

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.629 of 2013**

Arising Out of P.S. Case No.-120 Year-2011 Thana- Alauli District- Khagaria

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1. Magan Sada, S/o- Late Jaggu Sada
  2. Moti Sada, S/o- Late Dhanik Sada
  3. Bholu Sada, S/o- Late Doman Sada
- All R/o- Village Manrupa, P.S.- Alauli, District- Khagaria

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                                                                    |
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| For the Appellant/s  | : | Sri Ajay Thakur, Advocate<br>Mr. Md. Imtiyaz Ahmad, Advocate<br>Miss Swati Sinha, Advocate<br>Mr. Udbhav, Advocate |
| For the Respondent/s | : | Sri Abhimanyu Sharma, A.P.P.                                                                                       |

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

**Date : 17-12-2018**

1. The present Appeal has been preferred by three appellants against the judgment of conviction and sentence dated – 15.06.2013. All the appellants in Sessions Trial No. 114 of 2012 were held guilty for offence under Section 302/34 of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”]. Appellant no. 1 / Magan Sada was further held guilty for offence under Section 27 of the Arms Act, 1959 [ hereinafter referred to as the “Arms Act “]. Under Section 302/34 of the I.P.C. all the three appellants were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each. In default of payment of fine they



were directed to further undergo rigorous imprisonment for three years. Under Section 27 of the Arms Act appellant no. 1 - Magan Sada was further sentenced to undergo rigorous imprisonment for five years and imposed a fine of Rs. 5,000/-. In default of payment of fine he was directed to undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently. They were convicted and sentenced by Sri Krishna Kant Tripathi, learned Sessions Judge, Khagaria (Bihar) [hereinafter referred to as “trial judge”] in Sessions Trial No. 114 of 2012.

**2.** Short fact of the case is that on 16.08.2011 at 01.30 Hours Assistant Sub Inspector of Police Sri Manoranjan Singh [ not examined] of Alouli Police Station recorded fardbyan of Balram Sada / P.W. 4. The said fardbyan was recorded on Sumbha Chauk (within Alouli Police Station). In the fardbyan informant (P.W. 4) stated that on preceding evening i.e. on 15.08.2011 at about 7.00 P.M. [evening] he along with his elder brother namely : Gangaram Sada (deceased) while being pillion rider on a motorcycle was going to his village – Manrupa from Sumbha Chauk in evening at 7.15 P.M. while he proceeded ahead of Kehuna and to some extent near Bhamra, accused: 1- Magan Sada ( A-1), 2- Vikram Sada (not sent up for trial), 3 - Kari Sada (died before trial), 4- Moti Sada (appellant no. 2), 5- Bhola Sada



(appellant no. 3) and 6- Vijay Sah (not sent up for trial) variously armed with lethal weapons and pistols surrounded informant and his brother and they were exhorting to kill them. The informant from back jumped and tried to flee away. In the meanwhile Magan Sada ( appellant no. 1) and Kari Sada from pistols which they were carrying in their hands started indiscriminate firing on his brother whereby his brother fell down. After firing all the accused persons fled away. On alarm being raised by informant number of other persons assembled. Thereafter he carrying his injured brother on motorcycle proceeded for treatment however near village - Sumbha Chauk while they reached his brother succumbed to his injuries. The reason for the occurrence was given by the informant that appellant no. 1 – Magan Sada was unauthorizedly and illegally collecting money from poor villagers on the pretext of providing Indira Aawas which was being opposed by his brother. About 4-5 days prior to the occurrence Magan Sada / appellant no. 1 and Kari Sada had threatened his brother to kill him. The said fardbyan was read over to him and after finding it correct he put his signature. On the basis of the said fardbyan on 16.08.2011 at 10.00 a formal F.I.R. vide Alauli P.S. Case No. 120 of 2011 was registered for offence under Sections 302/ 34 of the I.P.C. and Section 27 of the Arms Act against the following:-



- (1) Magan Sada (appellant no. 1)
- (2) Vikram Sada (not sent up for trial )
- (3) Kari Sada (died before trial)
- (4) Moti Sada (appellant no. 2)
- (5) Bhola Sada (appellant no. 3); and
- (6) Vijay Sah (not sent up for trial).

