

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.738 of 2013

Arising Out of PS. Case No.-131 Year-2009 Thana- BAARSOI (R.T) District- Katihar

Md. Kalua, Son Of Late Jawed, Resident Of Village - Jakatbari, P.S. - Barsoi
(O.P. Kachna) District - Katihar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 580 of 2013

Arising Out of PS. Case No.-131 Year-2009 Thana- BARSOI District- Katihar

1. Hasibur @ Md. Hasibul, S/O – Nomo, Resident Of Village- Jokalbari, P.S.- Barsoi (Kachna O.P.) , District- Katihar.
2. Md. Manjoor, S/O - Late Samsul, Resident Of Village - Bighor Hatt, P.S.- Barsoi, District- Katihar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 613 of 2013

Arising Out of PS. Case No.-131 Year-2009 Thana- BARSOI District- Katihar

Sahdul @ Md. Sahdul, S/o - Late Haji Ahmad Hussain, Resident Of Village
- Goa Gaun, P.S. -Barsoi, (O.P. - Kachna) , District - Katihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 738 of 2013)

For the Appellant/s : Sri Kanhaiya Prasad Singh, Sr. Advocate
Sri Pratik Mishra, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In Criminal Appeal (DB) No. 580 of 2013)

For the Appellant/s : Sri Raghvendra Kumar Singh, Advocate

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

(In Criminal Appeal (DB) No. 613 of 2013)

For the Appellant/s : Sri Raghvendra Kumar Singh, Advocate



For the Respondent/s : Sri D.K. Sinha, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

Date : 01-02-2019

1. Appellants of all the three Appeals were tried together in Sessions Trial No. 156 of 2010 and convicted and sentenced by a common judgment, and as such, all the aforesaid three Appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

2. All the appellants by judgment dated- 27.05.2013 were convicted for commission of offence under Section 396 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”). By order dated- 31.05.2013 all the appellants were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each. In default of payment in fine they were directed to further undergo imprisonment for six months. Judgment of conviction and sentence was passed by Sri Housila Prasad Tripathi, learned Adhoc Additional Sessions Judge II, Katihar in Sessions Trial No. 156 of 2010 [arising out of Barsoi P.S. Case No. 131 of 2009].

3. Short fact of the case is that on 09.10.2009 at 7.00 A.M. Sri Panna Kumar Singh, S.H.O., Barsoi P.S. (P.W. 8) recorded fardbyan of Sawan Khatoon (P.W. 9). The said fardbyan



was recorded near the door of the informant in village- Goa Goun, P.S. - Barsoi O.P. Kachna, District- Katihar. In the fardbyan the informant disclosed that in the night of 8/9 October, 2009 at about 12.00 she woke up after hearing sudden sound of breaking of the latch of the door. Then she saw five accused persons in the room had intruded who were carrying *khanti*, knife etc. in their hands and started assaulting informant and slapped the informant and asked her not to raise alarm. They asked about Rs. 48,000/- which she had received which was sent from Delhi. The informant by indicating intimated the accused that the said Rs. 48,000/- was kept in briefcase. The accused persons took out Rs. 48,000/- from briefcase and also forcibly took nose-pin of the informant. In the meanwhile, from the side room where her Souten (1st wife of her husband) was sleeping woke up and she started raising alarm and came out in the courtyard. After hearing alarm villagers started assembling there. In the meanwhile, accused persons inflicted injuries on Phulo Khatoon by means of knife and rod. They also assaulted the neighbour of the informant namely Tura Mohammad (P.W. 12) and Md. Nurul (P.W. 10). They were assaulted by knife and rod. After noticing arrival of number of villagers accused persons started fleeing away towards Western side and they were chased by villagers. In the midst of chase from the Western side



