

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.215 of 1993

Arising Out of PS.Case No. -01 Year- 1980 Thana -Chautham District- KHAGARIA

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1. Rabin Yadav
 2. Jhaksu Yadav @ Jhakhi Yadav, both sons of Late Babulal Yadav
 3. Kaushailya Devi, wife of Late Babulal Yadav
 4. Binod Yadav, son of Tarni Yadav
 5. Bhubeneshwar Yadav, son of Late Govind Yadav

All resident of Village Rajajan, P.S. Chautham, District Khagaria

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : Mr. Anil Kumar Mukund, Advocate

Mrs. Sanjana, Advocate

For the State : Mr. Ashwani Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 31-07-2015

Heard learned counsel for the appellants and the

State.

2. This appeal is directed against the judgment, order dated 19.04.1993, passed by 1st Additional District and Sessions Judge, Khagaria, in Sessions Case No. 698 of 1992 whereunder two out of the seven accused persons put on trial, namely, Accused Nos. 6, 7 have been acquitted, Accused Nos. 1 to 3 have been convicted for the offences under Sections 302/34 and 201 of the Penal Code and sentenced to suffer rigorous imprisonment for life, five years under the two counts respectively. The sentences, however, have been directed to run concurrently. Accused Nos. 4, 5 have been convicted

for the offence under Section 201 of the Penal Code and sentenced to suffer rigorous imprisonment for five years.

3. Prosecution case, as set out in the fardeyan of the informant (P.W. 8) S.I. Doman Rajak of Mansi Out Post, recorded on 02.09.1980 at 2.00 hours near Mansi Bandal No. 3, is that in the previous night of 01.09.1980 around 11.00 P.M. Dafadar of Circle (torn) Kamli Tanti informed the Out Post that he has confidentially come to learn that Babua Yadav @ Babu Lal Yadav, son of Harilal Yadav, resident of Village Rajajam within Mansi Police Station has been killed by his son Rabin Yadav, Jhaksu Yadav and wife as there was household dispute between them. The accused persons with the help of villagers took the dead body towards river Ganges for concealing the same. Informant recorded the said information in the Station Diary of Mansi Out Post vide Station Diary Entry No. 13 dated 01.09.1980, proceeded towards the bank of river Ganges along with 1-3 District Armed Party comprising of Havildar Mohan Jha, Constable 1118 Tarni Prasad Thakur, Constable 148 Sayant Kumar Sharma, Constable 486 Suresh Prasad Singh, retired army man, Constable 132 Kapildeo Singh, Literate Constable 977 Mahabir Singh, Dafadar of Circle No. 5 Kamli Tanti, reached near Mansi bus stand through village Rajajam, ascertained the road, which goes towards river bank, proceeded towards the river bank, reached on the southern end of Bandal No. 3, saw dim light at some distance and



thought that near the light the accused persons may be attempting to conceal the dead body. Police party proceeded towards the light, by that time it was 10 minutes past mid-night and saw 10-12 persons returning from the river bank. Informant flashing torch light asked those returning from the river bank to disclose their identity whereupon persons returning turned around and attempted to escape. Amongst those who turned around and ran away three persons were apprehended. One of the apprehended persons was a child aged of 7-8 years, the others managed to escape by jumping into the river. Those who were apprehended are Bhubaneshwar Yadav, son of Govind Yadav, Binod Kumar Yadav, son of Tarni Prasad Yadav, Pramod Yadav, son of Babu Lal Yadav (aged 7-8 years), resident of Village Rajajan within Chautham Police Station. On extensive interrogation Binod Kumar Yadav and Bhubaneshwar Yadav disclosed that they had come to drown the dead body of Babua Yadav @ Babu Lal Yadav in the river-bed on the persuasion of his two sons Rabin Yadav, Jhaksu Yadav and his wife, the three killed Babua @ Babu Lal Yadav asking them to help in concealing the dead body otherwise they may be apprehended by the police. The two apprehended persons further disclosed that those, who managed to escape, were Rabin Yadav, Jhaksu Yadav, Bhumi Yadav, Dilip Yadav, Nazir Yadav and others, all residents of Village Rajajan. Pramod Yadav, aged 7-8 years was brought to perform the last rites. Meanwhile, other villagers,