**3. During investigation accusation against appellant no.**

1 – Magan Sada was found true and as such on 25.11.2011 charge sheet was submitted against him showing Kari Sada as dead. However, remaining two appellants namely: Moti Sada ( appellant no. 2), Bhola Sada ( appellant no. 3 ), Vijay Sah and Vikram Sada were not sent up for trial. Though charge sheet was submitted only against appellant no. 1, the learned Chief Judicial Magistrate, Khagaria differing with the Police report proceeded against all the accused persons who were even not sent up for trial. Meaning thereby that the learned Magistrate proceeded against all the three appellants. Thereafter the case was committed on 20.03.2012 to the court of Sessions and as such it was numbered as Sessions Trial No. 114 of 2012. After commitment on 07.05.2012 charge under Section 302/34 of the I.P.C. was framed against all the three appellants whereas separate charge under Section 302 of the I.P.C.



and Section 27 of the Arms Act was framed against appellant no. 1

- Magan Sada.

4. During the trial to establish its case on behalf of the prosecution altogether seven witnesses were examined. Out of seven witnesses only informant - P.W. 4 (Balram Sada) has claimed to be eye witness to the occurrence whereas P.W. 1 - Mahamunni Devi (mother of the deceased ), P.W. 2 / Madhu Devi (wife of the deceased), P.W. 3 - Lalo Sada ( uncle of the deceased) and PW. 7 - Jai Singh Sada (another uncle of the deceased ) were examined as hearsay witnesses. Besides this P.W. 1 – Mahamuni Devi and P.W. 3 / Lalo Sada have further stated as if deceased before his death had given oral dying declaration before them implicating the appellants. P.W. 5 / Dr. Krishna Mohan Prasad on 16.08.2011 was posted as Medical Officer in Sadar Hospital, Khagaria who conducted post mortem examination and P.W. 6 / Ajay Kumar on 16.08.2011 was posted as Sub Inspector of Police in Alauli Police Station and by the Officer – in – charge he was entrusted with the investigation of the present case.

5. After completion of prosecution evidence on 29.04.2013 statement of appellants under Section 313 of the Code of Criminal Procedure, 1973 [ hereinafter referred to as “Cr.P.C.”]



was recorded in which they claimed to be innocent. Thereafter from defence side also three witnesses were examined who are D.W. 1 / Bilash Yadav, D.W. 2 - Nibha Devi and D.W. 3 - Pardeshi Sada (all co-villagers). Mainly defence witnesses were examined on the point that neither deceased nor informant were knowing to drive motorcycle nor they were having any motorcycle.

6. After placing entire evidence Sri Ajay Thakur, learned counsel, assisted by Mr. Md. Imteyaz Ahmad, learned counsel for the appellants has argued that it is a case of no evidence. He submits that though informant has come forward as if he was eye witness and pillion rider of the motorcycle with the deceased, on examination of evidence of other witnesses it is established that informant had come later and as such evidence of P.W. 4 / informant is required to be simply ignored. He further submits that though other witnesses in their evidence have categorically stated that after hearing sound of firing they rushed to the place of occurrence and noticed the injured but none had said regarding seeing of actual occurrence or even seeing any of the appellants while fleeing away. Sri Thakur submits that P.W. 1 / Mahamuni Devi, P.W. 3 - Lalo Sada during evidence had come out with a case as if when they reached near the injured, the injured informed



them that he was shot at by the appellants particularly appellant no. 1 / Magan Sada. Sri Ajay Thakur, learned counsel for the appellants by way of referring to the evidence of Investigating Officer who was examined as P.W. 6 submits that of- course the learned Presiding Judge was not required to note statement of witnesses recorded under Section 161 of the Cr.P.C. but the learned trial judge being persuaded by Public Prosecutor had recorded the same. By way of referring to the evidence of P.W. 6, Sri Thakur submits that none of the witnesses before the Investigating Officer had whispered regarding oral dying declaration of the deceased. By way of referring to the evidence of P.W. 5 / Dr. Krishna Mohan Prasad as well as by way of referring to post mortem examination report (Ext. 2) it has been argued that injuries which were found on the person of the deceased was sufficient to indicate that after such injuries the injured could not have made any statement since the shots had injured both lungs of the deceased besides badly injuring chest and other parts of the deceased. He submits that if for the time being evidence of P.W. 1 and P.W. 3 on the point of oral dying declaration is considered as true the same is demolished from the evidence of doctor as well as post mortem examination report. Besides this those witnesses



during investigation had not at all whispered regarding oral dying declaration of the deceased.

