

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1037 of 2018

Arising Out of PS. Case No.-75 Year-2014 Thana- RAJAPAKAR District- Vaishali

Sunil Kumar Sharma S/o Late Radhekant Sharma, Resident of Village-
Baikunthpur, P.S. Raja Pakar, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arvind Kumar Sinha, Advocate
	:	Mr. Niraj Kumar, Advocate
	:	Mr. Pankaj Kumar Singh, Advocate
	:	Ms. Saloni Sinha, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date : 28-06-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') challenging the judgment of conviction dated 02.05.2018 and order of sentence dated 08.05.2018 passed in Sessions Trial No. 381 of 2014 (arising out of Rajapakar P.S. Case No. 75 of 2014, by learned Additional Sessions Judge-II, Vaishali at Hajipur by which the appellant/convict has been convicted for the offences punishable under Section- 302 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 25,000/- payable to the



minor child of the deceased and in default of payment of fine, further simple imprisonment for four months and the sentences have been ordered to run concurrently.

2. Heard Mr. Arvind Kr. Sinha, learned counsel for the appellant assisted by Mr. Niraj Kumar, Mr. Pankaj Kumar Sinha, Ms. Saloni Sinha and Mr. Binod Bihari Singh, learned A.P.P. for the respondent-State.

3. The brief facts leading to the filing of the present appeal are that as per *fardbeyan* of the informant Rohit Kumar, aged about 12 years recorded by the Rajapakar Police at 7.30 PM on 16.05.2014 that accused Sunil Kumar Sharma, who is a habitual drinker, on the same day i.e., 16.05.2014, in the morning, came to the house after consuming liquor and started assaulting his wife Menka Devi by *Danda/lathi*. The informant was not able to speak anything due to fear. After some time accused Sunil Kumar Sharma went out from his house and returned back and again started assaulting to Menka Devi (deceased) brutally and she died of the injuries sustained. The informant could not understand that his mother has been dead. In the evening, when the informant went to wake up his mother, she did not do anything, then nearby people came and he disclosed the whole occurrence. People over powered



accused/appellant Sunil Kumar Sharma and handed him over to the police.

4. On the basis of the, *fardbeyan* of informant, Rajapakar P.S. case No. 75 of 2014 dated 16.05.2014, was lodged and officer-in-charge Rajapakar entrusted the case for investigation to SI Sanjay Kumar Gaur. During course of investigation, the Investigating Officer has recorded the statement of the witnesses and collected the relevant documents and, thereafter, on completion of investigation, submitted charge sheet bearing charge sheet no. 142 of 2014 dated 31.07.2014 against above named accused person under Section 302 of the Indian Penal Code. On the basis of the charge sheet, learned Judicial Magistrate, 1st Class, Hajipur took cognizance against above named accused person under Section 302 of the Indian Penal Code on 22.08.2014. As the case was exclusively triable by the Court of Sessions, the case was committed to the Court of Sessions where it was registered as Sessions Trial No. 381 of 2014.

5. During course of the trial, the prosecution has examined altogether 11 (Eleven) witnesses including the informant, out of them, PW-1 Rakesh Kumar Singh (hostile witness), PW-2 Sujay Kumar Singh (hostile witness), PW-3



Umesh Sharma (hearsay witness and co-villager of the informant), PW-4 Rajesh Kumar Sharma (co-sharer of same courtyard of the accused and hearsay witness), PW-5 Niranjana Kumar (co-villager of informant), PW-6 Dilip Kumar Singh (co-villager of Informant), PW-7 Pramod Kumar Sharma (neighbor of Informant), PW-8 Nripendra Kumar (brother of accused and eye witness to the alleged occurrence), PW-9 Rohit Kumar Sharma (Informant-cum-son of the deceased), PW-10 Dr. Poornanad Jha, PW-11 Ramanand Singh (Advocate's clerk) have been examined. The Investigating Officer of the case has not been examined during course of the trial.