namely, Shankar Prasad Sah, Narayan Sah, Rudal Kumar Rangila, Laxmi Gupta, Shiv Shankar Gupta, all residents of Village Khutia Mansi also arrived at the river bank. Those apprehended also took the police party to the place where the dead body was concealed. Bhubaneshwar Yadav and Binod Kumar Yadav also recovered the dead body from the river-bed tied with earthen pitcher. Inquest of the dead body was conducted by the informant Sub-Inspector D. Rajak in presence of Shankar Prasad, Narayan Sah, residents of Village Khutia Mansi, who also took its custody. In the last paragraph of the fardbeyan Sub-Inspector D. Rajak claimed that Bhubaneshwar Yadav and Binod Kumar Yadav, Pramod Yadav and six others conspired to conceal the dead body of Babu Lal Yadav by drowning, who was killed by his wife, sons Rabin Yadav, Jhaksu Yadav and observed that offence under Sections 302, 201, 120-B/34 of the Penal Code is made out against them. Sub-Inspector D. Rajak further stated that he has taken over the investigation of the case and forwarded the fardbeyan to the Officer-in-Charge, Chautham Police Station for institution of the case under Sections 302, 201, 120-B/34 of the Penal Code again stating that he has already taken up investigation of the case. In the light of fardbeyan Sri S.N. Singh, Officer-in-Charge, Chautham Police Station registered Chautham P.S. Case No. 01 dated 02.09.1980. Sub-Inspector D. Rajak in the light of the contents of fardbeyan, Panchnama dated 02.09.1980 forwarded the dead body of



Babua @ Babu Lal Yadav to Khagarai Hospital for post mortem on 02.09.1980 at 12.30 P.M., which was received in the hospital on the same day at 2.30 P.M., post mortem conducted on the same day at 3.30 P.M. by Dr. O.P. Sinha (P.W. 1). P.W. 1 on dissection found bruise 2½” in width covering the front of the neck, skin hard and dark, blood clots found under the skin in the front of the neck, in subcutaneous tissues, upper 2 rings of the trachea and hyoid bone fractured. Trachea congested and contained blood froth, ante-mortem injury. Investigating Officer also recorded the statement of the co-villagers. Besides recording the statement of the villagers, two accused persons, namely, Accused Nos. 4, 5 Binod Kumar Yadav and Bhubaneshwar Yadav were also produced for recording their statement under Section 164 Cr.P.C. on 05.09.1980 and 14.10.1980 respectively. In the light of the contents of the fardbeyan, formal First Information Report, inquest, post mortem report and the statement of the co-villagers charge-sheet was submitted against seven accused persons. In the light of the charge-sheet cognizance was taken and after supply of police papers case was committed to the Court of Sessions. Sessions Court under order dated 04.12.1985 framed charge against the accused persons to which the accused persons pleaded not guilty and claimed to be tried.

4. To support the prosecution nine witnesses were examined, namely, P.W. 1 Dr. Om Prakash Sinha is Medical Officer,



Khagaria Hospital, who conducted post mortem on the dead body of Babua Yadav @ Babu Lal Yadav. P.Ws. 2, 3, 4 Shankar Prasad Sah, Laxmi Prasad Gupta, Rudal Kumar Rangila are the three co-villagers in whose presence inquest on the dead body of the deceased vide Panchnama dated 02.09.1980 was conducted. P.W. 5 Kamli Tanti is the Dafadar, who accompanied the police party to the river bank. P.W. 6 Ram Lakhan Jha is the A.S.I. of Mansi Out Post, who proved the fardbeyan, formal First Information Report. P.W. 7 Mahabir Singh is the A.S.I. who accompanied the informant D. Rajak as a member of the police party. P.W. 8 Doman Rajak is the informant and Investigating Officer of the case. P.W. 9 Kapildeo Singh is the member of the police party who accompanied Sub-Inspector D. Rajak to the river bank.

5. Learned counsel for the appellants submitted that the assertion of the informant and Investigating Officer of the case (P.W. 8) that he learnt about the killing of Babua Yadav @ Babu Lal Yadav by his two sons and the wife and further the fact that the sons and the wife in conspiracy with the co-villagers had taken the dead body to the river bank for concealing the same, proceeded to the river bank where he also recovered the dead body after apprehending Accused Nos. 4, 5 and thereafter conducted inquest proceeding in presence of the villagers, does not appear to be correct, as admittedly the inquest proceeding has been conducted vide Panchnama (Exhibit-

5) but the same does not contain the signature of Sub-Inspector D. Rajak (P.W. 8). It, however, contains the signature of five witnesses including one Rudal Kumar Rangila (P.W. 4), who has been declared hostile, as according to him Panchnama and the inquest proceeding was not conducted at the river bank. On account of failure of Sub-Inspector D. Rajak to put his signature on the Panchnama not only its authenticity but also his assertion that he recovered the dead body of Babua Yadav @ Babu Lal Yadav in the night of occurrence at the river bank becomes doubtful. Once recovery of the dead body from the river-bed/ bank at the instance of the two apprehended accused persons i.e. Accused Nos. 4, 5 becomes doubtful, the further story, as set out in the fardbeyan of Sub-Inspector D. Rajak on the basis of the information derived from the two accused persons, can hardly be relied upon to maintain the conviction of the appellants.

6. In the circumstances, we have no option but to grant the appellants benefit of doubt. Their conviction, sentence is, accordingly, set aside. Appeal is allowed. Appellants are on bail, are discharged from the liability of their respective bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

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