

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 384 of 1993

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(AGAINST THE JUDGMENT OF CONVICTION, DATED 13.07.1993, AND THE ORDER OF SENTENCE, DATED, 14.07.1993, PASSED BY SHRI DAHAUR BAITHA, 1ST ADDITIONAL SESSIONS JUDGE, BEGUSARAI, IN SESSIONS TRIAL NO. 295 OF 1986, ARISING OUT OF CHERIA- BARIARPUR POLICE STATION CASE NO. 114 OF 1985).

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Md. Shamsheer Alam son of Hamid Mian, resident of Mehda Shahpur, P.S. Cheria Bariarpur, District Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant : Ms. Fauzia Shakil, Advocate

For the Respondent: Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 02-04-2015

Under the judgment, dated 13.07.1993, passed, in Sessions Trial No. 295 of 1986/65 of 1986, by learned 1st Additional Sessions Judge, Begusarai, the appellant, Shamsheer Alam, stands convicted under Sections 302 and 201 of the Indian Penal Code. Following his conviction under Section 302 of the Indian Penal Code, while the accused-appellant has been sentenced to suffer imprisonment for life, he has been sentenced to undergo rigorous imprisonment for a period of five years for the offence under Section 201 of the Indian Penal Code.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) Deceased, Fazlu Rahman, was son of the informant (P.W. 14), Mujeebun Nisa. In the afternoon of 14.09.1985, while the informant and her son, Fazlu Rahman, were present at their house, accused Shamsheer Alam came there on his bicycle and took Fazlu Rahman with him on his bicycle. When Fazlu Rahman did not return home until the next morning, the informant began to make enquiries about his whereabouts from the people in the neighbourhood. Despite search so carried out by the informant and her co-villagers, they could not find Shamsheer Alam, but some of the co-villagers did tell the informant that her son, Fazlu Rahman, had been seen with Shamsheer Alam at Mustafa Mian's betel shop, situated at Khanjhapur Chowk. However, accused Shamsheer Alam, too, disappeared from his village and suspecting that accused Shamsheer Alam was behind the disappearance of her son, Fazlu Rahman, the informant orally informed the police about the disappearance of her son, Fazlu Rahman and expressing her suspicion that accused Shamsheer Alam was behind the disappearance of her son, Fazlu Rahman.

(ii) The oral information, so given to the police by the informant, was reduced to writing and treating the same as First Information Report, Cheria Bariarpur P.S. Case No. 114 of 1985 was registered, under Section 364 of the Indian Penal Code, against accused Shamsheer Alam.

(iii) During investigation, a headless dead body was recovered from a pit, on 17.09.1985, which was identified to be the

dead body of Fazlu Rahman and inquest was held over Fazlu Rahman's dead body, which was also subjected to *post mortem examination*. Consequently, Sections 302/201/120B/34 of the Indian Penal Code was added.

3. On completion of the investigation, a *charge sheet* was laid, under Sections 302/201/379/411/34 of the Indian Penal Code, against accused Harun Rashid, Hamid Mian, Ramchandar Sao, Tale Mahto and the absconding accused-appellant, Md. Shamsheer Alam.

4. At the trial, when charges, under Sections 302 and 201 read with Section 34 of the Indian Penal Code, were framed against accused Shamsheer Alam, Harun Rashid, Hamid Mian, Ramchandar Sao, Tale Mahto and further a charge, under Section 411 of the Indian Penal Code, was framed against accused Ramchandar Sao, all the accused pleaded not guilty to their respective charges.

5. In support of their case, prosecution examined as many as 18 (eighteen) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial.

6. Having, however, arrived at the finding that accused-appellant, Md. Shamsheer Alam, had been proved guilty of the *charges* under Section 302 and 201 of the Indian Penal Code,

the learned trial Court convicted him accordingly. Having found no material sufficient to warrant conviction of the remaining accused, all the co-accused were acquitted. Following his conviction, the sentences, as mentioned above, have been passed against the convict, Md. Shamsheer Alam.

7. Aggrieved by his conviction and the sentences passed against him, the convict, Md. Shamsheer Alam, has preferred this appeal.

8. We have heard Mr. Fauzia Shakil, learned Counsel, appearing for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecution, appearing for the State.