village namely- Chichora villagers also started assembling there and accused persons were intercepted from two sides and they apprehended one of the accused persons who on being asked disclosed his name as Md. Kalua (sole appellant in Cr. Appeal (D.B.) No. 738 of 2013) of village- Jokalbari, P.S. – Barsoi (O.P. Kachna). The said accused in presence of villagers disclosed that one of the accused namely -Sahdul (sole appellant in Cr. Appeal (D.B.) No. 613 of 2013) of the village of the informant had given information about the house of the informant and he had conspired in committing dacoity. In confession the apprehended accused disclosed that Sahdul one day before yesterday in a graveyard had disclosed that in the house of Mauziful (husband of the informant) about 50,000/- rupees was kept and he was also involved in dacoity but he was not present at that time. He conspired for committing dacoity. The said apprehended accused also disclosed the name of other accused namely- Hasibul, Md. Manjoor (both appellants in Cr. Appeal (D.B.) No. 580 of 2013) and Md. Jalil, all residents of village -Jokalbari. The said apprehended accused was also assaulted by slaps and *lathi* by agitated villagers and the said accused Md. Kalua had received injuries and another accused Md. Hasibul succeeded in fleeing away even after being assaulted by the villagers. Villagers carried the injured and injured villagers



-Md. Tura and Md. Nurul to Barsoi hospital where treatment was going on. However, Phulo Khatoon while being carried for treatment died on way. Her death occurred in Goa Goun. The said injured died due to injuries inflicted by the accused persons. The apprehended accused person before the villagers confessed his guilt. The said occurrence had taken place in between 12-12.30 in night. The said fardbyan was read over to her and after finding it correct she put her signature. As a witness to the fardbyan Sheikh Khalilur Rahman (P.W. 1) put his signature whereas P.W. 6 (Md. Ishaque) gave his L.T.I. on the fardbyan. On the basis of the said fardbyan on 09.10.2009 at 5.30 A.M. a formal F.I.R. vide Barsoi P.S. Case No. 131 of 2009 was registered for the offence under Section 396 of the I.P.C. against:-

- (1) Md. Kalua (appellant in Cr. Appeal (D.B.) No. 738 of 2013);**
(2) Hasibur @ Md. Hasibul
(3) Md. Manjoor
(both appellant no. 1 and 2 respectively in Cr. Appeal (D.B.) No. 580 of 2013);
(4) Md. Jalil @ Sheikh Jalil (not tried together): &
(5) Sahdul @ Md. Sahdul (appellant in Cr. Appeal (D.B.) No. 613 of 2013).

After investigation and collecting material and finding the case true on 11.01.2010 charge -sheet was submitted against aforesaid all four appellants keeping investigation pending against another accused. After submission of charge -sheet, on 12.04.2010 learned Chief Judicial Magistrate, Katihar took cognizance of



offence and the case was committed to the court of Sessions on 16.04.2010. In the case on 17.06.2010 joint charge was framed against all the appellants under Section 396 of the I.P.C. however appellants denied the charge and claimed to be tried.

4. During the trial to establish its case on behalf of the prosecution altogether twelve witnesses were examined, who are:- P.W. 1 (Sheikh Khalilur Rahman), P.W. 2 (Md. Tasduk Rahman), P.W. 4 (Md. Hashim), P.W. 5 (Md. Aslam) [all neighbours of the informant and hearsay witnesses]. Out of those witnesses P.W. 2 is one of the witnesses to the inquest report and he proved his signature on inquest report, which was marked as Ext. 1. P.W. 6 (Md. Ishaque) is the maternal uncle of the husband of the deceased, who had claimed to be an eye witness. P.W. 10 (Md. Nurul) and P.W. 12 (Tura @ Khurshid) had claimed to be eye witnesses and also claimed to be injured during the occurrence and injury was caused by the accused persons. P.W. 9 (Sawan Khatoon) is the informant and Souten of the deceased; P.W. 11 (Dr. Ram Rekha Suman) had conducted post -mortem examination on the dead body of the deceased and P.W. 8 (Panna Kumar Singh) is the Investigating Officer of the case. One of the co-villagers namely Md. Shahid (P.W. 3) was declared hostile.