7. Sri Thakur has further argued that prosecution has not given any explanation regarding non examination of the first Police Officer who reached the place of occurrence and recorded fardbyan of the informant. The fardbyan was recorded by one Sri Manoranjan Singh of Alouli Police Station but he was not examined by the prosecution nor the Investigating Officer had bothered to prepare any seizure list either regarding seizure of motorcycle or noticing the fact that on motorcycle or at the place of occurrence there was any blood mark or not. He submits that informant in his evidence has stated that after the occurrence from the place of occurrence the injured was carried on motorcycle and while he was moving ahead of Sumbha Chauk the injured died. He submits that in such situation there was every possibility of noticing blood mark at the place of occurrence where occurrence had taken place as well as on Sumbha Chauk where dead body was laid. He submits that even motorcycle has not been seized. In such circumstances it has been argued that it appears that the deceased was done to death by some unknown persons but due to old animosity since appellant no. 1 earlier had filed a case against the deceased the appellants were falsely implicated in the present case.



Alternatively it has been argued that it is a case in which prosecution has not established its case beyond all reasonable doubts and as such by way of extending benefit of doubt the appellants can be acquitted of the charges.

8. Sri Abhimanyu Sharma, learned Additional Public Prosecutor has vehemently opposed the Appeal. He submits that the informant is very much specific that at the time of occurrence he was pillion rider of the motorcycle which was being driven by his deceased elder brother. They were surrounded by about six named accused persons and while this informant by jumping from the motorcycle wanted to flee away, in his presence his brother was shot at by giving indiscriminate firing by the appellants. However Sri Abhimanyu Sharma, learned A.P.P. has not disputed the fact that besides the informant there is no eye witness to the occurrence. Sri Sharma has also not disputed the fact regarding no oral dying declaration of the deceased.

9. Besides hearing learned counsel for the parties, we have minutely examined entire evidence available on record and after going through the same *prima facie* we are of the opinion that prosecution has not been able to establish its case beyond all reasonable doubts. It is true that informant has claimed to be eye witness to the occurrence however if we examine the evidence of



informant *vis -a-vis* evidence of P.W. 1, P.W. 2 and P.W. 3 it would be difficult to place reliance in respect of presence of informant at the time of occurrence. The informant has reiterated the same thing which was asserted by him in his fardbyan. He stated that on 15.08.2011 at about 7.00 P.M. occurrence had taken place. At the time of occurrence he with his elder brother while sitting as pillion rider was going to his village - Manrupa on motorcycle from Sumbha. At the said time motorcycle was being driven by his elder brother Gangaram Sada (deceased). While both the brothers on motorcycle proceeded ahead of Kehuna and reached near Bhamra Pul after some distance while they proceeded he saw that Magan Sada (appellant no. 1) , Vikram Sada , Bhola Sada ( appellant no. 3), Moti Sada ( appellant no. 2 ), Vijay Sah and Kari Sada total six persons variously armed with pistols surrounded both the brothers. His brother stopped the motorcycle. Then Magan Sada and Kari Sada exhorted to shot them. The informant after hearing the same was frightened and wanted to flee away. In the meanwhile, appellant no. 1 / Magan Sada and Kari Sada gave shot of firing from pistol on Gangaram Sada (deceased) which hit on the right armpit and entered inside the ribs. Second firing hit the chest of his brother which exited from back. Thereafter he raised alarm. After his alarm all the six accused persons started fleeing away. Then



villagers came. After getting fire arm injury his brother – Gangaram Sada fell down and from his body blood started oozing out. On alarm being raised by him his mother – Mahamuni Devi (P.W. 1), Bhabhi- Madhu Devi ( P.W. 2 , wife of his elder brother), uncle- Lalo Sada (P.W. 3) and his another uncle - Jai Singh Sada (P.W. 7) and his brother- Arun Sada (not examined ) and number of other villagers arrived. At this juncture it would be necessary to point out that Jai Singh Sada / P.W. 7 in his evidence in paragraph 3 of his cross examination has categorically stated that at the time of occurrence he was in Haryana. Though P.W. 7 in his evidence himself has stated that at the time of occurrence he was at Haryana the informant / P.W. 4 in his evidence has come out with a case that after alarm at the place of occurrence this witness also arrived. This reflects regarding the credibility of this witness besides other evidences which proves that this witness is not credible and no reliance can be placed on his evidence. This witness further stated that thereafter he and his brother -Arun Sada (not examined) on the same motorcycle carried his injured brother for his treatment to Sumbha Chauk however on their arrival at Sumbha Chauk his injured brother had already died. After arrival of Police at Sumbha Chauk his fardbyan was recorded. This witness has proved his signature on the fardbyan which was marked as Ext. 1. In



