

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.393 of 1992

Arising Out of Cheria Bariyarpur PS.Case No. 1d(10)80, District, Begusatai.

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1. Murlidhar Singh , son of Rupo Singh
2. Balram Singh, son of Gajadhar Singh
3. Shyam Tanti, son of Moti Tanti
All residents of Village Mehadasahpur, P.S. Cheria Bariarpur, District-
Begusarai
4. Mantu Singh, son of Mahraj Singh
Resident of Village Madhurapur, P.S. Teghra, District Begusarai

.... Appellant/s

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Shri Aditya Prakash Sahay, Advocate
Shri Prabhat Kumar Singh, Advocate
Shri Manoj Kumar Sinha, Advocate
For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 09-01-2015

The present appeal is directed against the judgment of conviction and order of sentence dated 25th of September, 1992 passed by the learned 3rd Additional Sessions Judge, Begusarai, in Sessions Trial No. 66 of 1982 by which all the four appellants were held guilty of committing the offence under Section 302/34 of the Indian Penal Code and were directed to suffer rigorous imprisonment for life. All the four appellants had initially been charged for the offence they have been held guilty of, as also for the offence under Section 342 of the Indian Penal Code but it truly appears that they were acquitted of the charge under Section 342 I.P.C.

2. The F.I.R. lodged by P.W.9 Bijay Mohan Pathak, one of the nephews of the deceased Babban Pathak, is the basis of the case. It was a very short statement. P.W. 9 stated that his uncle Babban Pathak had exited from his



house after having taken his meal at about 3 A.M. in the night for taking a round in the field but he did not return in the night. There was a search for him by the family members and when they had gone near the field they found the dead body of Babban Pathak lying there. It appeared to them that some one had killed the deceased and had abandoned his dead body there. The informant (P.W.9) stated that he and his family members were trailing all the culprits and as soon as full details were known to them, the same would be given out to the Police Station. It appears from the evidence of P.W. 11 S.I. Dukh Mohan Pathak, who was the Officer-in-charge of Cheria Bariapur Police Station in the District of Begusarai that his sub-ordinate S.I. Bindeshwari Prasad had registered the case by drawing up the F.I.R. (Ext.-4) and took up the investigation himself. S.I. Bindeshwar Prasad died prior to the trial. He had gone to the place of occurrence and held inquest upon the dead body of Babban Pathak in presence of the independent witnesses and had prepared the inquest report (Ext.-5). P.W.11 S.I.Dukh Mohan Pathak returned from leave to his duty and took up the investigation himself on 2.10.1980 and perused the case diary in respect of the investigation which had been carried out by S.I. Bindeshwari Prasad. P.W. 11 visited the place of occurrence which was situated in Village Maidasahpur and it was a field and the crop standing in it was found trampled in a circular area of 2 dhurs indicating that there had been some scuffle in between the deceased and his assailants. Blood clot was found lying there and the same had been seized by S.I. Bindeshwari Prasad. P.W. 11 recorded the statements of the witnesses once again whose statements had already been recorded by S.I. Bindeshwari Prasad. He obtained the copy of the Post-Mortem examination and after completing the investigation sent the four appellants up for trial. Accused Hari Singh alias Hari Shankar Singh, as appears from the trial court's proceeding, died during the trial and proceeding against him was

directed to be dropped by the trial court's order dated 13.2.1991.