6. Learned counsel for the appellant, Mr. Arvind Kumar Sinha, at the outset, submits that on completion of investigation, Investigating Officer has recorded the statement of the witnesses and collected the relevant documents and thereafter submitted Charge sheet bearing charge sheet no. 142 of 2014 dated 31.07.2014 against above named accused person under Section 302 of the Indian Penal Code and on the basis of charge sheet, learned Judicial Magistrate, 1st Class, Hajipur has taken cognizance against above named accused person under Section 302 of the Indian Penal Code dated 22.08.2014. He further stated that besides the oral evidences, the prosecution



has also brought on record, certain documentary evidence. They are Exhibit No.1 signature of Niranjana Kumar on seizure list, Exhibit no.1/1 signature of Pramod Kumar on seizure list, Exhibit No.2 postmortem report, Exhibit no.3 writing and signature on Fardbeyan of S.H.O. Sanjay Kumar Gaur of P.S. Rajapakar, Exhibit no.4 writing and signature on formal F.I.R. of S.H.O. Sanjay Kumar Gaur of P.S. Rajapakar, Exhibit no.4/1 writing and signature on charge sheet of S.H.O. Sanjay Kumar Gaur of P.S. Rajapakar, Exhibit no.5 writing and signature on seizure list of S.H.O. Sanjay Kumar Gaur of P.S. Rajapakar. The defence has not produced any oral or documentary evidence during the course of trial.

7. Lastly, learned counsel submitted that the investigation officer has not been examined during the course of trial. Non-examination of Investigating Officer has caused serious prejudice to the defence. It is submitted here that none of the independent witnesses have supported the prosecution version. Contradictory statement by prosecution witnesses before police and before court coupled with non-examination of Investigating Officer in trial is purely fatal for the prosecution. It is further submitted that the prosecution miserably failed to prove the motive as alleged in First Information Report. The



statements of prosecution witnesses run contrary to each other. In view of the aforesaid facts, the impugned judgment of conviction and the order of sentence are bad in the eyes of law and hence not sustainable and the same is fit to be set aside. The learned trial Court has failed to consider and appreciate that the entire prosecution version is improbable and could not be believed. Learned counsel for the appellant argued that PW-1 Rakesh Kumar Singh and PW-2 Sujay Kumar Singh have been declared hostile and other witnesses have not seen the occurrence and they are hearsay witnesses and their evidences are not reliable. Investigating Officer has also not been examined in this case. He further submitted that PW-9, who is the son of the accused/appellant, has stated in his cross-examination that his mother died due to slipping and falling at the hand pump and thereby sustaining injuries which has caused the death of the deceased. He has also stated that two of the co-villagers of the accused person, namely, Pramod and Niranjana, have threatened and forced PW-9 to give false statement before the police and give thumb impression on the fardbeyan. This makes the prosecution case false and, therefore, prosecution has not successfully proved the case beyond shadow of reasonable doubt against accused person.



8. On the other hand, learned Additional Public Prosecutor Mr. Binod Bihari Singh has vehemently opposed the appeal. He has submitted that all the PW's have stated in their examination-in-chief and their cross examination that the accused/appellant used to regularly beat his wife after drinking alcohol. PW's- 3, 4,5,6,7 and 8 have stated in their examination-in-chief that the accused has also killed his father and his eight year old son. They have stated that the accused has a long history of drinking alcohol. The injuries sustained by the deceased on the head, chest and abdomen proves that the victim was hit with hard and blunt substance and the doctor, who conducted the postmortem examination has stated that the death is caused due to injuries caused by hard and blunt substance and such injuries are caused mainly by hitting a person with a *lathi* or a rod. The prosecution case is thereby proved on the basis of the postmortem report and the statements given by the various prosecution witnesses and the evidences on record. The learned trial court has rightly convicted the appellant and the present appeal should not be entertained.

9. We have considered the submissions canvassed by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the



documentary evidence exhibited.

10. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

11. Before the Trial Court, prosecution examined 11 witnesses. Out of 11 witnesses, PW-1 Rakesh Kumar Singh and PW-2 Sujay Kumar Singh have been declared hostile, as they have not supported the prosecution case so evidence of these PWs is not required to be discussed.

