

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1358 of 2024**

Arising Out of PS. Case No.-150 Year-2010 Thana- ARER District- Madhubani

Vijay Kumar, Son of Late Jharokhi Sahu, Resident of Village - Arer Hat,
Anrer, P.S. - Arer, District – Madhubani. Appellant

Versus

1. The State of Bihar
2. Hari Jha, Son of Late Ugramohan Jha, Resident of Village - Arer Dih, P.S. -
Arer, District – Madhubani.
3. Shashi Nath Jha, Son of Late Gangadhar Jha, Resident of Village - Arer Dih,
P.S. - Arer, District – Madhubani.
4. Raju Jha @ Rajiv Jha, Son of Late Chandeshwar Jha, Resident of Village -
Arer Dih, P.S. - Arer, District – Madhubani.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Gagan Deo Yadav, Advocate Mr. Ravi Prakash, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 18-03-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of acquittal dated 19.09.2024 (hereinafter referred to as the ‘impugned judgment’) passed in Sessions Trial No. 113/2012, C.I.S. Registration No. 430/2014 arising out of Arer P.S. Case No. 150 of 2010 passed by learned Additional Sessions Judge-1st Court, Madhubani (hereinafter referred to as ‘the learned trial



court'). By the impugned judgment, the learned trial court has been pleased to acquit respondent nos. 2 to 4 of the charges under Section 302/34 of the Indian Penal Code (in short 'IPC') giving them benefit of doubt.

Prosecution Case

3. The prosecution case is based on the *fardbeyan* of one Vijay Sahu recorded by Nusrat Jahan, PSI of town PS Madhubani on 02.12.2010 at 11:30 AM at Sadar Hospital, Emergency Ward, Bed No. 02, Madhubani. The informant is the father of the deceased who has deposed as PW-7 in course of trial. In his *fardbeyan*, the informant has stated as under:-

“On 02.12.2010 at about 07:30 AM in the morning, he was at his shop with his deceased son. He had asked his deceased son, namely, Deepak Kumar @ Deepu to open the shop and, accordingly, his son had opened the shop and was sitting there. In the meantime, his neighbour Hari Jha came at his shop and took his deceased son Deepak Kumar to Arer Deeh Tol. At about 08:00 O'clock, the co-villager, namely, Deelip Sah came to inform him that his son Deepak Kumar is in serious condition. On receiving this information, the informant went to the house of Hari Jha and saw that (1) Hari Jha, (2) Raju Jha, and (3) Shashi Nath Jha along with 10-15 villagers were present there and had kept his son in the



middle, when the informant interrogated from his son then he did not respond, he was unconscious. When the informant lifted his son to take him to hospital, then the above-named accused persons told him that he would be fine in few minutes and nothing has happened to him. Yet, the informant along with his brother Anand Kumar took his son to Dr. R. K. Singh for primary treatment where seeing his critical condition, the Doctor immediately referred his son to Sadar Hospital, Madhubani. Immediately, the informant, his brother Anand Kumar and co-villager Om Prakash Sahu along with other villagers brought his son to Sadar Hospital, Madhubani by a Scorpio Vehicle where in course of treatment, his son Deepak Kumar died. When the informant inquired from the villagers about the incident, they told him that Hari Jha had asked his son to tie electric wire on the electric pole by using a ladder and in course of doing the same, the ladder slipped and he fell down and became unconscious due to which, later on, he died.”

4. After investigation, police submitted a chargesheet bearing No. 142 of 2011 dated 30.10.2011 under Section 302, 34 of the IPC. All the three accused were sent up for trial.

5. The learned Magistrate took cognizance of the offence under Section 302, 34 IPC whereafter having noticed that the offence is triable by a court of session, after completion of



formalities under Section 207 CrPC, learned Magistrate committed the records to the court of sessions where it was registered as Sessions Trial No. 113 of 2012.

