the deceased and thereafter proceeded, non-informing the fact to the police by those witnesses raises a big question on the prosecution story. In such cases, it would have been normal conduct of the prosecution side, particularly the brother of the deceased to immediately go to the police station and inform the police regarding the occurrence, but no such explanation has been given. The brother of the deceased, who was examined as P.W. 4, in his evidence itself has stated that his statement was recorded on the next date i.e. 07-12-2008 at 01:00 PM. Ofcourse in a case, number of persons have been introduced as eye-witness to the occurrence, but none of the witnesses have given any plausible explanation as to why immediately after the occurrence, while the injured was being carried to the hospital, they did not inform the police. It is not a case that police station was far away, rather in the case, as per evidence of P.W.9



(investigating officer), police after getting such information immediately rushed to the place of occurrence and in between 09:00 and 09:30, police had already reached to the place of occurrence, but none had come forward to become informant of the case or make any statement before the police. The informant, whose *fardbeyan* was recorded on the next date at 06:00 on 07-12-2008, himself has stated that though he was assaulted, he was conscious and he remained in the same condition till his *fardbeyan* was recorded by the police. The investigating officer has stated that he had carried the injured to government hospital. In that event, if the informant was in conscious position, the police immediately would have recorded *fardbeyan* in hospital itself, but no explanation has been given by the investigating officer or informant himself as to why *fardbeyan* was recorded on 07-12-2008 at 6 hours (Morning).

22. On examination of entire evidence, we are of the considered opinion that prosecution has not given any plausible explanation regarding non-informing the police immediately after the occurrence, which creates serious doubt in the mind of the Court. On overall examination of the evidence, we are of the opinion that prosecution has not been able to establish its case beyond all reasonable doubt and as such, by way of extending



benefit of doubt, it is necessary to interfere with the judgment of conviction and sentence.

23. Accordingly, the judgment of conviction dated 04-12-2014 and order of sentence dated 08-12-2014 passed in Sessions Trial No. 667 of 2009/Trial No. 499 of 2014 (arising out of Paroo P.S. Case No. 190 of 2008) by Sri Samay Nath Srivastava, learned Additional District & Sessions Judge – IV, Muzaffarpur is hereby set aside and all the three appeals are allowed.

24. All the appellants are in jail and since judgment of conviction and sentence has been set aside, it is desirable to direct for their release. Accordingly, all the aforesaid three appellants namely Rajdeo Sahni (in Cr.Appeal DB No. 72 of 2015), Babulal Sahni (in Cr.Appeal DB No. 130 of 2015) and Kunkun Sahni (in Cr.Appeal DB No. 132 of 2015) are directed to be released forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

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