

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.377 of 1992

Arising Out of P.S. Case No. 8 Year- 1989 Thana -NATWAR District- SASARAM (ROHTAS)

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Dinanath Rai son of Ram Narayan Rai @ Lalu Rai, resident of village-Balia, P.S.-
Natwar, District-Rohtas.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Suraj Narain Pd. Sinha, Sr. Advocate
Shri Jitendra Narain Sinha, Advocate
Smt. Spriha Nupur, Advocate
Smt. Rina Sinha, Advocate
Shri Yogendra Prasad, Advocate

For the Respondent : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL
C.A.V. JUDGMENT
(Per: HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL)
Date: 8th July 2015

This appeal is directed against the judgment and
order dated 28.7.1992/29.7.1992 passed by the learned 9th
Additional Sessions Judge, Rohtas at Sasaram in Sessions
Trial no. 439 of 1989/86 of 1989 by which the appellant has
been convicted under Sections 302/34 of the Indian Penal
Code and has been sentenced to undergo imprisonment for life
and to pay a fine of Rs. 5,000/- and in default of payment of fine, to



undergo rigorous imprisonment for two years. He has further been convicted and sentenced to undergo rigorous imprisonment for three years under Section 201 of the Indian Penal Code. It has been directed that all the sentences will run concurrently. He has also been convicted under Section 302 of the Indian Penal Code but no separate sentence has been passed.

2. The prosecution case, in brief, is that Sunaina Devi, the informant (P.W.12) was married to Ashok Kumar Rai (deceased) of village-Balia, Police Station-Natwar, District-Rohtas. She had no issue. On 2.2.1989 she came to Ara with her mother-in-law (P.W.1) for her treatment. On 6.2.1989 she returned to village-Balia and asked Dinanath Rai, elder brother of her husband (appellant) and his wife about the deceased. The appellant told her that her husband (deceased) had gone somewhere taking the jeep. On 7.2.1989 she again went to Ara with her mother-in-law (P.W.1) for her own treatment. On 13.2.1989 the appellant came to Ara and asked the informant and her uncle Ram Janam Singh (P.W.2) as to whether Ashok (deceased) had come there. On query by P.W.2 the appellant told that on 4.2.1989 Ashok (deceased) had gone to Sasaram to purchase tyres for the vehicle but he



did not return as yet. The informant got suspicious as there was some differences between her husband and the appellant. Prior to this occurrence the deceased had told the informant that his brother (appellant) was bent upon killing her husband. This information was given by the informant to her mother, uncle and brother. After getting information that the deceased had not returned on 14.2.1989 the informant went to Balia with her uncle, Ram Janam Singh (P.W.2), cousin brother Ram Awadhesh Singh (P.W.4) and mother-in-law (P.W.1) and enquired into the whereabouts of her husband but the appellant did not give any concrete answer. In the meantime, brother, uncle, father and co-villagers searched for her husband (deceased) but he was not traced out. Prior to this occurrence also, the appellant had tried to kill the deceased but he could be saved. She was certain that her husband had been killed by the appellant in collusion with other persons.

3. The F.I.R. to this effect was lodged at Natwar Police Station and it was registered as Natwar P.S. Case no. 8 of 1989 against the appellant and unknown for the offence punishable under Sections 302, 201/34 of the Indian Penal Code. After investigation chargesheet was submitted against the appellant, showing Sheo Mohan Ram and Bhup Ram

absconders in the chargesheet. The trial was conducted against the sole appellant. After trial, appellant was convicted and sentenced as aforesaid.