6. The charges were explained to the accused persons who denied the charges and claimed to be tried.

7. On behalf of the prosecution as many as nine witnesses were examined and some documents were marked exhibits. The statement of the accused persons were recorded under Section 313 CrPC and thereafter, the defence examined three witnesses. The name of the witnesses produced on behalf of the prosecution and the defence and the documents marked exhibits on their behalf are mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Bhogendra Sah
PW-2	Dileep Sah
PW-3	Anand Kumar Sah
PW-4	Hare Ram Sah
PW-5	Raghuvir Sahu
PW-6	Jay Prakash Kumar
PW-7	Vijay Kumar @ Vijay Sahu
PW-8	Sangeet Kumar Sinha
PW-9	Arun Rajjak

List of Defence Witnesses

DW-1	Baleshwar Jha
DW-2	Shiv Kumar Jha
DW-3	Narayan Kamat



List of Prosecution Exhibits

Ext.-1	Signature of Anand Kumar Sah on the <i>Fardbeyan</i>
Ext.-2	Signature of the informant on the <i>Fardbeyan</i>
Ext.-3	Post-mortem Report
Ext.-4	Signature of SHO Arun Rajjak on the pagination of the <i>Fardbeyan</i>
Ext.-5	Signature of Arun Rajjak on the Formal FIR
Ext.-6	Inquest Report

Findings of the Learned Trial Court

8. The learned trial court, having analysed the evidences available on the record and the submissions advanced on behalf of the parties, concluded that the prosecution has failed to prove the charge levelled against the accused persons. The learned trial court found that all the witnesses examined on behalf of the prosecution are hearsay and interested witnesses. It has been held that the entire prosecution story is doubtful as the reason of injury causing death has not been proved by the prosecution. Having recorded this finding, the learned trial court has been pleased to acquit the accused persons.

Submissions on behalf of the Appellant



9. While assailing the judgment of the learned trial court, learned counsel for the appellant has submitted that the learned trial court has failed to appreciate that there was a strong motive to kill the deceased. His emphasis is that in course of trial, the prosecution witnesses have stated that there was an affair between the daughter of the accused, namely, Hari Jha and the deceased and it is for this reason, the accused Hari Jha called the deceased and killed him.

10. Learned counsel for the appellant submits that even though there is no eye witness to the occurrence of killing of the deceased, the circumstantial evidences are strong and complete the chain of criminological evidences leading to an irresistible conclusion that the accused persons-respondent nos. 2 to 4 are guilty of committing the offence for which they were charged.

Submissions on behalf of the State

11. On the other hand, learned Additional Public Prosecutor for the State has submitted that the learned trial court has rightly recorded that the whole prosecution story is doubtful. It is submitted that there is no infirmity in the appreciation of evidences by the learned trial court. This being an appeal against the judgment of acquittal, this Court being a court of appeal would not interfere with the judgment of acquittal on a mere asking.



12. Learned Additional Public Prosecutor has brought to the notice of this Court the initial case of the informant that his son was sitting at the shop when one of the accused Hari Jha came there and asked his son to come with him and took his son, the I.O. (PW-9) has clearly stated that in course of investigation, the informant had not said that Hari Jha had come by motorcycle and had taken away his son.

13. Learned Additional Public Prosecutor would further submit that in his *fardbeyan*, PW-7 has stated that when he reached to the house of Hari Jha, he found that apart from the accused persons, 10-15 co-villagers were also present and his son was there in middle of them lying unconscious. He along with his brother Anand Kumar brought his son in unconscious condition for primary treatment to Dr. RK Singh who referred his son to Sadar Hospital, Madhubani and thereafter, he had brought his son to the Sadar hospital with his brother and co-villager Om Prakash Sahu and other villagers by a Scorpio, however, in course of trial, no independent witness has deposed on this point. Dr. R.K. Singh has not been examined. The son of the informant died in course of treatment in the emergency ward and thereafter, the informant claims to have inquired about the occurrence from his co-villager and he came to know that his son had climbed the electric pole



with the help of a stair and he did so at the instance of Hari Jha, while doing this work, he slipped down from the stair and fell down on the earth and thereafter, he became unconscious.

14. Learned Additional Public Prosecution submits that there is no whisper in the *fardbeyan* of PW-7 that there was any affair between the deceased and the daughter of Hari Jha and for that reason, Hari Jha had killed him. It is submitted that no motive at all has been assigned by the informant behind the killing of the deceased, moreover, from the *fardbeyan* itself it is evident that the son of the informant had fallen down from the stair and thereafter, he had become unconscious that is the cause of death.

15. Learned Additional Public Prosecutor, therefore, submits that in course of trial, the prosecution witnesses were not found consistent and they changed the whole prosecution story which the learned trial court has rightly doubted.

