

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 1038 of 2013**

Arising Out of PS. Case No.-86 Year-2012 Thana- Manjagarh District- Gopalganj
=====

1. Lalan Sah, son of Sri Ambika Sah

2. Dadan Sah, son of Sri Ambika Sah

Both resident of Village- Bhisahi Turha Tola, P.S.- Manjagarh,
District- Gopalganj.

... .. Appellants

Versus

The State of Bihar

... .. Respondent
=====

with

CRIMINAL APPEAL (DB) No. 992 of 2013

Arising Out of PS. Case No.-86 Year-2012 Thana- Manjagarh District- Gopalganj
=====

Ambika Sah Son of Late Ram Kishun Sah, Resident of Village - Bhisahi
Turha Tola, Police Station- Manjagarh, District- Gopalganj.

... .. Appellant

Versus

The State of Bihar

... .. Respondent
=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 1038 of 2013)

with

(In CRIMINAL APPEAL (DB) No. 992 of 2013)

For the Appellants : Smt. Renu Jha, Advocate

For the State : Sri Ajay Mishra, A.P.P.

For the Informant : Sri Ranjan Kumar Srivastava, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 13-05-2019

The appellants in aforesaid two appeals were tried
together and convicted and sentenced by the common judgment



of the trial court and as such, both the appeals were taken up together under the heading "For Hearing" and are being disposed of this common judgment.

2. Lalan Sah and Dadan Sah {both appellants in Cr. Appeal (DB) No. 1038 of 2013} by judgment dated 13-09-2013 were held guilty and convicted for commission of offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). However, the sole appellant Ambika Sah (in Cr. Appeal (DB) No. 992 of 2013) by judgment dated 13-09-2013 has been held guilty and convicted under Section 302/34 of the I.P.C. All the three appellants have also been convicted for offence under Section 307/34 of the I.P.C. By order dated 19-09-2013, all the appellants under Section 302/34 of the I.P.C. have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand) each. In case of default in payment of fine, all the three appellants were directed to further undergo imprisonment for three months, whereas no separate sentence under Section 307/34 of the I.P.C. has been passed. The appellants were convicted and sentenced in Sessions Trial No. 333 of 2012/79 of 2013 (arising out of Manjagarh P.S. Case No. 86 of 2012) by Sri Dinesh Kumar Srivastava,



learned Adhoc Additional Sessions Judge - 2nd, Gopalganj (hereinafter referred to as the 'Trial Judge').

3. Short fact of the case, as per written application of Tuntun Sah (P.W.1), son of the deceased, addressed to officer incharge of Manjhagarh Police Station, Gopalganj dated 27-05-2012, is that on the same date i.e. on 27-05-2012 in the night at about 09:30 P.M., his elder uncle Ambika Sah (appellant in Cr. Appeal (DB) No. 992 of 2013) and his three sons namely, Lalan Sah, Madan Sah and Tuntun Sah were quarreling with each other. The informant's father was sitting outside his house, however suddenly accused persons stopped their quarreling and carrying knife and *lathi* surrounded his father. The informant further disclosed that appellant Ambika Sah (in Cr.App.DB No. 992/13) and his son Madan Sah (not appellant) caught hold of father of the informant and Lalan Sah and Tuntun (both appellants in Cr. App.DB No. 1038/13) with intent to kill injured him seriously. The informant's father thereafter raising *hulla* (बचाओ बचाओ) ran towards the road side. He was chased by accused persons and they inflicted knife blow, whereby informant's father on the side of the road fell down and profuse blood started oozing out and his father instantaneously died



there. The informant further disclosed that on hearing sound of cry of his father, he (P.W.1) and his younger brother Rajesh Sah came out of the house to save his father, however both were surrounded by the accused persons and with intent to kill them, accused persons assaulted both brothers by means of *lathi* and rod, whereby both of them were seriously injured. The informant claimed that Ambika Sah (app.in Cr.App.DB No. 992/13) and Lalal Sah, Madan Sah and Tuntun Sah, all sons of Ambika Sah in a deep rooted conspiracy, had initially shown quarreling in themselves and with common intention, all of them caught hold of his father and he was done to death by inflicting knife blow. The informant and his brothers were also brutally assaulted. It was requested to take appropriate action against the accused persons. The written report was signed by Tuntun Sah, informant (P.W.1). It has also come in evidence that said written report was written by Rajesh Sah (P.W.2) as per dictate of Tuntun Sah (P.W.1).