paragraph 4 in his cross examination he stated that while occurrence had taken place it was rainy day however on the date of occurrence there was no rain. Even in the night after the occurrence there was no rain. However the Investigating Officer / P.W. 6 on being asked as to whether he had noticed any blood mark on the place of occurrence had given his explanation that since on the date of occurrence there was heavy rain the blood mark had already washed out. We will come later to test the reliability of the evidence of P.W. 6 – Investigating Officer but presently on the basis of evidence of informant it is clear that on the date of occurrence or in the night thereafter there was no rain. It is pertinent to notice that the Investigating Officer had not prepared any seizure list nor he had seized the motorcycle as well as not seized blood soaked soil. In paragraph 9 of his cross examination this witness P.W. 4 has stated that the place of occurrence was a lonely place and nearby the place of occurrence there were no houses or buildings. On going through the evidence of this witness one fact is also very much clear that after his brother received fire arm injuries he had not made any statement and as such subsequent story developed by the prosecution that deceased had given oral dying declaration becomes doubtful.



**10. P.W. 1** – Mahamuni Devi is non else but mother of the deceased. Though she was examined as a hearsay witness she in her evidence has stated that while occurrence had taken place she was in her house. After hearing sound of firing she reached the place of occurrence and saw that her son had received gun shot injuries. On the chest of her son there were number of bullet injuries. She stated that in injured condition her son -Gangaram Sada (deceased) said that he was shot at by Magan Sada / appellant no. 1. After seeing injured condition of her son she started crying. Thereafter her injured son was lifted by her second son -Balram Sada /P.W. 4 , Arun Sada and others for his treatment and carried to doctor however on way he died. In paragraph 3 of her examination -in -chief she stated that the place where her son was shot at there was profused bleeding. In paragraph 8 of her cross examination this witness stated that at the place of occurrence she was the first person who arrived. Thereafter others had come to the place of occurrence. She reiterated that while after arrival at the place of occurrence she saw her son in injured condition at that very time there were none. She stayed at the place of occurrence for about 2-3 Hours. In paragraph 10 of her cross examination she further clarified that at the place of occurrence after her arrival about after 3 Hours her other two sons namely- Balram Sada



(informant and P.W. 4) and Arun Sada ( not examined ) arrived. She in paragraph 11 of her cross examination further stated that after her son had received gun shot injuries he was alive for about 3 Hours however while the injured was being carried for his treatment immediately thereafter he died. On examination of evidence of P.W. 1 / Mahamuni Devi [mother of the deceased] presence of informant at the place of occurrence comes under cloud of doubt.

**11.** P.W. 2 / Madhu Devi is the wife of the deceased and she is a hearsay witness, however she has not exactly stated as to from whom she gathered information that appellant no. 1 had killed her husband. In paragraph 7 of her cross examination she stated that while her husband was murdered at that very time she, her mother- in- law (P.W. 1) and all *devars* (brothers of her husband) and children were in the house itself. In paragraph 8 of her cross examination she further stated that after hearing sound of firing from the house her *devar* - Balram Sada (P.W. 4) was the first person who runningly rushed to the place of occurrence. She further in paragraph 8 of cross examination stated that while her *devar* ( brother of her husband) after coming out from the house proceeded towards the place of occurrence then she (P.W. 2) and other family members also proceeded to the place of occurrence



and after reaching the place of occurrence she saw her husband in injured condition. She too in paragraph 11 of her cross examination stated that at the place of occurrence itself her husband was alive for about 3 Hours. The evidence of this witness categorically disbelieves the evidence of P.W. 4 as if he was present at the time of occurrence with the deceased. In paragraph 21 of her cross examination this witness has stated that with appellant no. 1/ Magan Sada her husband was having very good relation and good friendship. This also raises suspicion regarding the motive for the occurrence which was projected by the informant.