Consideration

16. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State, we have also perused the records of the learned trial court. It is evident that in the present case, the prosecution witnesses are only the family members of the deceased. The informant (PW-7) has proved his signature on the written *fardbeyan* which is marked as Exhibit '2'.



In his cross-examination, he has stated that he had no inimical relation with any of the accused persons. He has deposed in paragraph '20' that he had not seen the occurrence and he has further deposed in paragraph '24' that he had listened that his son was murdered due to love affair. He has also deposed in paragraph '31' that due to death of his son, he was very shocked and senseless but he had not stated before police that he was not in a position to give statement.

17. Bhogendra Sah (PW-1) reached the place of occurrence from his field only after hearing that "*Deepak ko maar diya*". This witness is not an eyewitness to the occurrence. He has propounded a story that the deceased was in relationship with Hari Jha's daughter.

18. Similarly, Dileep Sah (PW-2) and Anand Kumar Sah (PW-3) reached the place of occurrence only to see that the deceased was lying on the floor and the blood and foam was coming out from his mouth. This witness (PW-3) has deposed in paragraph '6' that Hari Jha and others had spread a rumor that Deepak died due to electric shock which is wrong. In his cross-examination, PW-3 has stated that the place of occurrence is Arer Deeh Tol and his house is at about one kilometre from the place of occurrence. During the registration of the FIR, he was present and



signed as a witness in the FIR, however, his statement was recorded by police after three days. This witness has clearly deposed in paragraph '21' that he had not seen the assault. He has stated that Deepak was regularly going to Hari Jha's house and was staying there for half an hour to one hour and was playing carom. There was no quarrel between them. This witness is also a hearsay witness.

19. Hare Ram Sah (PW-4) is another witness who has deposed that he was in his shop and saw that Hari Jha came and called Deepak Kumar @ Deepu and they went together. He has deposed that after sometime, Dileep Sah had come and stated to Vijay Sah that blood is coming out from the mouth of Deepak and Deepak was near the courtyard of Hari Jha. They went there and saw Hari Jha, Raju Jha and Shashi Nath Jha, all had surrounded him and blood was coming out from the mouth of Deepak. This witness has then deposed that Deepak was indulged in love affair with Hari Jha's daughter and due to this agony, he committed the offence. This witness has deposed in paragraph '11' that he saw Deepak in injured condition and he had doubted that Deepak had died due to assault. He has stated that Deepak was assaulted by means of lathi-danda on his chest and he had about 20-25 marks of assault on his body but he had not seen whether the blood was



coming out from his chest or not. The defence suggested that this witness was a hearsay witness and he had not seen any part of the occurrence. Raghuvir Sahu (PW-5) is another witness who has deposed that he was in the house of Hari Jha for collection of generator fees and when he reached near the house of Hari Jha, he saw Hari Jha, Raju Jha and Shashi Nath Jha all carried injured Deepak near the courtyard and at that time Deepak was senseless. It is evident from the deposition of PW-5 that he is also not an eyewitness to the occurrence. He has clearly deposed that he had not seen the accused persons assaulting him and when he saw Deepak, he was senseless and his body was lying on the earth about 17-18 feet far from the courtyard.

20. Jay Prakash Kumar (PW-6) has deposed that he and his brother Deepak Kumar were in the shop, in the meantime, Hari Jha came and talked to Deepak whereafter they went together. A perusal of the evidence of this witness would show that he reached the place of occurrence only to see that Deepak Kumar was lying in very serious condition, blood and foam was coming out from his mouth and Hari Jha, Raju Jha and Shashi Nath Jha were present there. This witness has stated in paragraph '10' of his deposition that at the time of occurrence he was reading in Class VII and he was unable to say as to what statements were given by his father in



his *fardbeyan*. He had not seen the dead body of his brother and he has deposed that Bhogendra Sah and Hare Ram Sah who are PW-1 and PW-4 respectively in this case are the co-villager and cousin brother of the witness. He has further deposed that the witness Raghubir Sahu (PW-5) is also a co-villager. This witness was suggested that his brother Deepak died due to fall from electric pole. It is evident from the deposition of PW-6 that he is not an eyewitness and he has not seen any part of the occurrence.