4. During trial the prosecution has examined 15 witnesses, out of them, P.W.1 was the mother of the deceased and the appellant and mother-in-law of the informant. P.W.2 Ram Janam Singh was the uncle of the informant, P.W.3 Chhotelal Singh was a formal witness, who had proved the formal F.I.R. (Ext.2). P.W.4 was the cousin brother of the informant, P.W.5 Ram Awadhesh Singh was the father of the informant and P.W.6 Chandraketu Singh was tendered. P.W.7 Mangla Rai, P.W.9 Birendra Rai, P.W.10 Ram Ekbal Rai and P.W.13 Harisharan Chamar were the co-villagers of the deceased and the appellant. P.W.8 Ajit Rai was the sister's son (Bhagina) of the appellant and the deceased. P.W. 14 Madan Singh was the constable, who had taken parts of the deadbody of the deceased to the hospital for post mortem examination and P.W.11 was Dr. Devendra Tripathy, who had held autopsy on the dead body of the deceased and prepared the post-mortem examination report (Ext.3). P.W. 12 Sunaina Devi was the wife of the deceased and the informant of this case. P.W.15 Maheshwar Prasad Sharma was the investigating

officer.

5. The defence of the accused, as appears from the cross-examination and the suggestion given to the witnesses and the statement of the appellant under Section 313 of the Code of Criminal Procedure was that the appellant had neither confessed his guilt before the police and the co-villagers nor he was present at the Bhanas Badhar (field) nor he took out the parts of the human body from the Badhar (low land, water canal) nor he gave the spade to the police. The limbs of the body were not of the deceased Ashok Kumar Rai and the accused was arrested after recovery of the limbs and the signature of the accused was obtained on two plain papers which were used as seizure list and confessional statement.

6. Learned counsel for the appellant has submitted that there is no eye witness to the occurrence. The statement of the witnesses is highly contradictory in nature and full of inherent infirmity entitling the appellant to the benefit of doubt. There is no independent witness to support the prosecution case. There is no direct evidence against the appellant and the chain of circumstances is also not complete. Learned trial court has failed to consider the fact that the limbs of the deceased were not identified by the informant (P.W.12)



before the police on the basis of the underwear and by the presence of the mark of a healed wound on the leg. He has also submitted that there is no confession leading to recovery. The submission of the learned counsel for the appellant is that since the skin was not on the parts of the body, the identification of the dead body was doubtful.

7. The further submission of the learned counsel for the appellant is that the learned trial court was swayed by emotional considerations in convicting the appellant. The conviction is also based on circumstantial evidence. No one has seen the appellant to kill the deceased. There is also delay in lodging the F.I.R. In support of his contention he has relied on the following decisions:- Balwinder Singh v. State of Punjab reported in AIR 1996 SC 607, Aher Raja Khima v. State of Saurashtra reported in AIR 1956 SC 217 and Gowrishankara Swamigalu v. State of Karnataka and another reported in (2008) 14 SCC 411.

8. Learned counsel for the State has submitted that the appellant has made confession before his mother (P.W.1) and also before the police and the co-villagers. On the basis of the rumour and the statement of the mother of the appellant, a police team was sent to apprehend the appellant,



who was hiding himself in a wheat field and after chasing the appellant was apprehended. He also made statement before the police and traced out the dead body of the deceased hidden at different places. The informant and other witnesses have identified the dead body of the deceased by looking to the healed wound present below the right knee and also the underwear which was present at the thigh of the deceased. The appellant had gone with the police and co-villagers to the places where the dead body of the deceased was buried to demolish the evidence of the offence. The confession of the appellant has led to the recovery of the dead body of the deceased. There is complete chain of circumstances against the appellant and the learned trial court after considering all the materials has come to the conclusion that the appellant has committed the murder of the deceased and no interference by this Court is required.

Learned counsel for the State has submitted that it has been seen earlier that the parts of the dead body were recovered from different places and at that time the dead body was identified by the wife of the deceased and his near relatives from the underwear and mark of a healed wound below the right knee and thereafter the limbs were dumped in



bags. The dead body was at the stage of decomposition and the limbs were sent for post mortem examination by being kept in bags. By that time the skins might have been removed in the process of taking out the limbs from the bags and the doctor might not have found any skin on the body. On this ground the identification of the dead body of the deceased is not fit to be doubted.