**12.** P.W. 3 / Lalo Sada is one of the uncle of the deceased. In his evidence he stated that he heard sound of three firings. Then he rushed to the place of occurrence where he saw Gangaram Sada in injured condition. This witness further stated that Gangaram, in injured condition, informed him that he was shot at by Magan Sada / appellant no. 1. Thereafter he along with others carried the injured to Sumbha Chauk however in the meanwhile the injured died. If any reliance is placed on his evidence the informant's stand that the injured was carried on motorcycle with him and his brother appears to be doubtful. This witness has come out with a case of oral dying declaration of the



deceased however in the evidence of Investigating Officer – P.W. 6 nothing has come that this witness in his statement recorded under Section 161 of the Cr.P.C. had stated the fact regarding oral dying declaration. Meaning thereby that story of giving oral dying declaration was subsequently introduced by this witness. This witness in cross examination has also stated that while after hearing sound of firing he reached the place of occurrence, at the place of occurrence his wife, his son and other villagers were present and he remained at the place of occurrence for about five minutes. This statement of P.W. 3 creates doubt on the presence of P.W. 1 that too immediately after the occurrence at the place of occurrence.

**13.** P.W. 7 / Jai Singh Sada is another uncle of the deceased and he is also a hearsay witness. In examination – in – chief he stated that he heard that Gangaram Sada died due to fire arm injury and he stated that he heard that he was done to death by giving fire arm injury while he was returning to his village- Manrupa from Sumbha Chauk and it was done by Magan Sada / appellant no. 1. In paragraph 3 of his cross examination he stated that he was a labourer in Haryana and on the date while occurrence had taken place he was in Haryana in the district of Narlone. Of -course this witness has claimed to be not eye witness



but description of his presence given by P.W. 4 at the place of occurrence itself is sufficient to draw an inference that the witnesses are not truthful.

**14. P.W. 5 / Dr. Krishna Mohan Prasad on 16.08.2011**  
was posted as Medical Officer in Sadar Hospital, Khagaria and on the same day at 12.15 P.M. he conducted post mortem examination on the dead body of the deceased and noticed the following facts:-

“On External examination

Average built. Mouth and eyes closed.  
Rigor mortis present on all over the body.

Injury no. 1 – A lacerated irregular wound of size 1”x1” on upper part of external surface of right upper arm with inverted blackish margin- wound of entry.

Injury no. 2 - Lacerated wound  $\frac{3}{4}$ ”x  $\frac{3}{4}$ ” on upper part of right upper arm in inner side with everted margin -wound of exit.

Injury no. 3 – Lacerated wound  $\frac{3}{4}$ ” x  $\frac{3}{4}$ ” in upper part of right chest opposite injury no. 2 with inverted margin.

Injury no. 4 – Lacerated wound 1”x1” with everted margin on left chest back.

Injury no. 5 - Lacerated wound  $\frac{1}{2}$ ”x  $\frac{1}{2}$ ” with inverted margin over left upper part of chest with blackish margin – wound of entry.

Injury no. 6. – Lacerated wound  $\frac{1}{2}$ ”x  $\frac{1}{2}$ ” with everted margin over upper part of left side of chest – wound of exit.

Internal Examination

Injury no. 1. Communicated with injury no. 2 with laceration of tissues and fracture of humerus bone in the way.

Injury no. 3 communicated with injury no. 4 with laceration of right chest wall, right lung, mediastinum, left lung, left chest wall and fracture of right sides and left sides ribs, left scapula in the path of injury.

Injury no. 5 communicated with injury no. 6 with laceration of left chest wall, left lung and ribs.



Heart – Empty both sides. Both plural cavity filled with clotted blood about one litre.

Brain – Pale and intact.

Stomach – Filled with two ounce of digested food.

Small intestine – Small intestine contained digested fluid food.

Large intestine – Large intestine contained faecal matters and gas.

Other viscera – Other viscera are pale and intact. Bladder empty. Genital nothing abnormal detected.

Cause of death – Haemorrhage and shock due to above mentioned injuries which were anti – mortem in nature and caused by fire arm leading cardio respiratory failure.

Time elapsed since death to P.M. done – within twenty four hours.”