12. PW-3 is Umesh Sharma, who is a co-villager of the appellant. He has stated in his examination-in-chief that the appellant/accused was present in court and he identified the appellant. PW-3 stated that the occurrence took place two years ago at 7:30 o'clock in the morning. PW-3 was at his home and after hearing the commotion that the appellant was beating his wife, he went to his house. He thereafter saw that the wife of the appellant was dead. The dead body of the deceased was on the bed. The children of the accused stated that their father has killed their mother. PW-3 has further stated that the appellant/accused also used to beat his wife earlier. He further stated that appellant/accused has also killed his younger son due to which he has even been sent to jail. The father of the



appellant/accused is not alive and the appellant/accused has killed his father also. The appellant/accused was held captive until the police arrived and thereafter handed over to the police.

12.i. In his cross-examination, PW-3 has stated that no one had gone to his house to inform him and he went to Sunil's house after hearing the commotion. There is a case in between the PW-3 and the accused. The matter is sub-judice and PW-3 has a land dispute with the accused. PW-3 does not remember the Khata number and plot number of the land in dispute. There is no land dispute but the dispute is of scuffling as further stated by the PW-3. The PW-3 continued in his cross-examination regarding the details of the accused house with regards to the Chabutara which has not been plastered and it is surrounded by small pieces of bricks and the hand-pump is situated in between. He further stated that 20 people lived nearby his house and gave some names of his neighbours and on the date of the occurrence, PW-3 went to the house of the accused at 7.30 AM alone. He has stated that he does not remember the month in which the occurrence occurred, but it occurred in winter and the deceased was found on the bed facing north, the deceased head was facing east and her feet was facing west. The deceased was a thin woman and she did not



have any disease and she was not suffering from any heart problem and undergoing any treatment. He further stated that the deceased foot slipped near the hand-pump, due to which she fell down and suffered injuries causing heart attack, ultimately leading to death is not true. He further stated that he has no enmity with the accused and he is not giving a false statement.

13. PW-4 Rajesh Kumar Sharma has stated in para-1 of his examination-in-chief that occurrence is of two years ago. After hearing the commotion at the accused house, PW-4 went to the accused's door and saw that the children of the accused were crying and everyone present there was saying that the accused had killed his wife. The children also stated while crying that their father has killed their mother with *lathi*. PW-4 also identified the accused in the Court and stated that he is his cousin.

13.i. In his cross-examination, he has stated that the accused and PW-4 share the same courtyard which is demarcated and is shared by five people. The son of the accused Rohit Kumar currently lives in Kolkata. He further went on to say that other people were present at the door of the house of the accused, but the accused was not there and the deceased is his sister-in-law. He did not see the face of the deceased and also



did not see the accused killing his wife. Further, PW-4 has stated that the wife of the accused was a thin woman and the fact that the accused died of heart-attack after falling on brick is not true. He does not know why the accused killed his wife. He further stated that it is not that the deceased was not murdered by the accused and it is not the case that the death was natural.

14. PW-5 Niranjana Kumar, who is the villager of informant, has stated in para 1 of his examination-in-chief that occurrence is of 16.05.2014 and at that time he was at his door, his door is opposite to Sunil's door. The occurrence is of 07:30 PM in the evening. He has stated that the accused was beating his wife with stick and his son was standing there. On commotion, PW-5 ran to the house of the accused and found out that the wife of accused was lying on the bed and the accused was sitting there. PW-5 further stated that earlier the accused has also brutally murdered his father and that occurrence was suppressed by the villagers. Further, after two years of his father's murder, he also killed his younger son, who was aged about 8 years and a case was lodged against him, in which he was acquitted later on. The police arrested the accused and also seized the *lathi/danda* and a seizure list was prepared and marked as exhibit.



14.i. In his cross-examination, he has stated that he was not in good terms with the accused and on commotion he along with other co-villagers entered the house of the accused and saw a lady lying dead on the bed and accused was standing at the door. PW-5 further stated that he did not inspect the cloth of the women and also he did not communicate with the accused. He further stated that the three brothers of the accused live outside and no one other than them were present in the house at the time of the occurrence. He has stated that the occurrence has occurred in the fifth month i.e. May and no one came to call him and he along with other co-villagers themselves came to the house of the accused. PW-5 has seen the accused killing his son. The name of the said deceased son of accused is Mohit. Other co-villagers have also seen the accused murdering his son and he did not make any false allegation against the accused. The accused (appellant/accused in the present case) was acquitted in that case. The wife of the accused was a thin women and PW-5 has stated that he did not talk to the deceased and the reason as to why the accused killed the women is not known to him. He rejected the fact that the deceased was suffering from any disease and her heart failed due to falling on bricks to which she died. He has stated that he



can tell where all the injuries were sustained by the deceased and her head was oozing out blood and her *Saree* was also soaked in blood. There was injury in the middle of her head. PW-5 has informed the police that there was a hand pump erected in the accused's courtyard and her waist was broken and there was uneven surface. He further stated that it is not true that the accused does not own any land and PW-5 is trying to get the land registered after implicating him in a false case and he is not giving a false testimony. The wife of the accused did not die a natural death.

