

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.392 of 2009

Arising Out of Falka (Pothia) P S. Case No. 36 Year1990- District- KATIHAR, giving rise to
Sessions Trial No. 160 of 1990/T.R. No.748 of 2009

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Yogendra Mandal @ Yogea @ Yogi Mandal, son of late Uchit Lal Mandal, resident
of Village Khaira, Police Station Falka, District Katihar (Bihar)

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri ARun Kumar Mandal, Advocate.

For the Respondent : Sushri Shashi Bala Verma, 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: 07-04-2015

After being charged of committing the offences under
Section 302 read with Sections 201/120-B of the Indian Penal Code,
accused Uchit Lal Mandal died during the pendency of the trial while
accused Krishna Kant Mandal alias Billa Mandal absconded at the
very fag end of the trial, leaving the present appellant on trial, who
was held guilty of committing the offences he had been charged with
by the judgment dated 17.3.2009 passed in Sessions Trial No.160 of
1990/ T.R. No.748 of 2009 by the learned Presiding Officer of Fast



Track Court-III, Katihar. The appellant was heard under Section 235 Cr.P.C. on 18.3.2009 and was directed to suffer rigorous imprisonment for life due to being convicted of offences under Sections 302/120-B of the Indian Penal Code. The appellant was also directed to suffer rigorous imprisonment for one year on account of having been found guilty of committing the offences under Sections 201/120-B of the Indian Penal Code. The sentences passed upon the appellant were directed to run concurrently.

2. The appellant is before us in the present appeal to challenge the above noted judgment of conviction and order of sentence.

3. Dinesh Madal, examined as P.W. 6 reported to the police through his written report (Ext.1) that this appellant had taken his mother-in-law, namely, Pramila Devi, out of her house with the promise that he would ensure letting out of her land on lease to banana plantation trader of Naugachia, who had come to his Kamat, on a premium of Rs. 3,000/- per bigha per annum and would further ensure that Rs. 3,000/- was advanced to the deceased Pramila Devi. The deceased accompanied the present appellant to go to his Kamat and did not return.

P.W. 6 suspected that Krishna Kant Mandal alias Billa Mandal who had absconded at the fag end of the trial and who happened to be the step son of the deceased and who had a dispute for

certain properties with the deceased had stage-managed the incident of her abduction and killing. P.W. 7 S.I. Bandhu Sah after registration of the case was handed over the investigation and he appears arresting the appellant who was named in the written report and as appears from his evidence, the appellant led the police to one of the fields of said Krishna Kant Mandal alias Billa Mandal and on his pointing out the place it was dug out to find the dead body of Pramila Devi kept inside a gunny bag. Some quantity of common salt had also been stitched into the bag and the same was also found in it. The digging work was done by P.W. 2 Bhup Lal Mandle and P.W. 8 Kashi Pandit. After the dead body was retrieved from the field, inquest was held by P.W. 7 and the inquest report (Ext. 4) was prepared in presence of the witnesses. The dead body was transmitted to the hospital at Purnia for holding post-mortem examination.

4. P.W. 5 Dr. Satyendra Prasad Singh held autopsy on the dead body of Pramila Devi and found the following ante mortem injuries:-

- (i) A circular incised wound in the middle of neck at the level of 4th cervical vertebra. The wound had cut all the structures of the neck including skin, vessels, vertebral column, spinal cord, all major blood vessels, trachea. Except a piece of skin which was superficial and deep fascia left on left side of neck, all structures had been severed.
- (ii) Oblique incised wound on left side posterior

side 2"X ½" X ½".

On dissection P.W. 5 found that other organs of the body were intact and the above noted injuries were caused by heavy sharp cutting instrument and further that death had been caused due to shock and haemorrhage resulting out of the injuries over neck found by P.W. 5.

5. P.W. 7 S.I. Bandhu Sah recorded the statements of the witnesses and after concluding the investigation sent the three accused up for their trial.

