

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 982 of 2013**

Arising Out of PS. Case No.-8 Year-2010 Thana- Jogbani District- Araria

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Jai Prakash Das, Son of Sahdeo Das, resident of Village – Amouna, P.S. -
Jogbani, District – Araria.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Ajit Kumar Singh, Advocate
For the Respondent : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 24-04-2019

The sole appellant, after being convicted and sentenced, has filed the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.').

2. The appellant by judgment dated 30-08-2013 was held guilty and convicted for offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By order dated 31-08-2013, under Section 302 of the I.P.C., the appellant has been sentenced to undergo imprisonment for life



and to pay a fine of Rs. 10,000/- (ten thousand). In case of default in payment of fine, he was directed to further undergo simple imprisonment for three years. The judgment of conviction and sentence has been passed by learned Adhoc Additional Sessions Judge 4th, Araria (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 1091 of 2010/Trial No. 97 of 2010 (arising out of Jogbani P.S. Case No. 8 of 2010).

3. Short fact of the case is that on 19-01-2010 at 18.30 hrs. (6:30 P.M.), the Sub-Inspector of Police Sunil Kumar, S.H.O., Jogbani Police Station, Araria recorded *fardbeyan* of Sakaldev Das (P.W.11) son of Sukadev Das (P.W.10) of village Amona, P.S. - Jogbani, District - Araria. The said *fardbeyan* was recorded in Referral Hospital, Forbisganj, Araria in presence of Sushil Das (P.W.8). In the *fardbeyan*, the informant (P.W.11) disclosed that on the same date in the evening at 5:30 PM, he was standing on road opposite his house. At the same time, his brother Vijay Das aged about 30 years (deceased), Sushil Das (P.W.8), Lootan Das (P.W.4), Anil Das (P.W.2), all resident of village Amona and other co-villagers were going to bring deity of Maa Sarswati to Sonapur. As soon as his brother Vijay Das (deceased) reached on the road near the house of Jai Prakash



Das (appellant) suddenly son of Sahdeo Das namely, Jai Prakash Das (appellant) came nearer to his brother and gave knife blow on the left side of the chest of his brother and fled away alongwith knife towards his house. After getting knife injury, his brother Vijay Das fell down and started squirming. The informant and others tried to rescue his injured brother, in the meanwhile, Jai Prakash Das (appellant) fled away even from his house. The informant carrying his injured brother Vijay Das came to Referral Hospital, where he was declared dead. The informant further disclosed that one day prior to the occurrence, Jai Prakash Das (appellant) at about 10:00 PM in the night was beating his father Sahdeo Das, who raised *hulla* and thereafter, number of villagers including his brother (deceased) assembled there and saved father of the appellant from beating. It was further disclosed that the deceased also had slapped Jai Prakash Das (appellant). Thereafter, appellant had threatened to take revenge. This was the reason that the appellant, by inflicting knife blow, had killed his brother. The occurrence was seen by other villagers also. The said *fardbeyan* was read over to him and after finding it correct, in presence of his younger brother Sushil Das (P.W.8), this witness put his signature. As witness to the *fardbeyan*, his



younger brother Sushil Das (P.W.8) put his L.T.I. (Left Thumb Impression).

4. On the basis of said *fardbeyan*, on the same date i.e. on 19-01-2010 at 23.00 hrs. (11:00 PM), a formal F.I.R., vide Jogbani P.S. Case No. 8 of 2010, was registered for offence under Section 302 of the I.P.C. against sole appellant. After investigation, on 31-01-2010 chargesheet was submitted against the sole appellant and on 25-03-2010, the learned Chief Judicial Magistrate, Araria took cognizance of the offence and on 30-07-2010, the case was committed to the court of sessions and it was numbered as Sessions Trial No. 1091 of 2010. On 24-08-2011, charge under Section 302 of the I.P.C. was framed against the appellant, which he denied and claimed to be tried.

5. During the trial, to establish its case on behalf of the prosecution, altogether 12 witnesses were examined. Out of 12 witnesses, P.W.3 Bishundeo Das (uncle of the appellant), P.W.8 Sushil Das (brother of the deceased), P.W.9 Most. Mamta (wife of the deceased), P.W.10 Sukhdeo Das (father of the deceased) and P.W.11 Sakaldeo Das (informant and elder brother of the deceased) were examined claiming to be eye-witnesses to the occurrence. P.W.4 Lootan Das, P.W.6 Nandan Kumar Das and



P.W.7 Deepak Das were witnesses only on the point of alleged occurrence, however; they had not whispered about the involvement of the appellant. Dr. J.N.Mathur, who on the relevant date was posted in Sadar Hospital, Araria, was examined as P.W.12 and he conducted *post-mortem* examination on the dead body of the deceased. P.W.1 Mahesh Kumar Yadav, P.W.2 Anil Kumar Das and P.W.5 Wakil Das, since did not support the prosecution case, were declared hostile. During the trial, the investigating officer has not turned up to be examined as prosecution witness.