3. It may be pertinent to point out that initially there was no name in the F.I.R., but during the course of investigation it transpired from the statements of the witnesses that appellants Murlidhar Singh and Balram Singh had stealthily harvested the crop of Budhi Nath Singh (P.W.2) which act was seen by deceased Babban Pathak and the above named two appellants had cautioned the deceased not to divulge their acts to any one, else, he might be deprived of his eye sight and tongue. The theft which was seen by the deceased as per the prosecution story had occurred only 7-10 days prior to the occurrence and it was the reason that two were suspected to have their hands in the commission of the occurrence. It further appears from the evidence of PWs. 1 and 3, namely, Dorik Yadav and Garbhu Yadav as also from the evidence of P.W. 5 Surya Kant Jha, who happened to be the Mukhiya of the Panchayat at the relevant time that P.Ws. 1 and 3 were also amidst the field during that night for keeping watch over their respective fields and they had heard the shouts of the deceased and had seen the four appellants and two unknown others moving towards the west. P.W. 3 Garbhu Yadav, in fact, appears stating that when he questioned as to what had happened that they were there, he was threatened again to be liquidated. The 3rd set of evidence which came from the evidence of P.W. 4 Chouchary Tanti was that he had seen four persons taking a bath in the ditch but when he came to name them he appears to have declined and on that count he was declared hostile. However, the investigation records indicate as if P.W. 4 had named the present set of appellants as the persons who had been identified to have taken bath in the water of the ditch. These cumulative circumstances were the materials for the police to place the five accused persons on trial which ended in the impugned judgment.

4. The defence of the appellants and especially that of appellant

Murlidhar Singh was that there was a land dispute between appellant Murlidhar Singh and P.W. 5 Suryakant Jha, who was the Mukhiya of the Panchayat and further Bijay Mohan Pathak, one of his relatives, was posed in the Police Department as Sub-Inspector and Suryakant Jha and the said police Office who was related to the Mukhiya, were instrumental in implicating the appellants in this false case.

5. 11 witnesses were examined during the trial of the case by the prosecution and as many as five witnesses were produced by the defence in support of whatever it produced on record in its defence. Out of the eleven prosecution witnesses P.W. 7 Dr. Bilash Chandra Choudhay had held Post-Mortem examination on the dead body of the deceased while P.W. 10 Md. Akram Rizwi was a Judicial Magistrate who had recorded the statements of the witnesses under Section 164 Cr.P.C. We have already noted the evidence of P.W. 11 S.I. Dukh Mohan Pathak. Out of the remaining eight witnesses, P.Ws 1 and 3 had given evidence that while they were keeping watch over their respective fields they had heard the cries at 12 in the night of occurrence i.e. on 30th September, 1980 and had moved towards the field of the deceased and had found the accused persons going towards the west. P.W.2 Budhi Nath Singh had given evidence on the fact that he was told by the deceased about the act of theft of the appellants Murlidhar Singh and Balram Singh who had cut his crop and further that the two had threatened the deceased of dire consequences like being deprived of his tongue and eye sight. P.W.4 Choudhary Tanti, as we have noted, had stated that he had seen four persons taking bath in the ditch while P.W. 5 Suryakant Jha had given evidence that he was told by P.Ws. 1 and 3 about seeing the appellants and others going towards the west when they were going towards the field of the deceased after hearing his shouts. P.W. 5 further stated that he had the information about the above fact but in spite of that he did



not disclose this information to any one or either to the informant or the Investigating Officer. He rather stated that he had asked P.Ws. 1 and 3 to be strong enough to come with the story by bringing the same to the police. But what is further found is that in spite of having learnt about such circumstances from P.Ws. 1 and 3 he turned in his cross examination and stated that he did not send any information about the fact either to the police or to any authority and that he gave his statement to the police only when he was called at the Police Station though his evidence very particularly points out that he was accompanying the Police Officer who had first visited the place of occurrence for having a round of it to carry out the investigation of the case. His evidence in its totality does not appear convincing to us.

6. P.W.6 Ram Bilash Singh was yet another witness who was speaking on the motive of the occurrence that Budhi Nath Singh's crop was being cut by appellant Murlidhar Singh and Balram Singh and they had held out threats to the deceased not to divulge their acts to any one, else, he would be deprived of his eye sight and tongue. This fact as per P.W. 6 was narrated again to him by P.W.4, namely Choudhary Tanti and P.W. 5 the Mukhiya but curiously that aspect of the evidence is that in spite of having told the Mukhiya about the above fact and also having present at the scene of the occurrence or in the village the witness Ram Bilash Singh was not disclosing the fact either to the informant or to any of the family members of the deceased as also to the Police Station.

7. Yet another Witness P.W. 8 Urmila Devi is the wife of the deceased. She was stating that the deceased had exited from his house at about 10.30 in the night for going out to keep a watch over the field. He did not return in the night. A search was made for him. She further stated that the matter was reported to P.W.9 Bijay Mohan Pathak and he reported the matter to the Police.