4. On the basis of said written report dated 27-05-2012, on the same date at 22:20 hrs (10:20 P.M.), a formal F.I.R., vide Manjhagarh P.S. Case No. 86 of 2012, was drawn for offence under Section 307/302/34 of the I.P.C. against



three appellants and one Madan Sah (another son of Ambika Sah), who is not appellant in this appeal. After registering the F.I.R., the police prepared inquest report of the dead body of the deceased, which was prepared at 5:30 AM in the morning on 28-05-2012 and the dead body was sent for *post-mortem* examination.

5. During investigation, on the same date i.e. on 28-05-2012 Ambika Sah (appellant in Cr.App.DB No. 992/13) was arrested, whereas Dadan Sah (A-2 in Cr.App.DB No. 1038/13) was arrested on 03-06-2012 and Lalan Sah (A-1 in Cr.App.DB No. 1038)/13 surrendered on 09-07-2012 and since then both the appellants in Cr. Appeal (DB) No. 1038 of 2013 are in custody. The investigating officer after investigating the case and collecting material submitted chargesheet on 24-08-2012 against all the aforesaid three appellants keeping investigation pending against one of the accused Madan Sah. After submission of chargesheet, on 25-08-2012, learned Chief Judicial Magistrate, Gopalganj took cognizance of the offence and case was committed to the court of Sessions on 07-09-2012 and it was numbered as Sessions Trial 333 of 2012. After commitment on 08-11-2012, charge was jointly framed under



Section 302/34 and 307/34 of the I.P.C. against all the appellants.

6. During the trial, to establish its case, on behalf of the prosecution, altogether 11 witnesses were examined. Out of 11 witnesses, P.W.1 Tuntun Sah (son of the deceased and informant), P.W.2 Rajesh Kumar Sah (another son of the deceased), P.W.3 Ram Babu Sah (brother of the deceased), P.W.4 Maina Devi (wife of the deceased) and P.W.5 Taramati Devi (wife of P.W.1/informant) have been examined claiming to be eye-witness to the occurrence, whereas P.W.6 Sheo Shankar Sah and P.W.7 Bandhu Sah are independent hearsay witnesses. P.W.10 Dr. Imteyaz Ahmad had conducted *post-mortem* examination on the dead body of deceased. P.W.11 Nagendra Mishra, an Advocate clerk, has proved the photocopy of the inquest report, which was marked as Ext.X for identification, whereas Dr. Chandrika Prasad Mishra (P.W.8) had examined the injury of P.W.1 (informant) and P.W.2 (Rajesh Sah) and P.W.9 Suresh Prasad Singh is the investigating officer of the case.

7. After completion of the prosecution evidence, on 19-03-2013 Ambika Sah (appellant in Cr. Appeal (DB) No. 992 of 2013) has claimed that he was falsely implicated, since a case



was going on against Ram Babu (P.W.3) of the present case. Both appellants in Cr. Appeal (DB) No. 1038 of 2013 in their statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') have claimed to be innocent. On behalf of the defence, some documents were got exhibited i.e. Ext.A and A/1 are copy of complaint case no. 1021 of 2008 and complaint case no. 1004 of 2008 respectively, whereas Ext.B and B/1 are the documents, on which, there is no need to place any reliance.

8. Smt. Renu Jha, learned counsel for the appellants, after placing entire evidence, has argued that the case is based on no evidence. She submits that ofcourse in the written report as well as in evidence, the witnesses have come forward, as if, they had seen the occurrence, but actual fact is otherwise. She submits that during investigation, in statement recorded under Section 161 of the Cr.P.C., none of the witnesses have claimed to be eye-witness and as such, the evidence of so-called eye-witnesses is not reliable. She further submits that since dispute in between two family was going on, there is reason for false implication of the appellants. She further submits that in evidence, it has come that except Madan Sah, whose



investigation was kept pending, other two sons of Ambika Sah (appellant in Cr. Appeal (DB) No. 992 of 2013), who are two appellants in Cr. Appeal (DB) No. 1038 of 2013, were residing in the State of Gujarat since last 20-25 years for their livelihood.