5. After completion of the evidence, circumstances and evidences brought on record during the trial were explained to the accused persons and on 11.12.2012 their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) was recorded in which they claimed to be innocent and also produced two witnesses as defence witnesses, namely: Afaque Ansari (D.W. 1), resident of village- Jokalbari and D.W. 2 (Md. Yusuf), resident of Goa Goun. D.W. 1 deposed as if three appellants namely: Md. Kalua, Hasibur and Md. Manjoor who were residents of Jokalbari were having clean antecedent and were never involved in any crime. D.W. 2 -Md. Yusuf [co-villager of the informant] had come out with a case that the informant was in inimical term with Sahdul @ Md. Sahdul (sole appellant in Cr. Appeal (D.B.) 613 of 2013) since he was having land adjacent to the land of informant and it was claimed that this informant had captured the land.

6. After placing entire evidence, Sri Kanhaiya Prasad Singh, learned senior counsel assisted by Sri Pratik Mishra, learned counsel for the appellant in Cr. Appeal (D.B.) 738 of 2013 has argued that during the whole trial prosecution has miserably failed to place any reliable evidence and even in absence of any such evidence the learned trial judge has incorrectly passed the



judgment of conviction and sentence. He highlights that P.W. 10 (Md. Nurul) and P.W. 12 (Tura @ Khurshid), who are co-villagers of the informant, though had claimed to have received injuries at the time of occurrence which were inflicted by the appellants, not a single bit of paper has been brought on record to show regarding examination of their injuries by any medical expert. He submits that P.W. 10 in his evidence has stated that after the occurrence while he was chasing the accused persons along with the villagers and apprehended one of the accused namely, Md. Hasibul the accused persons returned back and they inflicted knife blow as well as blow by rod. Due to said injuries he became unconscious and then he was carried to Barsoi hospital and he remained unconscious for about 20-22 days in Barsoi and thereafter he was referred to Katihar Government Hospital where again he remained for few days. Learned Senior Counsel submits that informant in the fardbyan had stated that at the time of occurrence in the premises of the informant the appellants had injured both witnesses i.e. P.W. 10 and P.W. 12, but P.W. 10 during the trial had stated that he received injuries while he along with the villagers had apprehended one of the accused. Besides this, except oral version no documentary evidence has been brought on record to show that P.W. 10 was ever treated by a doctor. Similarly,



in respect of P.W. 12 (Tura @ Khurshid) Sri Singh has argued that evidence of this witness is required to be noticed only for its rejection. He submits that this witness too had stated that after injury he was carried to hospital and he remained in hospital for number of days but in cross -examination it has come that he had stated that on the next day he was present with the Investigating Officer. Accordingly, it has been argued that no reliance can be placed either on the evidence of P.W. 10 or P.W. 12 and those witnesses are not eye witness to the occurrence. He submits, by way of referring to the evidence of P.W. 6 (Md. Ishaque), who is non else but maternal uncle of the husband of the deceased, that it also appears to be not reliable since this witness had stated that after Md. Kalua was apprehended by villagers he was carried to Police Station and handed over to Officer -in-Charge, however the said stand is entirely contrary to the initial version of the prosecution case. Regarding evidence of P.W. 9 -Sawan Khatoon (informant) and Souten of the deceased, it has been argued that in her evidence there are serious contradictions which suggest that her evidence is not reliable. Sri Kanhaiya Prasad Singh, learned senior counsel has further argued that the informant may not be treated as an eyewitness considering the fact that it is the case of prosecution that after the occurrence while accused persons were