6. We have already noted that one of the accused, namely, Uchit Lal Mandal died during the trial and further, other accused namely, Krishna Mandal alias Billa Mandal had absconded at the very fag end of the trial, leaving the present appellant only on trial who was convicted and sentenced by the impugned judgment of convict on and order of sentence as noted at the very out set of the present judgment.

7. The defence was that the appellant was not the beneficiary of the land and it was a matter of dispute between co-accused Krishna Mandal alias Billa Mandal and the deceased Pramila Devi and it was a case of false implication on suspicion.

8. Eight witnesses were examined by the prosecution, out of whom Mala Kumari (P.W.1) was 12-year-old daughter of the deceased. P.W. 2 Bhup Lal Mandal was one of the two witnesses



who had dug out the dead body of Pramila Devi after the present appellant had confessed to the police and was brought to the field to point out the place where he had taken away the dead body confidentially and had buried. P.W.2 had also stated that the neck of the deceased was half cut. P.W. 3 Nand Kishore Jha was a witness of seizure of blood stained foot of a cot and its other parts besides a blood stained small spade. P.W. 4 Satya Narayan Thakur was a witness to the seizure of the same articles which had been witnessed by P.W. 3. P.W. 6 Dinesh Mandal was the informant of the case and he was not an eye witness to the occurrence. He had given different set of evidence in support of prosecution case.

9. The point for determination in the present appeal is very short. There is no eye witness to the occurrence and as appears from the very circumstances which arise out of the materials of the case, it was a murder which was committed with due diligence and in utter caution. The execution was as confidential as the accused persons thought it could be. But, trails of circumstances were found left by the accused persons. Sometimes in most of the criminal cases the circumstances which could be collected by the police opens up many avenues so as to tracing out the real culprits. The questioning by the police to the suspected person sometimes leads to some conclusive nature of evidence which ultimately clinches the issue as regards commission of murder of the deceased. It also opened up the facts of



conclusive nature and avenues for the police in the present case to put its hands on clinching evidence of murder of Pramila Devi. It was her own daughter Mala Kumari (P.W.1) who had dropped an information to the police, as appears from the evidence of P.W. 2 in paragraphs 3 and.8, which information was enough for the police to discover the facts not only of murder of Pramila Devi but also of consignment of her dead body into the soil by being put into a gunny bag. It was so definitely and cautiously executed that there does not have any drop of information to any one or within the precincts of the Police Station. P.W. 2 had stated that confession of the appellant had led to the place where the dead body had been buried after being put in a gunny bag. P.W. 2 in paragraph 3 of his evidence had stated that confession of the accused was coming out in presence of many persons who had assembled there. Similar is the evidence of P.W. 8 also and it papers that the police had taken some of the Executive Officers, like, the B.D.O and other besides the Mukhia of the Village and some other respectable persons to the place from where the dead body was recovered. We do not have a semblance of challenge to the claim of the Investigating Officer that the Executive Officer, like, the B.D.O. and others were present. .As such, the defence does not appear to have challenged the fact that the appellant had confessed and his confession had led to discovery of the dead body.

10. We have scrutinized the evidence coming from

P.Ws. 2 and 7 telling us that it was this appellant who had given the facts in his confession to the police which had led to discovery of the dead body. The appellant was equally accompanied by the police to that place as pointed above. Section 27 of the Evidence Act comes into play as regards the complicity of the appellant and its proof.

11. In view of the conclusive nature of information so as to pointing out the place where the appellant had buried the dead body, the police had definite information that the appellant had murdered the deceased. This evidence appears skeletal at the first place. It was conclusive to hold that the prosecution has succeeded in bringing the charges home to the appellant.

12. In view of the above discussions, we find no merit in the appeal. The judgment of conviction and order of sentence passed upon the appellant appear quite meritorious as a result of which we dismiss the appeal.

(Dharnidhar Jha, J)

Kanth/-

(Amaresh Kumar Lal, J)

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