9. As per learned counsel for the appellants, the credibility of the so-called eye-witness comes into cloud of doubt, due to the reasons that the oral evidence has not been corroborated by the medical evidence. She submits that the so-called eye-witnesses have come out with a case, as if, both appellants (in Cr. Appeal (DB) No. 1038 of 2013) had inflicted knife blow each on the person of deceased, however the *post-mortem* report does not corroborate the evidence. As per medical evidence, it appears that deceased was having only one penetrating injury. It has further been argued that it appears that prosecution side were having vulture-eye on the property of Ambika Sah (appellant in Cr. Appeal (DB) No. 992 of 2013) due to the reason that his two sons had settled in Gujarat, who are two appellants in Cr. Appeal (DB) No. 1038 of 2013, and one of the son Madan Sah (not appellant) was residing outside the village with his in-laws family. In any event, it has been argued that on examination of the evidence, it is established that none



had seen the actual occurrence and the learned Trial Judge has incorrectly passed the judgment of conviction and sentence.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor as well as Sri Ranjan Kumar Srivastava, learned counsel for the informant have opposed the appeals. Sri Srivastava, learned counsel for the informant, by way of referring to evidence of P.W.1 to P.W.5, has argued that it is true that all the witnesses are close relatives of the deceased, but merely on the ground that they are relatives, their evidences may not be ignored. He submits that during the trial, all the aforesaid five witnesses have deposed that in their presence, the deceased was inflicted knife blow and while two sons of the deceased i.e. P.W.1 and P.W.2 tried to stop them, they were also assaulted by means of *lathi* and rod. However, learned Addl. Public Prosecutor as well as learned counsel for the informant were not in a position to satisfy the Court as to why on the person of the deceased only one injury was noticed, whereas it was case of the prosecution that the deceased was inflicted two knife blow by two appellants (in Cr. Appeal (DB) No. 1038 of 2013).

11. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record, however



before recording finding, it would be necessary to refer to the evidence, which has been brought on record.

12. P.W.1 Tuntun Sah (one of the son of the deceased) is the informant in the case. He, in his evidence, has stated that on the date and time of the occurrence, he was at the door of his house. His father (deceased) was also there. Ambika, Dadan, Lalan and Madan were quarreling with each other, suddenly, they stopped their quarrel and came to the door of the informant and surrounded father of the informant. Ambika (app. in Cr.App.DB No. 992/13) and Madan (not appellant) both caught arm of the deceased and Lalan and Dadan (both appellants in Cr.App.DB No. 1038/13) had inflicted one knife blow each on him. After getting knife injury, his father ran outside. This witness also followed them. Thereafter, Ambika Sah (appellant in Cr. Appeal (DB) No. 992 of 2013) broke head of this witness by *lathi* and his brother (P.W.2) was given rod blow. His father, while fleeing, fell down on the road and died there. In paragraph-3 of his evidence, P.W.1 stated that his brother Rajesh (P.W.2), on dictation given by him, prepared an application, which he read and thereafter, he put his signature. His signature on the written report was marked as Ext.1. He and his brother were provided medical aid. He



deposed that it was moonlight night and in the village, there was electricity also. In paragraph-6 of his cross-examination, he stated that his father was three brother namely, Ambika Sah (appellant in Cr. Appeal (DB) No. 992 of 2013), Lal Babu Sah (his deceased father) and Ram Babu Sah (P.W.3). He further stated that all sons of Ambika Sah (app.in Cr.AppDB No. 992/13) since last 25-30 years were residing outside, Madan Sah (not appellant), who is one of the son of Ambika Sah, has settled in his in-laws house. Regarding Madan, he stated that he was coming to the village, since he was having share in the property. In paragraph-15 of his cross-examination, he stated that through telephone, he gave information to the police station and police arrived within 15-20 minutes. In paragraph-16 of his cross-examination, attention of this witness was drawn to his previous statement. At the time of examination of investigating officer, contradiction was taken and investigating officer (P.W.9) in paragraph-10 of his evidence has stated that before him, during investigation, Tuntun Sah (P.W.1) had said that after hearing cry of his father, he came out from his house and saw that his father was lying in an injured condition and blood had oozed out and he had already died. This witness has also not stated before the



police that when he and his brother went to save his father, they were also assaulted. In view of such evidence, particularly the fact that P.W.1 had not stated during investigation, as if, he had seen the entire occurrence, certainly during the trial, if he had stated those facts, there would be difficulty in relying on such evidence.