fleeing away one of the accused was apprehended by the villagers and as such this witness can not be termed as a witness to apprehension of Md. Kalua. Besides this, he submits that her evidence appears to be not probable. In the evidence of P.W. 9 it has come that while dacoits intruded into the house she had also raised alarm, but to the reasons best known to the prosecution it has come that instead of injuring the informant the accused persons had assaulted her Souten namely: Phulo Khatoon. He further submits that prosecution case also appears to be not probable due to the reason that husband of informant was said to be informed by the informant in the night of the occurrence itself and within twenty four hours her husband arrived, however the Investigating Officer did not take any pain to examine him or record his statement nor her husband had come forward to make any statement in support of the prosecution whereas the deceased was his first wife. In evidence it has also come that deceased was buried by villagers, meaning thereby that family members had not participated in burial process. This also creates doubt on the prosecution case. By way of referring to evidence of P.W. 1, P.W. 2, P.W. 4 and P.W. 5 he submits that evidence of those witnesses itself reflects regarding non-probability of the prosecution case. Even those witnesses had claimed to be hearsay witnesses but it



has not come as to who were the persons who informed them and in absence of such corroboration such hearsay evidence may not be treated as admissible. P.W. 7 (Md. Nazir) though was examined but since he did not appear for his cross- examination, his evidence was discarded by the court below itself, and as such, there is no need to take notice of the evidence of P.W. 7 - Md. Nazir. Sri Singh, learned senior counsel has tried to persuade the court that it appears that Kalua was subsequently apprehended since he was close associate of Sahdul with whom there was allegation of animosity regarding land with the informant. He submits that this is the reason that while the informant was being examined she was given suggestion regarding false implication. He further submits that during entire evidence this fact has not been brought on record as to who had apprehended Kalua and produced before Police. Only vague fact was stated by the Investigating Officer. On aforesaid grounds it has been argued that judgment of conviction and sentence is liable to be set aside.

7. Sri Raghvendra Kumar Singh, learned counsel appearing on behalf of appellants in other two Appeals adopting the argument of Sri Kanhaiya Prasad Singh, learned senior counsel, has argued that case of those appellants is on much better footing than the case of Md. Kalua. He submits that Md. Kalua



was shown to be apprehended by the villagers and appellants' name had come in the confessional statement of Md. Kalua which was made before Police without leading to recovery of any fact, and as such, the evidence was barred under Section 25 of the Evidence Act. He submits that besides the statement / confessional statement of co-accused there is nothing against the appellants. During investigation no Test Identification Parade was held whereas the appellants hail from a different village and it was case of the prosecution that except Kalua none of the other accused were identified by the prosecution side at the time of commission of occurrence. It has also been argued that during evidence fact has come that immediately after the occurrence Sarpanch, Ward Counsellor and Mukhiya had arrived at the place of occurrence but without any explanation those witnesses were not produced during the trial. He further submits that informant / P.W. 9 in her evidence had accepted that few days prior to the occurrence her parents had come to her house and they remained there for some time even after the date of occurrence but none of those parents had come forward to make any statement. Besides this, it is case of the informant that she was having three child and one was aged about fifteen years but the said witness has not come forward to support the prosecution case.



8. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the Appeals has argued that evidence of informant is very much consistent and she had claimed to identify the accused Kalua before being produced by the villagers. He further submits that though the accused persons were not put on T.I. parade but the appellants were identified in the dock. He submits that identification of accused in dock is also permissible.

9. Besides hearing learned counsel for the parties, we have minutely examined entire evidence, both oral and documentary evidence, and after examining the same *prima facie* we are of the opinion that prosecution has not been able to establish its case beyond all reasonable doubts. However, it would be necessary to cursorily refer the evidence, which has been brought on record.

10. P.W. 1 (Sheikh Khalilur Rahman) in his evidence has stated that occurrence had taken place about ten months back. There was *hulla* in village which was coming from Western side i.e. from the house of Mauziful Rahman (husband of the informant) that dacoity was going on. In the morning he heard that the dacoits had looted Rs. 48000/- and one female was injured. This witness further stated that he heard that the injured female had died on way while being carried for treatment. In cross



-examination he stated that his statement was not recorded before Police. He further stated that beside the house of Mauziful there was land of Sahdul. He further in cross -examination stated that he had heard alarm from a distance of about 1 K.M. and the place where murder had taken place he had not gone. Meaning thereby that in his evidence nothing has come to show involvement of either of the appellants.