Learned counsel for the State has submitted that the conduct of the appellant has been doubtful from the very beginning and to prove his innocence the circumstances have been created by him. He went to Ara to the house of P.W.5, Ram Jash Singh, father of the informant where he met with P.W.2, Ram Janam Singh, the uncle of the informant and asked him as to whether Ashok (deceased) had come there. P.W.2 replied in negative. Thereafter, the appellant told him that Ashok had gone to purchase tyre from Sasaram on 4.2.1989 but did not return as yet. Thereafter, the appellant returned from there. P.W.5 Ram Jash Singh stated that on 13.2.1989 the appellant had come to his house at Ara while he was returning from his house, he met him in the way and enquired from him as to whether Ashok had come to his house or not. The appellant told that on 4.2.1989 the deceased had



gone to Sasaram to purchase tyre. Even after the request of P.W.5, the appellant did not stay at his house. This fact was stated to the informant (P.W.12) and her mother-in-law (P.W.1). The informant stated that there was some difference between the deceased and the appellant.

9. After hearing the learned counsels for both the parties and on perusal of the records, it appears that the appellant had firstly tried to mislead the informant and other members of his family including his mother P.W.1 regarding the disappearance of the deceased. Later on, he had also made attempt to mislead the police regarding the disappearance of the deceased. P.W.15 was the Officer-in-charge of Natwar Police Station. He has stated that on 14.2.1989 the appellant gave written information that his brother Ashok Kumar Rai (deceased) had proceeded for Sasaram to purchase tyres for the jeep on 4.2.1989 at 5 A.M. and he had been traceless since after. It was recorded as Sanha no. 224 dated 14.2.1989 (Ext.4). On 15.2.1989 P.W.15 went to village-Balia, the village of the appellant and the deceased and after enquiry he returned to the police station and lodged a Sanha (Ext.4/1).

10. On 17.2.1989 Sunaina Devi (P.W.12), wife of the deceased, came to the police station and on her



firdbeyan Natwar P.S. case no. 8 of 1989 was instituted (Ext.2) and on 17.2.1989 P.W.15 went to the village-Balia at 6 P.M. and inspected the house of the appellant in which there were three rooms in the east, two in the south, two in the western side and one in the northern side. In that house, rooms of the appellant and the deceased were there. There was hand pipe and the floor of the hand pipe was plastered. All the rooms and the courtyard had been cleaned with soil and cow-dung. He took the statement of P.W.1, the mother of the deceased who stated that the appellant confessed before her that he (appellant) had killed the deceased and the deadbody had been caused to disappear in the bush. Thereafter, the investigating officer with the police force and the co-villagers of the appellant proceeded for the Bhanas Badhar and search was made but nothing could be found. There it came to the notice of the investigating officer that the appellant had hidden himself in the wheat field in the northern side of the village-Balia. Thereafter, the field was surrounded by the police. After seeing the police force and the investigating officer, the appellant tried to run away. He was chased and apprehended. He made confessional statement (Ext.5) which was recorded by him (P.W.15). According to the confessional statement of



the appellant, the co-villagers and the police team proceeded for Bhanas Badhar and the appellant dug out the thigh part of a human body in a rotten condition and a hand of the dead body. The parts of the deadbody were identified by the co-villagers and P.W.12, the wife of the deceased. The inquest report (Ext.6) was prepared which was witnessed by P.W.7 and P.W.10. The deadbody was recovered from the canal, the water of which was flowing towards the north. Its width was 10 feet and depth was 2 feet in which there was dense bush of Bahaya plants. Thereafter, the appellant took the place towards south at some distance and dug out human body parts from knee to the fingers of two legs. The inquest report of this part was prepared as Ext.6/1. All these parts of the human body was identified by P.W.12 Sunaina Devi, Mangla Rai (P.W.7) and Ram Ekbal Rai (P.W.10) as the limbs of the deceased. The underwear in torn condition was also seized which was exhibited as material Ext. no. 1. The second place was at a distance of five hundred yards towards the north from the place of first recovery of the limbs in the same canal which was also two feet into the ground and was covered by bush. All the parts of the human limbs were sealed in a bag and were sent to Sasaram for post mortem examination with the