13. P.W.2 Rajesh Kumar Sah, P.W.3 Ram Babu Sah, P.W.4 Maina Devi and P.W.5 Taramati Devi, though had claimed to be eye-witnesses to the occurrence, but on examination of evidence of investigating officer (P.W.9), it is evident that during investigation, they had not claimed to be eye-witnesses, rather they stated that they were inside house and after hearing sound of cry of deceased, they came out and saw Lal Babu lying dead. In such situation, it would be difficult to perceive as to whether aforesaid witnesses, who had claimed to be eye-witnesses, were actually eye-witness to the occurrence or not and their evidence appears to be doubtful.

14. P.W.6 Sheo Shankar Sah and P.W.7 Bandhu Sah, who are independent witnesses, have stated that while they arrived at the place of occurrence, the father of informant (P.W.1) was lying dead and they were informed by the family



members of the deceased regarding occurrence. Once the evidence of witnesses, who have claimed to be eye-witnesses, is considered as doubtful, certainly no reliance can be placed on the evidence of such hearsay witnesses, who have heard those facts from such so-called eye-witnesses.

15. P.W.10 Dr. Imteyaz Ahmad, who was posted as Medical Officer in Sadar Hospital, Gopalganj and conducted *post-mortem* on the dead body of the deceased and he noticed following facts:-

“Rigor mortis present in all four limbs.

Eyes bilateral closed, mouth and feast partially opened.

Stab wound on left side, upper part of the chest near left shoulder about 3” x 2” cavity deep.

On dissection:-

Head- skull bone intact-.

Brain and meninges congested.

Neck- no subcutaneous bleeding, neck bone intact.

Chest- bony cage intact. Penetrating wound 3” x 2” cavity deep penetrating injury in left lung 2” x 1” which causing massive haemothorax.

Heart- both chamber empty.

Abdomen- stomach contains undigested food like rice and pulse (*dal*).

All internal organs intact and Liver, spleen, kidney pale and congested.

Small intestine contains gases and fecal matters.

Urinary bladder empty.

Time elapsed since death- within 24 hours.

Cause of Death- Due to penetrating injury which causes penetrating trauma to lungs and massive haemothorax causing shock and death.”



16. He further deposed that *post-mortem* report was in his pen and signature and same was marked as Ext.5. On examination of the evidence of P.W.10 as well as *post-mortem* report, it is evident that same is not corroborative of oral evidence. In oral evidence, the witnesses, who had claimed to be eye-witnesses, had claimed that both appellants (in Cr. Appeal (DB) No. 1038 of 2013) had given one knife blow each, whereas such fact has not been noticed in the *post-mortem* examination report.

17. P.W.8 Dr. Chandrika Prasad Mishra has deposed that he examined the injuries on the person of Tuntun Sah (P.W.1) and Rajesh Sah (P.W.2) and proved the injury reports, which were marked as Ext.2 and 2/a respectively. In his evidence, he after examining the injury, deposed that all the injuries were simple in nature caused by hard and blunt substance.

18. The investigating officer Surendra Prasad Singh (P.W.9) on 27-05-2012 was posted as officer incharge, Manjhagarh police station and he identified endorsement on the written report, which has been marked as Ext.1/b, formal F.I.R. was marked as Ext.3. In his evidence, he stated that on the date



of occurrence i.e. 27-05-2012, Tuntun Sah (P.W.1) had given written report at the police station itself and on the basis of same, he registered the case and took up investigation of the case. After taking up investigation, he re-recorded statement of the informant and thereafter, he examined Rajesh Sah (P.W.2), Maina Devi (P.W.4), Ram Babu Sah (P.W.3) and Taramati Devi (P.W.5). Their statement was recorded at the place of occurrence. At this juncture, it is necessary to notice the fact that informant/P.W.1 in his evidence, had stated that after the occurrence, he informed the police through telephone regarding the occurrence, thereafter police arrived there, whereas in the evidence of investigating officer, the fact has come that informant/P.W.1 in police station itself had given written information, which is the basis of the F.I.R. and on the basis of said written report, on the same date at 10:20 P.M., formal F.I.R. was drawn in the case, whereas alleged occurrence had taken place at 9:30 P.M. and on perusal of the F.I.R., it is evident that police station was about 9 kilometre away from the place of occurrence. In such circumstances, the drawing of formal F.I.R. within such short span of time creates some doubt in the mind of the Court.