11. P.W. 2 (Md. Tasduk Rahman) is yet another neighbour of the informant. In his evidence he stated that in the morning he heard that in the house of Mauziful Rahman dacoity was committed and in course of dacoity Phulo Khatoon was injured and she died. In dacoity Rs. 48,000/- was looted. He stated that his signature was taken on inquest report and it was marked as Ext. 1. He further stated that he was identifying Sahdul who was of his village. In cross -examination he clarified that he identified Sahdul since he was his co-villager. Meaning thereby that identification of Sahdul by P.W. 2 was not having any connection with dacoity.

12. P.W. 3- Md. Shahid had not supported the prosecution case and as such he was declared hostile.

13. P.W. 4 (Md. Hashim) is another co-villager and neighbour of the informant and he in his evidence has stated that in



the morning he heard that in the house of Phulo Khatoon dacoity had taken place and Phulo Khatoon was murdered. He was not knowing as to by which weapon she was murdered. He further denied regarding giving his thumb impression. Evidence of this witness has also got no relevance so far case of appellants is concerned.

14. Similarly, P.W. 5 -Md. Aslam [co-villager of the informant] stated that at 12.30 in the night on the date of occurrence he awoke after hearing *hulla* and came out from the house with a torch. With villagers he went to the house of Sawan Khatoon -informant (P.W. 9) and he saw that three persons were lying in injured condition. Amongst them, one was female. The injured were sent on vehicle to hospital. After twenty minutes thereafter injured Phulo Khatoon died. Thereafter this witness returned back from the place of occurrence. He further stated that he heard that some had come for committing theft. He further stated that Police had obtained his signature on blank paper and identified Sahdul who was in court since he was his co-villager. In cross- examination he stated that Sahdul was his villager. The land of Sahdul was adjacent to the land of informant and some of the lands of Sahdul was encroached by the informant. On examination of evidence of this witness it goes without saying that he has not



stated anything showing involvement of either of the appellants. He stated that informant had encroached over the land of appellant – Sahdul.

15. P.W. 6 -Md. Ishaque (maternal uncle of husband of deceased) in his evidence stated that in the night of the date of occurrence at 12.00 after hearing *hulla* which was coming from the house of Mauziful he went there and saw that dacoits were assaulting Phulo Khatoon. Kalua after inflicting knife blow on Phulo had fled away. Tura (P.W. 12) and P.W. 10 (Nurul) who were ahead of this witness were also assaulted by Kalua (appellant). They were assaulted by rod and knife. He claimed to identify them in torch light. In torch light he saw that both were injured. The dacoits fled away towards Western side. The villagers of other village caught Kalua who was having knife in his hand which was stained with blood. This witness further stated that villagers carried Kalua (appellant) and handed over Kalua in Police Station however he has not given specific name of the villager who had apprehended Kalua nor during the trial any of the witnesses had come forward to claim that he had apprehended appellant- Kalua and he handed over appellant – Kalua to Police. This witness further clarified that he too had gone to Police Station along with Kalua and others. He stated that in presence of the villagers Kalua



had confessed his guilt. At page no. 26 of his cross examination he stated that Sawan Khatoon -P.W. 9 (informant) was his Bhagin Putoh (Sister's daughter- in- law) . On examination of his evidence it appears that he had come out with a case that the apprehended accused i.e. appellant- Kalua was carried to Police Station and in Police Station he was handed over to Police, however, the said evidence is contrary to the evidence of informant and Investigating Officer since it is case of the prosecution that appellant /Kalua was handed over to Police by the villagers near the door of the informant not in Police Station. He further stated that before his arrival in the house of Sawan Khatoon (informant) about hundred persons had already arrived. This suggests that this witness was not in a position to see the actual occurrence and suggests that this witness arrived at the place of occurrence much after the commission of the offence. He has also admitted that appellant -Sahdul was having about one hundred bigha of land.