Bijay Mohan Pathak was examined as P.W. 9 with a meaningful change in his evidence from that which was his earlier version about the time when the deceased had exited from the house while telling the same story that the deceased had gone out to keep a watch over the field and he did not return in the night as a result of which a search was made for him when he was found dead. The statements of P.Ws. 1 and 3 were recorded under Section 164 Cr.P.C. by Shri Md. Akram Rizwi, a Judicial Magistrate.

8. There appears no doubt that the deceased was killed. P.W.7 Dr. Bibhas Chandra Choubey stated before the court below that he held the Post-Mortem examination on the dead body of Babban Pathak and found the following ante-mortem injuries:-

- (i) Incised injury on the right side of forehead measuring 2" X 1" X ½" deep to the muscle above the eye brow.
- (ii) Penetrating injury on the right side of cheek of the size 2" X 1" deep to the mandible bone which was found fractured.
- (iii) Two incised wounds one on the right side of face on the mandible measuring 1 ½" X 1" X 1" and the other on the same organ which was ½" x ½" X ¼". The fracture of the palm appears to have caused on mandible on its right middle.
- (iv) Swollen echymosis on the front of the neck measuring 4" X 3" tracheal ring was found fractured .
- (v) Linear ecchymosed on the right side of chest, two in number measuring 4" X 1" and 4" X 1". The injuries were above right nipple. There were other two injuries below the right nipple and they were of the same size above the two injuries.

On dissection the Dr. P.W. 7 found Mandible maxillary bone, parietal bone, ribs 4,5,6 and 7th on the right side and 4th on the left side were found fractured. Tracheal ring cartilages of larynx were fractured, muscle and skin were found ecchymosed, blood clots were present and the whole trachea were congested. Further congestion of lungs were found and both the lungs were also found swollen. More marks of congestion of blood and swelling were found on the fractured portion of the sides on the above lungs.

In the opinion of P.W. 7 the cause of death was due to shock and haemorrhage caused by the injuries indicated above as if the deceased had been throttled to death by pressing his neck. The death was caused by throttling

and also by the injuries above noted by P.W. The time elapsed since death was 24 hours earlier to the time the Post-Mortem examination was held by P.W. 7. Thus, what appears from the evidence of P.W. 7 is that the deceased had definitely been murdered.

9. While delivering the judgment the learned trial Judge was referring to the decisions of the Supreme Court laying down the principles to appreciate circumstantial evidence. The learned Judge was considering the observation of the Supreme Court in the case of **Kishore Chand Vs. State of Himachal Pradesh reported in 1990 Cri. L. J. 2289** and **Jawahar Lall Das Vs. State of Orissa reported in 1991 SCC (Cri) 527** and had proceeded to appreciate the evidence and had noted that the motive had been established and the other circumstance which was almost conclusive was that the accused persons had been seen immediately after the occurrence at the place of occurrence and further the witnesses had narrated these facts to some other witnesses. We cannot take a view different from the Supreme Court decisions which were referred to for appreciation of the evidence of circumstantial nature, but we are tempted to quote yet another decision of the Supreme Court on the same class of evidence not to be benefited ourselves as to what should be the approach of a court in appreciating the evidence in such cases but to point out that as to merely referring to the legal principles are not to be treated as the last words in such matters. What has to be done to appreciate the evidence in the light of the principles has been fixed in the case of **Shankarlal Gyarasilal Vs State of Maharashtra reported in AIR 1981 SC 765** by recording the following observation in paragraph 31 of the judgment, which is as follows:-

“31. It causes us some surprise that the learned Additional Sessions Judge, Akola, who tried the case, has not shown any awareness of the fundamental principle which governs cases dependent solely on circumstantial evidence. Nowhere in his judgment has the learned Judge alluded, directly or indirectly, to the principle that in a case of circumstantial evidence, the circumstances on which the prosecution relies

must be consistent with the sole hypothesis of the guilt of the accused. It is not to be expected that in every case depending on circumstantial evidence, the whole of the law governing cases of circumstantial evidence should be set out in the judgment. Legal principles are not magic incantations and their importance lies more in their application to a given set of facts than in their recital in the judgment. The simple expectation is that the judgment must show that the finding of guilt, if any, has been reached after a proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reasonable hypothesis.”