15. PW-6 Dilip Kumar Singh, who is villager of the accused, has stated in para 1 of his examination-in-chief that occurrence is of 2 years ago. On alarm, he arrived at the house of accused person and saw that the accused has beaten and thrown the deceased and the accused has killed his wife by hitting her with stick, which was lying besides the dead body of the deceased. He further stated that the accused has also killed his son and went to the jail for the same and PW-6 has also given statement to the S.I. in the murder of the son of the accused. He identified the accused, who was present in the Court.

15.i. In his cross-examination he has stated that he



has not seen the accused assaulting the deceased and he does not know as to why and how the occurrence occurred. He has stated that the time of the occurrence is of 5 to 6 PM and no one else came with him. The deceased was laid at the door and PW-5 was present there for 10 to 15 minutes and other co-villagers were also there during that period. The accused is the neighbor of PW-6 and he lives two houses away from the house of the accused. He further stated that the deceased was a thin woman and he does not know as to whether the deceased died due to heart disease. He does not know when the accused went to jail or when he was acquitted in the earlier case. He was not in talking terms with the accused and has never interacted with the informant. He has also rejected the fact that he along with other co-villagers have taken the informant (the son of the accused) into their confidence to get a false case lodged against the accused.

16. PW-7 Pramod Kumar Sharma has stated in para 1 of his examination-in-chief that after hearing commotion he went to the accused's house and found out that three sons of the accused were crying and the wife of the accused was lying dead. The children of the accused told that their father killed their mother with *lathi*. He further stated that the accused has



also killed his one son earlier. Police came and recovered the stick used for beating and made a seizure list and PW-7 has signed the seizure list. He identifies the accused present in the Court.

16.i. In his cross-examination, PW-7 has stated that the house of the deceased is near his house and he saw the deceased lying dead inside the house. The accused has three children and there was a commotion when he reached at the place of the occurrence. The deceased died due to beating. The forehead of the deceased was severely injured. There were injuries also in various parts of the body of the deceased. He did not removed the clothes from the body to examine it. The S.I. came and examined the body and he did not see the occurrence of scuffle with his own eyes. He was present with other co-villagers after the incidence has occurred. The accused has three brothers and they do not live there. The accused was handed over to the police. The deceased was thin woman and she was not a patient of Blood-Pressure and the deceased was not ill. The accused is the nephew of PW-7. He has further stated that he has seen the accused beating his wife on earlier occasions. He did not register the prior incidents of the accused/appellant beating his wife to the authorities. He has not seen the appellant



drinking alcohol on the day of the incident, when the deceased died. The occurrence took place in morning at 8 AM and a seizure list was prepared. PW-7 has further stated that he was aware of the occurrence and deceased did not die due to heart attack and he is not giving a false testimony because of jealousy.

17. PW-8 Nripendra Kumar has stated in para 1 of his examination-in-chief that occurrence is of 16.05.2014 about 7.00 PM to 7.30 PM. He has stated that the accused was beating his wife on head with *lathi*, due to which she fainted and fell down, the accused picked her up and took her to his house and kept her there. The villagers thereafter came and started talking that the wife of the accused was killed by him and thereafter the body was kept on the bed. The PW-8 has further stated that the accused had earlier brutally murdered his father and his son five years ago and two years ago respectively. The accused has fractured his father's heart with pounder and he killed his son by dashing the head of the son on the root. Other co-villagers also saw the occurrence of the killing of the father and son by the accused/appellant. The accused often used to beat his wife and no one used to intervene. The accused was identified by PW-8 in the Court.