16. P.W. 9 (Sawan Khatoon) is the informant of the case and in her evidence she identified her signature on the fardbyan which was marked as Ext. 9 and she also identified signature of Sheikh Khalilur Rahman (P.W. 1) on the fardbyan, which was marked as Ext. 9/1. In her evidence she had reiterated the fact which was disclosed in the fardbyan however on going



through her evidence in cross -examination it is evident that at the time of occurrence in her house besides the informant and deceased other family members were also there, who were parents of informant and her children, one was aged about fifteen years, however without any plausible explanation none of those witnesses were produced by the prosecution. On going through her evidence also it appears that she had claimed that she had received Rs. 48,000/- through Courier in the month of September and a plea was taken that while Courier was delivered to her it was delivered in presence of about fifteen villagers which also appears to be not probable. She was asked about the distance of the Bank from her house in which she stated that the Bank was about twenty minutes walking distances. Besides this, it also appears to be doubtful that once dacoity was committed in the house of informant, there was no reason to brutally assault her Souten by the appellants whereas the informant herself had said that after noticing dacoity inside the house she had firstly raised alarm in that event the accused should have also injured her but there is no injury on the person of the informant and accused persons in peaceful manner took only Rs. 48,000 /- which was kept in briefcase and thereafter they fled away but before fleeing away they assaulted Phulo Khatoon to the extent of her death.



17. The evidence of P.W. 10 (Md. Nurul) and P.W. 12 (Tura @ Khurshid) has already been noticed while it was being placed by Sri Kanhaiya Prasad Singh, learned senior counsel and on going through their evidence we are also in agreement with the submission of learned counsel for the appellants that their evidence may not be relied upon.

18. Dr. Ram Rekha Suman (P.W. 11) on 09.10.2009 was posted as Medical Officer, Sadar Hospital, Katihar and on the same day he conducted post- mortem examination on the dead body of the deceased and found the following facts:

“(i) One sharp cutting lacerated wound over left shoulder 4” x 2” x muscle deep.

(ii) Abrasion over right knee.

(iii) multiple abrasion and bruises over right thigh.

(iv) Swelling over right temporal region.

On dissection of head & neck blood under brain matter.

On dissection of thorax -heart and lungs intact and N.A.D.

On dissection of abdomen -liver, spleen, kidney are intact and N.A.D.

Stomach containing semi digested food material with non specific smell. Uterus was found small and N.A.D.

External genitalia was found intact with N.A.D.

Cause of death:- Haemorrhage & shock due to above mentioned injuries.

Time elapsed since death: within 12 to 36 hours.”

He proved the post-mortem report, which was marked as Ext.10. On examination of the evidence of P.W.11 as well as post-mortem report it is evident that deceased had received both types of injuries i.e. incised injury as well as injury caused by hard and



blunt substance as if the accused persons only for the purposes of committing murder of the deceased had entered into the house of informant who was Souten (2nd wife of her husband) of deceased.

19. P.W.8 (Panna Kumar Singh) on 09-10-2009 was posted as Officer- In-Charge of Barsoi Police Station and in his evidence he stated that on rumour he received information that in course of dacoity murder had taken place in the village- Guagoau and then he along with Armed forces proceeded for the village. At the door of the informant he recorded fardbeyan and he proved the fardbeyan which was in his writing and signature and marked as Ext.3. He claimed that after his arrival a seizure-cum-production list was prepared in respect of producing knife shown to be recovered from appellant -Kalua and the said seizure list was marked as Ext. 4. Second seizure list was in relation to blood soaked soil as well as iron *khanti* which was marked as Ext.4/1. He also recorded confessional statement of appellant -Kalua and his confessional statement was marked as Ext. 5. Here it is necessary to indicate that said confession had not led to recovery of any fact/evidence, and as such, no reliance can be placed on such evidence. This witness also prepared inquest report , marked as Ext.6, formal F.I.R. marked as Ext.7 and endorsement on the fardbeyan which was marked as Ext. 8. In his evidence he stated