constable Madan Singh (P.W.14) and two chowkidars, Ram Chamar and Bahmin Yadav. The Gamchha with blood-stains was also recovered which was identified by P.W.10 Ram Ekbal Rai, and P.W.9 Birendra Rai belonging to the accused Sheo Mohan Ram and seizure list (Ext.7) was prepared. On the next day again the appellant was taken to the Badhar, but no other parts of the body was recovered. Thereafter, the investigating officer and others returned to village-Balia with the appellant. The seizure list (Ext.7/1) was prepared and shown as material Ext. no. 2. After taking statements of the witnesses and obtaining the post mortem report the chargesheet was submitted. The investigating officer has been cross-examined at a great length.

11. The identification of the deadbody has been made by P.W.12, P.W.4, P.W.7, P.W.8, P.W.9 and P.W.10. The deadbody has been identified by the prosecution witnesses by seeing the mark of a healed wound present below the knee of the deceased and the part of the underwear which was worn by the deceased.

12. P.W.1 is the most competent and independent witness as she is the mother of the deceased as well as of the appellant. P.W.1 has stated that Dinanath (appellant) and



Ashok (deceased) were her two sons. The appellant killed the deceased who had no issue. At the time of occurrence she had taken P.W.12, the wife of the deceased for her treatment at Ara. She returned to village-Balia from Ara after five days and searched for her son Ashok. The appellant told her that Ashok had gone to purchase some parts of the vehicle. When Ashok did not return, again she asked from him whereabouts of the deceased. Thereafter, appellant told her that the deceased had gone to Gangasagar. Again when Ashok did not return, she enquired from Dinanath (appellant) about his whereabouts who told her that someone might have killed him (deceased). She has further stated that Dinanath had confessed before her that he (Dinanath) had killed Ashok (deceased) and his deadbody had been concealed in Bhanas Badhar with the help of Sheo Mohan, Bhup and a man of Chamar caste. The appellant also confessed that Ashok was killed in the courtyard near the handpipe and the deadbody was cut into pieces and kept in three bags.

In her cross-examination she has stated that the distance between Balia and Ara is 20 to 30 Kosh (40 to 50 miles). Shiv Pujan Rai was the Mukhiya and Ram Ekbal Yadav (P.W.10) was the Sarpanch. She remained at



Ara for five days where there is house of her daughter-in-law (P.W.12). Birendra (P.W.9) and Ram Ekbal (P.W.10) are co-villagers. She had also asked Birendra to search her son Ashok, who reported that Ashok could not be traced out. She has also stated that the head and trunk parts of the body of her son could not be traced out. She has also stated that on the next date in the evening the appellant was apprehended by the police and he was taken to the police station.

She being mother of the appellant, the evidence of P.W.1 appears convincing, inspires confidence and is fit to be relied upon. She did not have any reason to be unfair to the appellant.

13. P.W.2 is the uncle of the informant (P.W.12). He has stated that on the date of murder of the deceased, P.W.12 and P.W.1 were at his house at Ara. P.W.12 had come there with P.W.1 for her (P.W.12) treatment. After remaining there for five days, both of them went to Balia. He has also stated that the appellant had come to his house and enquired about the deceased. He replied that Ashok (deceased) had not come there. The appellant told him that Ashok had gone to purchase tyres at Sasaram on 4.2.1989 and had not returned. Thereafter, the appellant returned and this information was



conveyed to P.W.1 and P.W.12. P.W.12 told that there was difference between the deceased and the appellant. On 14.2.1989 P.W.2, P.W.12 and P.W.1 went to Balia, but the deceased was not there and a rumour was thick in the air that the appellant had killed the deceased. P.W.2 returned to his village and asked his son to trace out Ashok but Ashok was not found. On 17.2.1989 the case was lodged by P.W.12. He was also witness to the F.I.R. The signature is Ext.1.

In his cross-examination he has stated that at his house at Ara, his wife and son were living. There is nothing to disbelieve his evidence.

