

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.475 of 1992

Arising out of PS.Case No.-38 Year-1989 Thana-Imamganj District- GAYA

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1. Barmoo Bhuiyan, Son of Bhikhan Bhuiyan.
 2. Jattu Bhuiyan, Son of Kamleshwar Bhuiyan.
 3. Lakhan Bhuiyan.
 4. Arjun Bhuiyan, both sons of Nanhak Bhiyan of village Harankel, P.S. Imamganj, District Gaya.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Smt. Sudha Ambastha, Amicus Curiae

For the State : Sri Dilip Kumar Sinha, APP

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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: 15-01-2015

Six accused persons including the four appellants were put on trial by the learned 8th Additional Sessions Judge, Gaya in Sessions Trial No. 103 of 1990/237 of 1990 by being charged with committing offence under Section 302/34 of the Indian Penal Code. The learned Judge delivered the judgment on the 30th of November, 1992 and while he acquitted two accused persons, namely, Phoolchand Bhuian and Mahadeo Bhuian, he held the four appellants guilty of committing the offence they had been charged with. The appellants were heard on sentence on the same day and each of them was directed to suffer rigorous imprisonment for life. The appellants are before this Court challenging the judgment of conviction and order of sentence passed against them.



2. The deceased Gurucharan Das was carrying a reputation in the *Ilaka* of an exorcisor of evil soul. It appears that he left his house at about 9 A.M. on 14.04.1989 and did not return. The son of the deceased, namely, Maheshi Das, who was examined as P.W.4, was informed by persons that the dead body of his father was lying near the Panchayat Bhawan in his village. He went there along with his villagers, like, Kameshwar Das (P.W.1), Gobardhan Das (P.W.2), Bishun Paswan (P.W.3) and found that his father had been killed by being brutally assaulted. The manner of killing was as brut as to mutilate the dead body so much so that the identification was not possible. P.W.4 the informant stated in his evidence that he could identify his father only by his feet and clothes.

3. He went to the police station with the village Choukidar and lodged the report upon which the investigation was taken up and on closure of the same, the six accused persons were put on trial.

4. The defence of the accused persons was of innocence and non-participation.

5. Six witnesses were examined during the trial out of whom P.W.6 Devnarayan Prasad was a witness of formal character who deposed on being acquainted with the writings and signature of Siddheshwar Prasad Sinha who was the Officer-in-



Charge of Imamganj Police Station on the relevant date and thus, the First Information Report of the case was brought on record. Out of the remaining five witnesses, P.W.5 was Dr. Mithlesh Kumar Sinha who had held post-mortem examination on the dead body of deceased Gurucharan Das. Other witnesses, like, Kameshwar Das (P.W.1) and Gobardhan Das (P.W.2) deposed on being witnesses to the inquest proceedings and also stated that it were the four appellants who had taken the deceased away with them for getting the evil soul and they further stated that the deceased did not come and his dead body was found lying on the road near the Panchayat Bhawan. The other two witnesses, like, Gobardhan Das and Bishun Paswan stated that they were attracted to the place where the dead body was lying and found that it was that of Gurucharan Das who had been murdered. Bishun Paswan (P.W.3) stated that Maheshi Das (P.W.4) the informant of the case had stated to him confidentially that it were the present set of accused persons who had taken his father away with them. P.W.4 the informant himself stated that the present set of appellants had taken his father away for exorcising an evil soul from someone.

6. While we were going through the evidence of witnesses, what we found was that the witnesses who stated the above fact that the present set of accused persons had taken Gurucharan Das with them for getting an evil soul exorcised from



someone had firstly not made that statement before the police and as such there was specific suggestion given to each of them that they had not made that statement to the police. The witnesses claimed that they had indeed made the statement to the Investigating Officer, but what we find is that on account of the non-examination of the Investigating Officer, the defence appears greatly prejudiced as it was precluded from proving the above fact by eliciting relevant statements from the Investigating Officer. The case was registered against unknown. There was no mention in the First Information Report that the accused persons had taken away the deceased with the purpose of getting an evil soul exercised from any person. It was an innocuous statement made by the informant that his father had left his house to go out and could not return. The informant did not state in the First Information Report that the deceased had gone by accompanying the accused persons to their house. It appears a subsequent development and improvement made by the prosecution so as to slapping a charge of being seen last and also of taking the deceased away with them.

7. On perusal of the evidence which was available on record, we do find that the deceased was brutally murdered, but the evidence which was led by the prosecution through four witnesses was too scant to justify conviction of the four appellants as well. It was a case which was based on suspicion of the

witnesses and in our opinion it was fit that the four appellants should also have been acquitted in view of the nature of the evidence.

8. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence dated the 30th of November, 1992, passed by the learned 8th Additional Sessions Judge, Gaya in Sessions Trial No. 103 of 1990/237 of 1990. The appellants are acquitted of the charge they had been found guilty of. The appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.

9. We have been assisted by Smt. Sudha Ambastha, who was appointed Amicus Curiae to assist this Court today itself. We direct that Smt. Ambastha be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court. Let the first and last pages of the judgment be handed over to her.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Sanjay/N.A.F.R.

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