10. Thus, what appears is that the legal principles are very much handy only when appreciation of evidence in such case is properly made and mere recital of such judgments cannot be enough to record a finding of guilt in every case. As may appear from the above decision, the judgment has always to be recorded after proper and careful evaluation of circumstances in order to determine whether they are compatible with any other reliable evidence.

11. Coming to the evidence of the present case, the evidence of the witnesses like P.Ws. 2,5,6 and 9 also indicates that the two appellants, namely, Murlidhar Singh and Balram Singh had been seen by the deceased cutting the particular crop of P.W. 2 Budhinath Singh and the two appellants had cautioned the deceased not to divulge their acts of theft to any one, else, the deceased was to receive serious consequences of losing his eye sight and tongue. The proximity of the incidents appears to be stated by the witnesses. They have stated that it was within ten days. They have further stated that the deceased had narrated the fact to each of them but they had not taken any steps to inform any other, even at least to the police. We cannot rule out the lethargy of the rural people of not giving information to any one and to keep such information to himself. But we can say as to they should keep silence over an important matter for more than one day or two of the recovery of the dead body. Naturally, in the rural area on such incident the people approach the villagers



with the culprit to convene a Panchyati and rationally or socially protest so as to highlighting the matter. Curiously the witnesses were keeping disturbing silence not only for 10 to 12 days even prior to the incident but also after a couple of days or so of the murder of the deceased. The stony silence had not to be taken at the time when the police officer had visited the place of occurrence. Any one who had learnt about the motive and had found that the appellants along with others could be committing the crime for that very reason should have told the Police officer about what had been told by the deceased. It was not the ordinary disclosure made by the Police but it was circumstance very serious in nature which could have ultimately fructified inflicting of the injuries on the deceased as a result of which he died. We are not ready to accept the evidence of these witnesses on motive part of the occurrence.

12. The prosecution story is that the deceased had left his house after taking his dinner for going out to keep watch over his field. The evidence of the witnesses like P.W. 8 Urmila Devi who happens to be the wife of the deceased cannot be brushed aside lightly because she being the wife of the deceased had special means of knowledge about the behaviour and other activities of the deceased. We could have readily accepted her evidence to accept the prosecution story that the deceased used always to go out of his house for watching his field during the night as well, but when we consider the evidence of P.W. 9 Bijay Mohan Pathak, the informant of the case in paragraphs 7 and 8, we find that his solitary son was married and his two daughters were also married and settled in their lives. The informant is one of the agnates of the deceased. From his evidence in Paragraphs 10 and 11 it appears that the informant, deceased and other of his Gotias were quite well off in their lives and most of them had held respectable and responsible Government jobs. P.W. 9 was avoiding to give direct answer as to what were the properties possessed



by the deceased but we have the evidence of P.W.3 in paragraph 13 that he was a reach fellow and possessed of the landed property of 25-50 bighas and further as may appear from the evidence of P.W. 3 in paragraph 15 he had a plough man, an oxen and he had employed a servant also. If the deceased was such a man that he was owning 50 bighats of land and had employed servant for taking agricultural operation and other things, we have a basic doubt about the prosecution story that he might be taking up such a rigorous pain to keep a watch over the field . The witnesses like the informant and the wife of the deceased i.e. P.Ws. 9 and 8 had stated that he used to go out of his house to keep watch over the field but the evidence of such status does not convince us that the witnesses may be true as regards the prosecution claim that he had gone to keep watch over his crop. That basic part of the prosecution story, to us, appears doubtful.