17.i. In his cross-examination, he has stated that



he has given the statement to the police that when he reached the accused's house, he saw the accused's son telling the villagers that his father had killed his mother by beating her mercilessly after drinking alcohol. The villagers handed him over to the police. He has given his statement to police, but he did not know what is recorded by the police and he denied the fact that he has given wrong information to the police. He also denies the fact that he is giving false statement in the Court that the accused hit his wife on the head to which she fell unconscious. The deceased is sister-in-law of PW-8. He did not see the stick used to beat the deceased or the body of the deceased. He further stated that the wife of the accused was wearing a colorful Saree and PW-8 had seen the occurrence from his door as house of the accused is opposite to his house. He cannot confirm as to the *lathi* hit on the left or the right part of the head of the deceased and also did not see any blood on the Saree of the victim. PW-8 does not had his name in the witness list. He also did not testify in the case of the murder of the son of the accused. He further stated that the statement given by him in the murder of the father of accused and the son of the accused is false. The father did not die of his old age and the son also did not die in an accident. The statement given by PW-8 is



not due to enmity for not registering the property of the accused in the name of PW-8. He has not given any false testimony and the accused does not own any land. It is also not correct that the wife of the accused died due to heart attack.

18. PW-9 Rohit Kumar Sharma, who is the informant and son of the accused/appellant, has stated in his examination-in-chief that the occurrence took place three years ago in morning and he has given his statement to the Sub-Inspector at his door on 16.05.2014 around 7:30 pm. He further stated that his father, i.e., the accused came home in drunken state and started beating his mother. His mother said nothing out of fear. After some time, his father came back and again started beating his mother badly to which his mother died. He further stated that he did not try to save his mother due to fear. Thereafter, when he tried to wake up his mother in the evening, she was not saying anything. Several co-villagers stated that his mother has died and the villagers caught and handed the accused to the police and the police also seized the *lathi*. The *fardbeyan* is correct as stated by PW-9 and he has given his thumb impression in front of the villagers. The father of PW-9 is identified by him in the court.

18.i. In his cross-examination, he has stated that



his mother was operating hand pump and there was mud due to which she slipped and fell on the bricks due to which she got serious head injuries and other injuries too, he and his father, i.e., the accused, lifted her up and placed her on bed. His father went to call the doctor and the doctor said that the deceased has died due to heart attack. He further stated that no one hit his mother with *lathi* and his father was not in a drunken state on the date of the occurrence. After the death of his mother, he informed other villagers. He further stated that Promod and Niranjana, who are the co-villagers of the accused, started beating PW-9 and got a false case registered by him against his father, i.e., the accused. The police did not read the *fardbeyan* to him and the co-villagers, above named, threatened and forced him to give his thumb impression on the same. Pramod and Niranjana also signed on the *fardbeyan* and got a case registered against his father. He further stated that his mother already had a heart disease. The villagers took away all his belonging from his house and he cannot identify as to who took the items from his house. He denied everything stated in his examination-in-chief. The occurrence stated to have occurred with his mother is false and PW-9 has testified on the warrant issued by the court. Further, he has stated that Pramod and Niranjana had earlier long



enmity with his father and taking advantage of the present occurrence, they falsely implicated his father. He has stated that his father is innocent and in the absence of their father all his siblings are suffering from miserable livelihood conditions.

19. PW-10 is Dr. Punanand Jha, who has conducted the post mortem examination of deceased Menka Devi at 11.00 AM on 17.05.2014 and found following injuries on her body: External injuries: -

- i. Incised wound on forehead size 1" x 1/2" x skin deep another wound size 1" x 1",
- ii. Bruise below left eye 2" x 2" on neck 4.5 " x 1" on left cheek size 1" x 1".
- iii. Multiple bruises on right side chest. Bruise upper part of sternum 2" x 2",
- iv. Multiple bruises on the upper abdomen incised wound on the both thigh approx. 1" x 1/2",

On Dissection:

- (a) Head-skull bone intact Trachea intact and congested.
- (b) Thorax- Thorasic cavity contain blood.
- (c) Both the lungs pale.
- (d) Heart- Right chamber filled with blood, left empty.
- (e) Abdomen- stomach empty.
- (f) Intestine- small and large bowels contain gases and facical material. Spleen, kidney, liver pale.
- (g) Time elapsed since death- within 24 hours.
- (h) Cause of death-hemorrhage and shock due to above injury caused by hard and blunt substance.