9. While considering the present appeal, it may be noted that according to the evidence of Dr. S.M. Bakar (P.W. 17), he had conducted *post mortem* examination, on 18.09.1985, at Begusarai hospital, on a dead body, which was headless from the root of the neck, the said dead body having been identified as the dead body of Fazlu Rahman.

10. It is in the evidence of doctor (P.W. 17) that on conducting *post mortem examination* on the said dead body, he found following *ante mortem* injuries on the said dead body:

"(i) The head was chopped off from the level of the root of the neck, cutting the skin, muscles of the neck, trachea, carotid vessels of the neck, and cutting the inter-vertebral disc between the sixth and seventh cervical vertebra which was ante mortem and caused by sharp weapon and



grievous in nature.

(ii) An incised wound was found over the front of the abdomen extending from xiphisternum up to symphysis pulm cutting the whole thickness up to anterior wall of the abdomen with bulging of the viscera. Stomach omentum large and small intestine and the liver and it was post mortem in nature caused by sharp cutting weapon and grievous in nature."

11. In the opinion of the doctor (P.W. 17), the cause of death was shock and hemorrhage resulting from the injuries sustained by the said deceased, the injuries having been caused by a sharp cutting weapon and the injury on the neck being sufficient to cause death of a person in ordinary course of nature.

12. The fact that the said headless body was of Fazlu Rahman was not disputed at the trial inasmuch as his dead body was identified by his mother on the basis of birth mark nor the findings of the doctor and his opinion with regard to the cause of death were questioned by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the findings of the doctor and/or in his opinion with regard to the cause of death.

13. What, therefore, clearly transpires from the evidence on record is that Fazlu Rahman's death was *homicidal* in nature.

14. The question, however, remains if the accused-appellant was the one, who had put to death Fazlu Rahman.

15. While considering the question, posed above, it

needs to be pointed out that P.Ws. 1 to 7, 9 and 14 have been examined by the prosecution to prove that the accused-appellant, Shamsher Alam, was last seen with the said deceased.

16. Let us begin with the beginning of the prosecution's case. It is noticeable, in this regard, that according to the evidence of PW 14, who is mother of the said deceased and also the informant of this case, while she and her son, Fazlu Rahman, were present at their house, accused Shamsher Alam came to her house and asked her son, Fazlu Rahman, to accompany him and Fazlu Rahman accordingly went with the accused on a bicycle and, since thereafter, Fazlu Rahman never returned home and she told PW 6, Motiur Rahman, (who turned hostile) that Fazlu Rahman had not returned home and asked him (PW 6) to find out Fazlu Rahman's whereabouts.

17. It is in the evidence of PW 14 that she came to know that her said son was seen chewing betel at the shop of Md. Mustafa (PW 1), but her son did not come back home and, on the third day, Fazlu's dead body was recovered. It is also in the evidence of PW 14 that when her son, Fazlu Rahman, did not return home, she informed the police.

18. From the evidence so given by PW 14, what becomes clear is that Fazlu Rahman had left his house with accused Shamsher Alam on the latter's bicycle and, thereafter, he never returned home.

19. Close on the heels of the evidence of P.W 14,

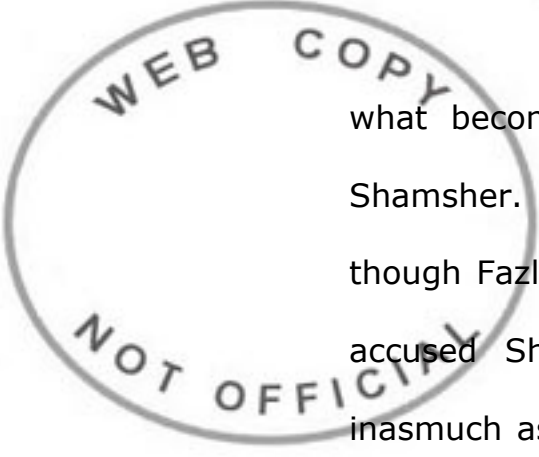
PW1 (Md. Mustafa) had deposed that he owned betel shop at Lakshmanpur Chowk and, on 14.9.1995, between 04:00 and 05:00 PM, accused Shamsheer Alam and Fazlu Rahman came to his shop on a bicycle, they took betel at his shop and, then, they went away after chewing betel.

20. So far as PW 2 (Quyamuddin) is concerned, his evidence is that on 14.09.1985, at about 04:30 PM, when he was at his shop, at Rosara Road, he saw accused Shamsheer going with Fazlu on his bicycle.