19. The investigating officer (P.W.9) in paragraph-3 of his evidence, has described about the place of occurrence. The dead body of deceased was found lying on brick soling road, which was opposite the house of Bandhu Sah (P.W.7). In paragraph-7 of his evidence, he stated that on the next morning at 06:30, he prepared inquest report and he remained at the place of occurrence for whole night on the date of occurrence and then in the morning at 10:30, he returned back to the police station, however in the evidence of so-called eye-witnesses, it has come that after arrival of the police within half-an-hour, dead body was carried by the police. This also creates serious doubt on the prosecution case. In paragraph - 8 of his cross-examination, he (P.W.9) stated that near the electric pole, where dead body was lying on the road, he noticed blood mark, however; near the door of Lal Babu (deceased), he did not notice any blood mark, whereas, it was prosecution case that the deceased was inflicted knife blow while he was sitting on the chair near his door. The investigating officer has also not found any chair or cot near the door. In paragraph 10, 11, 12 and 13 respectively, contradiction was taken regarding previous statement of Tuntun Sah (P.W.1), Taramati (P.W.5), Ram Babu (P.W.3) and Sheo Shankar Sah



(P.W.6). In paragraph – 14 of his cross-examination, this witness has categorically stated that none of the witnesses before him had stated as to how Lal Babu (deceased) was assaulted.

20. After recording statement under Section 313 of the Cr.P.C., from the defence side, some documents were brought on record i.e. Ext.A, A/1, B and B/1. Ext. A is the copy of complaint case no. 1021/08, which was filed by appellant Ambika Sah (in Cr. Appeal (DB) No. 992 of 2013) against Ram Babu Sah (P.W.3), Sonmati Devi, Bandhu Sah (P.W.7) and others. Similarly, Ext.A/1 is copy of complaint case no. 1004/08, which was filed by wife of P.W.3 against appellant Ambika Sah (in Cr. Appeal (DB) No. 992 of 2013), Lalan Sah, Dadan Sah (both appellants in Cr. Appeal (DB) No. 1038 of 2013) and Chintamani (wife of Lalan Sah). Meaning thereby that dispute in between the parties was going on. However, learned counsel for the informant Sri Ranjan Kumar Srivastava had drawn our attention to paragraph – 13 of evidence of P.W.4 Maina Devi to show that she and her husband had given evidence in support of Ambika (appellant in Cr. Appeal (DB) No. 992 of 2013) in earlier complaint case.



21. In any event, on examination of entire evidence, it is evident that though P.W.1 to P.W.5 during evidence have given a detailed picture, as if, they had seen entire occurrence, however; on examination of the evidence of investigating officer (P.W.9), it is evident that during investigation in statement recorded under Section 161 of the Cr.P.C., their evidence was to the extent that at the time of occurrence, the deceased only had gone out of his house for urinating and all the witnesses were inside house. All the witnesses heard the sound of cry of the deceased and when they reached near the road, they saw that Lal Babu (deceased) was lying dead. Meaning thereby that the evidence of so called eye-witnesses is not credible. Their evidence has also not got corroboration from the medical evidence. It is true that if there is conflict in between oral evidence and medical evidence, weightage of oral evidence is to be given, but in such cases, oral evidence must be credible. Since there is some serious doubt on the claim of being eye-witness to the occurrence by the so called prosecution witnesses, the contradiction of medical evidence has got substance.

22. In view of aforesaid evidence, there is no difficulty in coming to the conclusion 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 desirable to interfere with the judgment of conviction and sentence.

23. Accordingly, the judgment of conviction dated 13-09-2013 and order of sentence dated 19-09-2013 passed in Sessions Trial No. 333 of 2012/79 of 2013 (arising out of Manjhagarh P.S. Case No. 86 of 2012) by the learned Adhoc Additional Sessions Judge - 2nd, Gopalganj is, hereby, set aside and both the appeals are allowed.

24. Since the judgment of conviction and sentence has been set aside and two appellants in Cr.Appeal (DB) No. 1038 of 2013 are in custody, both the appellants namely Lalan Sah and Dadan Sah are directed to be released forthwith, if not wanted in any other case. The sole appellant i.e. Ambika Sah {in Cr.Appeal (DB) No. 992 of 2013}, who is on bail, is discharged from the liability of his bail-bond.

(Rakesh Kumar, J.)

(Anil Kumar Sinha, J.)

Anay

AFR/NAFR	AFR
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