21. We have already discussed the deposition of the informant (PW-7) hereinabove. There is no iota of doubt that PW-7 is not an eyewitness to the occurrence. He has stated in paragraph '20' of his deposition that what happened with his son, he had not seen. He has denied this suggestion that he had instituted the case on the basis of hearsay. He has accepted that the witnesses Bhogendra Sah, Hare Ram Sah and Raghubir Sahu are his close relatives and Jay Prakash Kumar is his son. The defence called upon the informant to say as to in which part of the body of the victim, he had seen the injury, the informant replied that blood was coming out from mouth and nose and he had also seen a red sign on his neck. He has deposed that it seems that someone assaulted him when he saw his body. The defence suggested this witness that he was giving a false evidence that his son died due to fall from



electric pole and filed this false case, the informant denied this suggestion. To this Court, it appears that the learned trial court has rightly concluded in its analysis that the informant himself is a hearsay witness and by denying the suggestion as regards the filing of the case and the reasons shown thereunder, he has not supported the prosecution case.

22. Sangeet Kumar Sinha (PW-8) is the Head Clerk who was posted at Sadar Hospital, Madhubani on 02.12.2012. He has deposed in his cross-examination that he was working with Dr. Kedar Singh. Dr. Kedar Singh had died, therefore, this witness has proved his signature and writing which has been marked Exhibit '3'. He had no knowledge of the post-mortem report and according to him, it was not prepared in his presence.

23. The I.O. of the case is one Arun Rajjak who has been examined as PW-9. He has stated that on 05.12.2010 he was posted at Arer PS as SHO and on that day, he had registered this case giving rise to Arer P.S. Case No. 150 of 2010. He has proved the writing and signature on the endorsement which has been marked Exhibit '4'. He had also signed the formal FIR which has been marked Exhibit '5'. This witness had himself taken charge of the investigation, recorded the re-statement of the informant and thereafter recorded the statement of the witnesses. He had taken



the inquest report from Town Police station and mentioned in the case diary. He has proved the inquest report which was written and signed by the PSI N. Jahan and same has been marked Exhibit '6'. He has deposed in his cross-examination that in the inquest report column no. 8, it is mentioned that the victim died due to fall from cement pole and it is mentioned in column 9 that villagers stated that the victim died due to fall from electric pole. He has also deposed that there is no eyewitness and he mentioned the place of occurrence in the case diary in paragraphs '7' and '10' but had not mentioned the statement of the residents in the boundary of the place of occurrence. PW-9 has deposed in paragraph '5' that the informant himself stated in his statement that victim died due to fall from electric pole. He has further deposed that the witnesses Bhogendra Sah(PW-1) and Hare Ram Sah (PW-4) had not deposed before him. Regarding the witness Jai Prakash Kumar, PW-9 has stated that in his statement, this witness had not stated the reason of death of Deepak that he was in love with Hari Jha's daughter and saw Hari Jha, Raju Jha and Shashi Nath Jha murdering him under a conspiracy.

24. The defence examined three witnesses who have stated that Deepak @ Deepu died due to fall from electric pole. DW-2 has stated that he had seen the fall from electric pole and



police had also recorded his statement in his investigation. DW-3 has further claimed that he had seen the occurrence and Deepu had died due to fall from electric pole during electric work. Police had also recorded his statement during investigation.

25. We have discussed the evidence of the prosecution as well as the defence hereinabove. It is evident on scrutiny of the materials on the record that in the beginning, the prosecution case was that the deceased had fallen down from the electric pole and due to the said fall, he had become unconscious. He was bleeding from his mouth. Only in course of trial, the prosecution developed a story that the deceased was having an affair with the daughter of one of the accused, namely, Hari Jha (Respondent no. 2) and for that reason, he has been murdered.

26. In our considered opinion, the prosecution has miserably failed to bring clinching evidences on this point and the failure of the informant to disclose this in the *fardbeyan* would prove fatal to the prosecution. The occurrence has taken place in the village where huge number of villagers were present at the place of occurrence and some of the villagers are said to have participated in carrying the deceased in injured condition to Dr. R.K Singh for primary treatment but those villagers who could have been independent witnesses to the occurrence have not been



examined. We, therefore, find that the story developed by the prosecution at a belated stage would not inspire confidence. There being no eye witness to the occurrence, the prosecution has even failed to establish the circumstances leading to an irresistible conclusion that the accused persons are guilty of the offence.

27. In result, we find no reason to interfere with the judgment of the learned trial court.

28. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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