6. After conclusion of the prosecution evidence, the appellant was questioned with incriminating circumstances and evidences brought against him during the trial and his statement under Section 313 of the Cr.P.C. was recorded on 20-05-2013, in which, he claimed to be innocent. However, no evidence, whether oral or documentary, has been brought on record from the defence side. The learned Trial Judge, on the basis of evidence available on record, has passed the judgment of conviction and sentence, which has been assailed in the present appeal.



7. Sri Ajit Kumar Singh, learned counsel for the appellant, after placing entire evidence, has firstly argued that due to non-examination of the investigating officer, the case of defence has seriously been prejudiced. He submits that due to non-examination of the investigating officer, prosecution has not been able to establish the place of occurrence, since no material exhibit has been brought on record. He further submits that evidence of so called eye-witnesses is itself inconsistent and no reliance can be placed on such evidence. According to Sri Ajit Kumar Singh, learned counsel for the appellant, evidence of P.W.3 Bishundeo Das appears to be not credible, since he was having some grudge against the appellant and his father. In his evidence, it has come that mother of this witness had transferred some land in favour of appellant's side. It was argued that it appears that due to such grudge, though P.W.3 was not eye-witness to the occurrence, during the evidence has claimed to be eye-witness.

8. It has further been argued by learned counsel for the appellant that neither *fardebayan* nor formal F.I.R. has been got exhibited. According to Sri Singh, except close relatives of the deceased, none of the independent witnesses have come forward



to support the prosecution case and the witnesses, who were cited in the *fardbeyan*, have not supported the prosecution case and as such, the prosecution has not been able to establish its case beyond all reasonable doubt. Alternatively, it was argued that it is not a case of prosecution that the appellant had given repeated blow. It appears that in a spur of moment, the occurrence had taken place and this was the reason that there is no evidence regarding repetition of knife blow on the deceased. On aforesaid ground, it has been argued that the prosecution has not been able to establish its case beyond all reasonable doubt.

9. Sri Ajay Mishra, learned Addl. Public Prosecutor has supported the prosecution case as well as judgment of conviction and sentence and he submits that the informant (P.W.11) was the eye-witness in whose presence occurrence had taken place, which has been corroborated by the evidence of P.W.3, P.W.8 and P.W.10.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence, both oral and documentary, available on record, and after going through the same, *prima facie*, we are of the opinion that the prosecution has not been able to establish its case beyond all reasonable doubt,



however; before proceeding, it would be necessary to refer to the evidences, which have been brought on record.

11. The informant in the case has been examined as P.W.11. In his examination-in-chief, almost he has reiterated what he had stated in the *fardbeyan*, however; on examination of his evidence in paragraph - 5 of cross-examination of this witness, it is evident that he himself admits that at the time of occurrence, he was at his house. Meaning thereby that evidence of P.W.11, who right from the very beginning had claimed to be eye-witness, may not be considered as credible. Besides this, in the *fardbeyan*, this witness had disclosed, as if, at the time of occurrence deceased was accompanied by P.W.8 Sushil Das, P.W.4 Lootan Das and P.W.2 Anil Das, whereas, during the trial, Lootan Das (P.W.4) and Anil Das (P.W.2) have flatly refused regarding witnessing occurrence by them and this was the reason that both the witnesses were declared hostile.

12. So far as the evidence of Sushil Das (P.W.8) is concerned, it is evident that this witness also does not appear to be eye-witness to the occurrence. P.W.8 Sushil Das, who is younger brother of P.W.11 Sakaldeo Das (informant of the case), in paragraph - 1 of his examination-in-chief, has stated, as if, he



was also one of the eye-witness to the occurrence, however; in cross-examination in paragraph – 2, he stated that at the time of occurrence, he was at his house. In paragraph – 4 of his cross-examination, he further deposed that before the police, he had stated that while his deceased brother with others had gone to bring deity of Maa Saraswati, occurrence had taken place and he reached there within two minutes. In paragraph – 5 of his cross-examination, he further states that he was with his brother, who was lying on the road. This witness in his evidence in last line of paragraph – 9 has deposed that prior to the occurrence in between his deceased brother and appellant, there was no dispute. Besides the fact that as per cross-examination, he was not present at the place of occurrence, it is also evident that in between deceased and appellant, as per P.W.8 (own brother of the deceased), there was no dispute and as such, there was absence of motive for the occurrence.