21. Broadly in tune in the evidence of PWs 1 and 2, PW 7 has deposed that on 14.09.1985, at about 5:00 PM, he was at the shop of Mustafa (PW1), at Khanjapur Chowk, and when he was chewing betel there, accused Shamsheer and Fazlu reached there on a bicycle and he (PW 7) asked Fazlu if he (Fazlu) would go home, but Fazlu replied that he would not go home as he was going for some work.

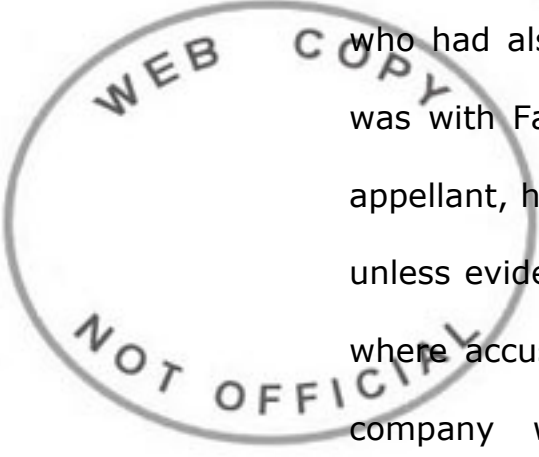
22. Coming to evidence of PW 9 (Budhi Nath Singh), we notice that according to him, on 14.09.1985, at 04:00 PM, when he was at a tea shop, at Bariyarpur camp, sipping tea, he saw accused Shamsheer taking Fazlu on his bicycle and, at about 5:30 PM, on 14.09.1995, he saw accused Shamsheer, Fazlu, Ram Chandra Sah and one more person sitting at the local bridge, he (PW 9) asked accused Shamsheer as to why he was sitting there, and accused Shamsheer replied by saying that he had come to see his farm and, then, he (PW 9) asked Fazlu as to what he (Fazlu)

was doing and Fazlu replied by saying that he (Fazlu) was merely sitting there.



23. From the narration of the evidence on record, what becomes clear is that Fazlu left his house with accused Shamsher. What is, however, extremely important to note is that though Fazlu left his house in the company of accused Shamsher, accused Shamsher was not the person last seen with Fazlu inasmuch as the undisputed evidence of PW 9 (Budhi Nath Singh) is that on 14.09.1985, (that is, the day Fazlu had disappeared), he (PW 9) had seen, at about 05:30 PM, not only accused Shamsher and Fazlu together, but they were in the company of Ram Chandra Mahto and one more person. This apart, though it has been alleged by PW 14 (Mujeebun Nisa), in her evidence, that accused Shamsher had disappeared from the village, the undisputed evidence of PW 3 (Abdul Sattar) is that Fazlu's mother had come to him and asked him to find out whereabouts of Fazlu and, upon coming to know that accused Shamsher had taken away Fazlu on his bicycle, he (PW 3), while going to offer Namaz, asked accused Shamsher about Fazlu and accused Shamsher responded by saying that till Bariarpur, Fazlu went on bicycle with him and, then, Fazlu went away somewhere. This shows that notwithstanding the allegation made by PW14 that accused Shamsher, too, had disappeared and absconded, accused Shamsher was very much present, according to the prosecution's evidence, in his village.

24. Coupled with the above, we have already



indicated that accused Shamsheer was not the lone person, who was last seen with the said deceased; rather, Ram Chandra Mahto, who had also been put on trial with them, and one more person was with Fazlu. When Fazlu was not last seen with the accused-appellant, he cannot be held responsible for disappearance of Fazlu unless evidence on record clearly shows that as to how, when and where accused Ram Chandra Mahto (since acquitted) had parted company with accused-appellant, Shamsheer, and the said deceased.

25. Situated thus, it becomes clear that the prosecution is left with no convincing, cogent, clinching, credible and reliable evidence, which could have been made foundation for convicting the accused-appellant.

26. At any rate, in the light of the nature of evidence on record, the prosecution could not have been held, and ought not to have been held, to have proved their case beyond reasonable doubt against the accused-appellant. Consequently, the accused-appellant deserved to be accorded, at least, benefit of doubt.

27. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

28. Since the accused-appellant is on bail, his bail bonds are hereby cancelled and his sureties shall stand accordingly discharged.

29. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

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A.I./S.A./Kundan

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