13. The other evidence in support of the prosecution is that while the deceased was being attacked he had cried for attracting people for his safety. Two witnesses- P.Ws. 1 and 3 gave statements that after hearing the shouts of the deceased they ambled up to the field of the deceased and found that the deceased had been killed and while they were so moving where the deceased was lying they had seen the accused persons going towards the west. P.W. 3 went to the extent of stating that he had also made an inquiry from the appellants as to why they were there in such a dead of night and one of the accused, namely, Balram Singh had threatened to him also. P.W. 1 stated that he was frightened and he was retreated back to his house and kept himself confined to his house and did not come out and as may appear from his evidence that incident took place after twelve days of the occurrence. P.W. 3 had stated that he was frightened but he also stated that he came back to his house and did not make statement and narrated the fact only when P.W. 5



Suryakant Jha had called him. P.W. 5 also stated that he learnt about the two witnesses having seen the accused persons leaving the place of occurrence and he came to know about that part of the prosecution story from them and because the two were frightened they did not speak the fact to him. What is curious from the evidence of P.W. 5, we have already referred to. In fact he was moving with the police Officer when he had come to visit the place of occurrence during the course of investigation but he did not make any statement to him P.W. 5 stated that he made statement and disclosure of the fact to the police only when he was called to the Police Station. Before that he had not whispered the fact. The witnesses have stated that the two appellants namely Murlidhar Singh and Balram Singh had threatened the deceased of dire consequence if he had ever divulged their acts of cutting crops of P.W. 2 Budhinath Singh. They were told by P.W. 1 and 3 that they had seen the accused persons on or around the place of occurrence but the disturbing aspect of the evidence is that they maintained stony silence by breaking the same after many days of the occurrence. P.Ws. 1 and 3 themselves were stating the fact that they had seen the accused persons just after the deceased was found dead by them and the prosecution evidence of P.W. 5 that he had inspected the place of occurrence in presence of P.Ws. 1 and 2 appears to us again a suspicion.

14. The learned trial Judge was referring to the decision of his Court in the case of **Basudeo Mahto and other Vs. the State of Bihar reported in 1970 PLJR 376** in which the importance of a document like F.I.R. or a solitary document was held to be not a substantive piece of evidence. We are very much accepting that the F.I.R. is not a substantive piece of evidence but it has its own importance and its importance being the earlier version cannot be minimised It is the basic prosecution story on account of being the first version regarding the manner of occurrence and other details of commission of



the occurrence. It is also a document to point out as to whether the witnesses had seen the occurrence and it is a document which is one of the strongest weapon in the hand of the defence to urge before the court with reference to the evidence of the prosecution to show as to how the prosecution has distorted the fact to improve things. This is at least the important document like the F.I.R. and the value of the document is not only evidentiary but circumstantial also. It was true that there could have been a fault in information by the informant regarding time when the deceased had existed from his house after taking a dinner for taking a watch over the crop in his field.

15. It was rightly submitted by Sri D.K.Sinha, learned Additional Public Prosecutor that at 3 A.M. in the night nobody in the locality, like, Begusarai could be taking his dinner for going out of his house. Definitely the fact that the deceased had left his house after taking his dinner at such time could not be the dinner time whereafter he had left his house. We can appreciate in the heat of passion being suffered by the murder of the deceased, the informant put the time when the deceased had left the house for going to keep a watch over the field but we are not holding that the deceased was not murdered. He was definitely murdered and murdered by being assaulted brutally as the injuries which were found by P.W.7, the doctor were inflicted by attempting him on his vital portion, like, head, neck as also his chest. The evidence of the witnesses shows that there is no eye witness and the circumstances which were noted by the learned trial Judge were not in the chain of circumstances and the conclusive nature of circumstances pointing out to the guilt of the accused is the circumstances only when the ferry of the evidence of the case is there. Here in the present case, we do not find any circumstance as strongest as to be conclusive and were compatible with any reasonable hypothesis and the evidence found was created by the witnesses. In fact the evidences were created

so as to raise an inference and connecting a circumstance to the guilt of the accused and what we find is that the evidences were not convincing to the judicial conscience. What we find after consideration of the evidence is that the prosecution has not been able to prove the charges and further the charges having not been proved the appellants deserve to be acquitted.

16. In the result, we find merit in the present appeal and allow the same by setting aside the judgment of conviction and order of sentence passed against the appellants.

17. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

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