13. P.W.3 Bishundeo Das (uncle of the appellant) in paragraph – 1 has deposed, as if, he had seen the occurrence near the house of Sahdeo Das. In paragraph – 2 of his cross-examination, this witness admits that Sahdeo Das is his own brother and appellant is the son of Sahdeo Das. In his



examination-in-chief, he has come out with a new story that while the deceased was moving and reached near the house of Sahdeo Das (father of the appellant), then Sahdeo Das and his son Jai Prakash Das (appellant) both said to kill Vijay Das (deceased).

14. Learned counsel for the appellant has rightly argued that this witness, since was having some grudge, had given false evidence.

15. In paragraph - 2 of his cross-examination, P.W.3 (Bishundeo Das) has stated that Jai Prakash Das is the son of Sahdeo Das and Sahdeo Das is his own brother. In paragraph - 3, he further stated that his mother had transferred land to son of his brother Sahdeo Das. Ofcourse in his cross-examination, no important thing has been brought, but in paragraph-9 of his cross-examination, he has further stated that at the place of occurrence, there were houses of about 500 persons. He was given suggestion that since his mother had gifted land to appellant's side and due to said animosity, he falsely implicated the appellant, was denied by him, but fact remains that this witness, in his evidence, had admitted that his mother had transferred land to son of his brother Sahdeo, who is



father of the appellant. This witness ofcourse has claimed to be eye-witness, but in his evidence, new story has come, as if, the appellant with his father was also involved in this occurrence. This fact was neither initial version of the prosecution nor during entire trial has come and as such, the evidence of P.W.3 appears to be not credible.

16. P.W.9 Most. Mamta (wife of the deceased), though in paragraph-1 of her examination-in-chief, has claimed, as if, she has witnessed the occurrence, but in her cross-examination, in paragraph-2, she stated that on the date of occurrence, she was in her parental house and she had not seen the occurrence.

17. Similarly, P.W.10 Sukhdeo Das (father of the deceased) in paragraph-1 of his evidence has stated that on hearing sound of *hulla* that Jay Prakash Das (appellant) had stabbed in stomach of his son, he went there and saw that his son was in injured condition. In paragraph-2 of his cross-examination, he states that while he reached at the place of occurrence, his son was lying and he was squirming and after seeing this, he became unconscious.

18. P.W.12 Dr. J.N. Mathur on 20-01-2010 was posted in Sadar Hospital, Araria and he conducted *post-mortem*



examination on the dead body of the deceased. During *post-mortem* examination, he found one stab wound on the left side of the chest of the deceased. Since on examination of entire evidence, we are satisfied that prosecution has not been able to establish its case, there is no need to elaborately discuss the evidence of doctor, who examined *post-mortem*. The *post-mortem* report was marked as Ext.2. In paragraph-3 of his cross-examination, he accepted the suggestion that on fall over penetrating bamboo, such injury may occur.

19. P.W.4 Lootan Das, whose name was mentioned in *fardbeyan*, as if, he had also seen the occurrence, in his evidence states nothing showing complicity of the appellant, rather he stated that he heard that the appellant had stabbed. However, in his evidence, he has not disclosed the source from whom he got such information. Accordingly, such information is not admissible in the eye of law.

20. P.W.6 Nandan Kumar Das, though has not been declared hostile, he has simply stated that he was not knowing as to how murder had taken place and who was involved in the murder.



21. P.W.2 Anil Kumar Das, whose name was mentioned in the *fardbeyan*, as if, he had also accompanied deceased at the time of occurrence, since did not support the prosecution case, was declared hostile.

22. On examination of the aforesaid evidence, it is evident that though name of independent witnesses was mentioned in the *fardbeyan*, as if, eye-witness to the occurrence or companion of the deceased, none has supported the prosecution case. Even informant/P.W.11 has not established as to whether he was ocular witness to the occurrence or not. On going through the entire evidence, it is evident that evidence of none of the so-called eye-witnesses is credible and as such, no reliance can be placed on such evidence. Moreover, the prosecution, during the trial, has not brought on record any material exhibit. Even the investigating officer has not come forward to depose in the case.

23. On examination of entire evidence on record, we are of the considered opinion that the 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 apt to interfere with the impugned judgment of conviction and sentence.



24. Accordingly, the judgment of conviction dated 30-08-2013 and order of sentence dated 31-08-2013 passed in Sessions Trial No. 1091 of 2010/Trial No. 97 of 2010 (arising out of Jogbani P.S. Case No. 8 of 2010) by the learned Adhoc Additional Sessions Judge - 4th, Araria is, hereby, set aside and appeal is allowed.

25. The appellant is in custody and since the judgment of conviction and sentence has been set aside, it is, hereby, directed to release him forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Anil Kumar Sinha, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
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