This witness stated that post mortem examination report was in his writing and pen and it was marked as Ext. 2. On examination of the evidence of P.W. 5 as well as on examination of post mortem examination report i.e. Ext. 2 it is clear that cause of death besides hemorrhage and shock was also caused by fire arm leading to cardio respiratory failure. Injury no. 3 and 4 shows that it was lacerated on right chest wall, right lung, left lung, left chest wall and fracture on right sides and left sides of ribs. Internal injuries which have been noticed by the doctor is indicative of the fact that after such injury the injured could not have been in a condition to make statement. Accordingly, we are in agreement with the submission of Sri Thakur, learned counsel for the appellants that after such injury the injured was not in a position to make any statement and as such there is no reason to place any



reliance on the evidence of P.W. 1 and P.W. 3 particularly on the point of oral dying declaration. Besides this evidence of Investigating Officer makes it clear that during investigation none of the witnesses had stated regarding oral dying declaration of the deceased.

**15.** The Investigating Officer Sri Ajay Kumar was examined as P.W. 6. On 16.08.2011 he was posted as Sub Inspector of Police in Alauli Police Station and on the same day he was entrusted with the investigation of Alauli P.S. Case No. 120 of 2011. This witness was handed over inquest report and fardbyan by the Officer – in – charge for further investigation. During investigation he proved endorsement of Officer- in -charge on formal F.I.R. which was marked as Ext. 1/1, signature of Officer –in- charge on formal F.I.R. which was marked as Ext. ½. In his evidence one thing peculiar has been noticed that this witness i.e. Investigating Officer was shown the place of occurrence by Jai Singh Sada / P.W. 7 however in the evidence of P.W. 7 he himself has admitted that on the date of occurrence he was in Haryana, meaning thereby that the inspection of the place of occurrence by the Investigating Officer is itself doubtful since this witness P.W. 6 in paragraph 4 of his evidence has stated that he was shown the place of occurrence by Jai Singh Sada / P.W. 7.



Once Jai Singh Sada in his evidence has admitted that on the date of occurrence he was in Haryana then his presence at the place of occurrence and story of showing the place of occurrence by him by the Investigating Officer cannot be relied upon. Though it was not permissible but the learned Public Prosecutor has shown entire 161 Cr.P.C. statement of the witnesses without any attention of such witnesses drawn to their previous statement. The learned Presiding Officer has noted down entire 161 Cr.P.C. statement of witnesses. Though such thing was not required to be looked into but for just arriving to a correct conclusion we have examined the same and on examination of those facts we have not found any fact showing that the deceased while he was injured had made any oral dying declaration before any of the witnesses. Accordingly there is no reason to place reliance on the story of oral dying declaration.

**16.** On going through entire evidence available on record we are of considered opinion that prosecution has not been able to establish its case beyond all reasonable doubts rather the prosecution case appears to be doubtful. The presence of informant at the place of occurrence itself has come under cloud of doubt in view of evidence of P.W. 1 and P.W. 2. P.W. 2 (wife of the deceased) in categorical term has stated that at the time of occurrence all brothers of the deceased were inside the house and



after hearing sound of firing all family members including all brothers of the deceased rushed to the place of occurrence. Meaning thereby that story which has been built up in the fardbyan cannot be believed. In such circumstances there is no reason to place reliance on the evidence of P.W. 4 who has claimed to be eye witness. This shows that occurrence was seen by none. Only fact which was brought on record to implicate the appellants was the so called oral dying declaration which cannot be believed. The reason for not believing such fact are the injuries found on the person of the deceased which has been noticed by P.W. 5 in its post mortem examination report as well as the fact that none of those witnesses i.e. P.W. 1, P.W. 3 during investigation had stated that the injured had given any oral dying declaration. Meaning thereby that story of oral dying declaration was introduced subsequently and developed and as such it would not be safe to place any reliance on such evidence.

**17.** In view of aforesaid facts and circumstances we are of the opinion that prosecution has not been able to prove its case beyond all reasonable doubts. Accordingly by way of extending benefit of doubt it is necessary to interfere with the judgment of conviction and sentence. Accordingly judgment of conviction and sentence dated: 15.06.2013 passed in Sessions Trial No. 114 of



2012 [arising out of Alauli P.S. Case No. 120 of 2011, G.R. No. 1229 of 2011] by Sri Krishna Kant Tripathi, Sessions Judge, Khagaria ( Bihar ) is hereby set aside and the Appeal is allowed. Since judgment of conviction has been set aside and appellant no. 1/ Magan Sada is inside jail, he is directed to be released forthwith, if not required in any other case. Other two appellants who are on bail are discharged from the liabilities of their bail bonds.

**18.** The Appeal stands allowed.

**(Rakesh Kumar, J)**

**( Arvind Srivastava, J)**

praful/-

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