that at the place of occurrence he was informed that two injured namely: Tura and Nurul were sent for treatment to hospital, Barsoi and it has also come in his evidence that from Barsoi Police Station hospital in Barsoi was very nearer. However on examination of his evidence it is not clear as to on which date he recorded statement of those witnesses. On the contrary he stated that on 09-09-2009 he recorded statement of Nurul (P.W.10) however in the case occurrence itself had taken place in the night of 8/9 October 2009. This witness again tried to clarify the same that on the next morning he recorded the statement. In any event his evidence cannot be relied upon. Either it is apparent error or misrepresentation by the witness. In his evidence he stated that none of the seized articles were produced before him since same was kept in Kachna O.P. In his cross-examination he stated that Kalua who was apprehended by the villagers was injured but he had not taken any step for his medical examination. He further stated that apprehended accused was produced by the villagers but he had not specified the name as to who was the person who produced the appellant- Kalua. On examination of his evidence it has come that the Investigating Officer had not bothered to take any step for recovery of looted amount or articles which also creates some doubt in the mind of the court. Even he has not



bothered to inquire as to whether the said amount i.e. Rs. 48,000/- had come through courier and received by the informant or not. He has also not investigated regarding the land dispute in between informant and appellant- Sahdul. In his cross examination at page no. 47 he had stated that he had relied on the statement of informant and investigated the case only on the basis of such belief. Meaning thereby that the Investigating Officer not at all applied his mind regarding proper investigation. On examination of his entire evidence it is established that investigation was done completely in perfunctory manner and in such situation it would be difficult to place reliance on his evidence regarding production of appellant -Kalua by the villagers before him since he had not disclosed the name of villager(s) nor such villager has come forward to depose in favour of the prosecution.

20. On examination of entire evidence it is established that prosecution has miserably failed to establish its case beyond all reasonable doubts. The reason is that the informant though in her evidence has stated that at the time of occurrence in her house along with her parents who hails from Madhya Pradesh (Bilaspur) had come and were staying they had not stated anything before the Police nor they were examined as witnesses. Her husband, who was also husband of the deceased, though had come within 24



hours of the occurrence had not come to make any statement before Police or during the trial. The informant has stated that she was having one son aged about 15 years and all children were with her. Even her son has not come to support the prosecution case. Number of witnesses were cited as witness to the occurrence but none of the independent witnesses had come forward to support the case. In the case save and except fractured evidence of P.W.6 -Md. Ishaque (maternal uncle of the husband of the deceased) and evidence of P.W.9 -Sawan Khatoon (informant), there is no other plausible material on record. So far evidence of P.W.6 (Md. Ishaque), P.W. 9 -Sawan Khatoon (informant), P.W.10 (Md. Nurul) and P.W.12 (Tura @ Khurshid) those evidence we have already discussed and the evidence have been seen to be suspicious and as such relying on such evidence it would not be safe to approve the judgment of conviction and sentence. Accordingly, by way of extending benefit of doubt, it is desirable to interfere with the judgment of conviction and sentence.

21. Accordingly, judgment of conviction dated- 27.05.2013 and sentence dated: 31.05.2013 passed by Sri Housila Prasad Tripathi, learned Adhoc Addl. Sessions Judge II, Katihar in Sessions Trial No. 156 of 2010 arising out of Barsoi P.S. Case No. 131 of 2009 , G.R. Case No. 2025 of 2009 is hereby set aside and



all the aforesaid three Appeals are allowed. Sole appellant – Md. Kalua in Cr. Appeal (D.B.) No. 738 of 2013 is inside jail and since judgment of conviction and sentence has been set aside, he is directed to be released forthwith, if not required in any other case. Other appellants, who are on bail, are hereby discharged from the liabilities of their bail-bonds. All the Appeals are allowed.

(Rakesh Kumar, J)

(Anil Kumar Upadhyay, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-02-2019
Transmission Date	08-02-2019

