

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.95 of 1993

Arising Out of PS.Case No. -43 Year- 1981 Thana -KUTUMBA District- AURANGABAD

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1. Abdullah Mian, son of Md. Ashique
2. Kalim Mian, son of Md. Mustaquim
3. Farooque Mian, son of Basarat Hussain
4. Khurshid Mian, son of Md. Idris
5. Mumtaz Mian, son of Late Ahmad Mian
Appellant nos. 1 to 3 residents of Village Udaiganj and appellant nos. 4 and 5
residents of Village Bajrahi, P.S. Kutumba in the district of Aurangabad
..... Appellant/s

Versus

The State of Bihar
..... Respondent/s

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Appearance :

For the Appellants : Mr.
For the State : Mr. S.C. Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

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

Date: 22-06-2015

None appears for the appellants/ accused persons. With the assistance of the State counsel, we have, however, perused the entire records ourselves.

2. Appellants/ accused persons, by filing the present appeal, assailed the judgment/ order dated 19/20.01.1993, passed by 4th Additional Sessions Judge, Aurangabad, in Sessions Trial No. 41/82/ 18/89 whereunder the accused persons put on trial for the charges under Sections 302/34, 201/34 have been convicted and sentenced to undergo rigorous imprisonment for life.

3. Prosecution case, as set out in the fardbeyan of Chowkidar Lorik Yadav (P.W. 11) recorded by Sub-Inspector Lallan Prasad Singh of Kutumba Police Station on 03.05.1981 at 7.00 P.M. in village Dhullaha, is that he learnt from the shepherds that a dead body is floating in the well of one Ram Bilash Sao of village Barah Kurwa, went there along with villagers named in the fardbeyan and after confirming the presence of the dead body in the well, blood stains on the boundary of the well made inquiries to confirm the identity of the dead body but none of the villagers could identify the same. Informant asked Dafadar Jeetbahan and Chowkidar Ghura Dusadh to guard the dead body and himself went to inform the Sub-Inspector, Kutumba Police Station about the presence of the dead body in the well. Chowkidar met Sub-Inspector, Kutumba Police Station Sri Lallan Prasad Singh in village Patila where his fardbeyan was recorded, on the basis of which First Information Report of the present case was registered on 04.05.1981. The scribe of the fardbeyan Lallan Prasad Singh having forwarded the fardbeyan to Kutumba Police Station for its registration proceeded with the investigation and prepared the inquest report of the deceased in presence of M/s. Bhola Singh, Tarkeshwar Ram and Krishna Kant Pandey. After inquest dead body was forwarded to Sadar Hospital, Aurangabad for post





mortem. Autopsy of the dead body was conducted by Dr. Kamla Kant Singh (P.W. 5). Investigating Officer examined the father of the deceased as also other villagers including one Sirajuddin and in the light of the statement of Sirajuddin and other villagers submitted charge-sheet against the accused persons. In the light of the charge-sheet cognizance was taken and after commitment of the case to the Court of Sessions charges were framed against the accused persons under order dated 27.11.1987 to which they pleaded not guilty and claimed to be tried.

4. In support of the prosecution case 12 prosecution witnesses have been examined. P.Ws. 1, 3, 4, 6, 7 Abdul Jabbar, Sharafat Hussain, Enamul Haque, Abdul Hamid and Yasin are the co-villagers of the deceased who learnt about the complicity of the accused persons in the crime from P.W. 2 Sirajuddin. P.W. 2 Sirajuddin is also co-villager, who claimed that it was the accused persons who confessed their complicity in the murder of Mustaque @ Mastan before him. In the light of the statement of the accused persons P.W. 2 informed the father of the deceased and others about the manner in which deceased was done to death by the accused persons. P.W. Dr. Kamla Kant Singh conducted autopsy on the dead body of the deceased. P.Ws. 8, 10 Md. Shafi, Abida Khatoon is the father, sister-in-law of the

deceased. P.W. 11 Lorik Yadav is Chowkidar and informant of the case. P.W. 12 Krishna Kant Sahay is the Judicial Magistrate before whom P.W. 2 recorded his 164 Cr.P.C. statement (Exhibit-3).

5. Besides the prosecution witnesses Nawal Kishore Mishra an Advocate's Clerk has been examined as Court Witness No. 1, who identified the signature of inquest witnesses over the inquest report but neither the original nor carbon copy of the original inquest report has been made exhibit during trial. Inquest report incorporated in the case diary has been made exhibit in the trial.

6. From the fardbeyan (Exhibit-2), it is evident that the same has been recorded against unknown and until the time of its recording neither the identity of the deceased nor the identity of the assailants were known. From the evidence of the father of the deceased, it is evident that a Barat had come to the village on 01.05.1981 and the deceased had gone to see the Barat wherefrom he disappeared. The dead body was seen in the well on 03.05.1981. No information about disappearance of the deceased on 01.05.1981 was ever given to the police or other authorities. The identity of the dead body was not established until the same was sent for post mortem as post mortem report



(Exhibit-1) clearly indicates that the dead body is of unknown Mohamdan male circumcision done. It is not known when the father came to identify the dead body, as from his evidence, it is evident that he had gone to police station to identify the dead body but by that time the dead body had already been sent to Aurangabad for post mortem. None of the inquest witnesses has been examined to establish that the dead body was recovered in their presence from the well.

7. The trial court, however, has proceeded to convict the accused persons put on trial in the light of the evidence of P.W. 2 Sirajuddin (co-villager) before whom the accused persons are said to have confessed their complicity in the crime. The question required to be answered is if P.W. 2 was aware about the complicity of the accused persons in the crime what prevented him not to lodge the fardbeyan or to inform the father of the deceased about the complicity of the accused persons in the murder of his son. As per the evidence of the father (P.W. 8) deceased had gone to see the Barat on 01.05.1981 whereafter he did not return until his dead body was seen in the well on 03.05.1981, as such, the father was also obliged to have informed the police about the disappearance of his son. In any case, the extra judicial confession made by the accused persons before

P.W. 2 cannot be relied upon as P.W. 2 has neither informed about the same to the father of the deceased P.W. 8 nor to the police.

8. For the reasons aforementioned, it may not be possible for us to maintain the conviction of the appellants/ accused persons, which is set aside granting them benefit of doubt. The appellants are on bail, are discharged from the liability of their respective bail bonds.

9. Appeal is accordingly, allowed.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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