He proved post mortem report in his hand writing and signature



which has been marked as exhibit.

19.i. During cross examination, he has stated that injury nos. 2 to 8 were caused by hard and blunt substance. These injuries can be possible by fall on hard surface or bricks. Injury no. 1 cannot possibly by fall on brick. He has not mentioned the instrument by which measurement was taken. He has not mentioned oozing blood in injury no. 1. It is not fact that report is not tentative. Further, he has stated that it is not true that all injuries were simple in nature and it is also not true that scientific procedure was not conducted to achieve accuracy and the report is not based on conjectures. From the evidence of this witness, it is clear that there was brutal assault and number of injuries like bruise over her body including incised wound on forehead has been found. As per F.I.R. the deceased was assaulted by piece of bamboo which may have caused incised wound and, as such, the prosecution story is proved.

20. PW-11 is Ramanand Singh. He is performa witness. He identified the writing and signature on the *fardbeyan* of S.H.O. Sanjay Kumar Gaur of PS Rajapakara and marked as ext. 4. In para 2, he identified the writing and signature on the formal F.I.R. of S.H.O. S.I. Sanjay Kumar Gaur marked as ext. 4/1. In para 3 he identified the writing and



signature on the case diary para 1 to 56 of S.I. Sanjay Kumar Gaur, marked as ext. 5. In para 4, he identified the writing and signature on the seizure list of S.H.O. Sanjay Kumar Gaur, marked as ext. 6.

21. In this case, the Investigating Officer has not been examined by the prosecution.

22. It would emerge from the evidence that various prosecution witnesses have stated that the time of occurrence is said to be at 7:00 to 7.30 AM, but some other prosecution witnesses in the trial court in their examination-in-chief have stated that the occurrence occurred in the evening at 7.30 PM which is contrary with the witnesses that have been examined. The prosecution witnesses nos. 1 and 2 have been declared hostile. The Investigating Officer has also not been examined in the present case. Further, the *fardbeyan* has also not been proved.

23. The statement given by the son of the accused/appellant, i.e., PW-9 cum-informant, implicates the appellant but in his cross-examination he has specifically stated that a false case has been registered against his father and co-villager Pramod and Niranjana have forcefully made PW-9 to lodge a case against his father. He has stated that his mother fell



at the hand pump in the courtyard and sustained injuries and later on succumbed to the injuries. The two co-villagers forced the PW-9 to put his thumb impression in the *fardbeyan*. The only eye witness to the occurrence is PW-9 and all the other prosecution witnesses are only hearsay and have not seen the occurrence. The statement given by the son is completely contrary to the statements made by other witnesses who are hearsay.

24. PW-10, in his postmortem report, has stated that there are multiple bruise on the body of the victim and the death was caused due to injury by hard and blunt substance. In his opinion, he has stated that the injuries can be possible by falling on hard surface or bricks. The witnesses have not stated about one incised wound on forehead, but they have not stated about skin deep wound with size of 1" x 1" which was reason for the death of the deceased as stated in the postmortem report, but none of the Prosecution Witnesses have disclosed how such incised wound occurred in antemortem injury of deceased. So, it is evident that none of the prosecution witnesses have seen the occurrence and also none of them have said anything regarding the incised wound sustained by the deceased.

25. Thus, from the aforesaid deposition of the



prosecution-witnesses, we are of the view that there are major substantive inconsistencies in the deposition of the prosecution witnesses.

26. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellant beyond reasonable doubt, despite which the trial Court has recorded the impugned judgment of conviction and the order of sentence. As such, the same are required to be quashed and set aside.

27. Accordingly, the impugned judgment of conviction dated 02.05.2018 and order of sentence dated 08.05.2018 passed by the learned Additional Sessions Judge-II, Vaishali at Hajipur, in connection with Sessions Trial No. 381 of 2014 (arising out of Rajapakar P.S. Case No. 75 of 2014) are quashed and set aside. The appellant is acquitted of the charges levelled against him by the learned Trial Court giving him benefit of doubt.

28. Since, the appellant of Cr. Appeal (DB) No. 1037 of 2018, Sunil Kumar Sharma, is in custody, hence he is directed to be released from custody forthwith, if his presence is not required in any other case.



29. The appeal stands allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.07.2024
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