14. P.W.4 is the brother of Sunaina Devi (P.W.12), wife of the deceased. He has also supported the case as did P.W.2. He had identified the deadbody by the sign of healed wound present below the right knee and the underwear of the deceased on 18.2.1989. Prior to it he had also gone to some places in search of the deceased.

In his cross-examination he also stated that he had gone to village Chandi and enquired from Shiv Nath Singh, brother-in-law of the deceased and also at other places, but no trace could be made of him.

15. P.W.5 Ram Jash Singh is the father of



P.W.12. He is also a witness to the F.I.R. He has also supported the prosecution case as did P.W.2. He has stated that on 13.2.1989 the appellant came to Ara at his house, at that time he was not present. When the appellant was returning from his house, he met him in the way and asked as to whether the deceased had come back to his house. He gave his answer in the negative. Thereafter, the appellant told him that the deceased had gone to purchase tyres from Sasaram on 4.2.1989. Thereafter, even on request to him to stay at his house, the appellant did not stay and returned. When P.W.5 went to his house at Ara, there was a talk between his daughter P.W.12 and her mother-in-law P.W.1 suspecting that the deceased might not have gone to purchase tyres rather he had been made to disappear.

16. P.W.7 Mangla Rai is a witness to the arrest of the appellant by the police and the recovery of the parts of the dead body after digging up the soil by the appellant from Behaya bush. He is also witness to the confession made made by the appellants before the police leading to recovery of the parts of the dead body of the deceased.

17. P.W.8 has stated that the appellant is the brother of his mother. On 18.2.1989 he had gone to Balia after



getting information that the deceased had been killed. He has stated that wife of the appellant told him that Dinanath Rai (appellant), Bhup Ram and Sheo Mohan Ram killed Ashok Rai (deceased) but the dead body had not been traced out. On the same day at about 3 P.M. Dinanath Rai (appellant) was apprehended by the police from the wheat field in presence of Ram Ekbal Rai (P.W.10), Mangla Rai (P.W.8), Hari Sharan Ram (P.W.13), Birendra Rai (P.W.9), Kamta Rai and many other persons. The appellant told the police that he (appellant) had killed his brother Ashok with the help of Bhup Ram and Sheo Mohan Ram and the deadbody had been cut into pieces and the parts of the dead body had been concealed in Bhanas Badhar. The police and other persons followed the appellant on being led by him. The appellant dug out the dead body from two places. The dead body was identified by P.W.12 the wife of the deceased by his underwear and the mark of a healed wound below the right knee.

P.W.8 is an independent witness. He is the sister's son of the appellant as well as the deceased. He is impartial. He has also supported the prosecution case. There is no ground to discard his evidence.

18. P.W.9 is the witness, who had seen the



circumstances. He has stated that in the night of 3.2.1989 he, Raja Rai, Dudh Nath Rai, Ram Ekbal Rai (P.W.10), Laxman Rai and others came to his village by the jeep of Ashok Rai (deceased), who was driving the jeep. When they reached at the village road at about 11 P.M., accused Dinanath Rai, Sheo Mohan Ram and Bhup Ram were standing there. After getting down from the jeep P.W.9 and others went towards their house. The appellant asked his brother to go inside the house and in the next morning he would have to go to Sasaram to purchase tyre. In the same night at about 3 / 4 A. M. when he (P.W.9) was in his room, he heard the cry of someone and asked the inmates of his house as to who was crying. The family members told him that no one in his house was crying. But noise of crying was coming out from the house of the appellant. In reply to his query, the appellant told that no one was crying in his house. Thereafter, P.W.9 slept in his house. In the morning, villagers were whispering among them about the disappearance of the deceased. On 14.2.1989 all of a sudden the wife, mother, father-in-law, cousin brother-in-law and brother-in-law of the deceased came to the house of the appellant and asked about the deceased. He (P.W.9) was also present there. The appellant told them that on 4.2.1989 Ashok



had gone to Sasaram to purchase tyres but did not return. On 18.2.1989 he heard that the appellant was apprehended by the police in the wheat field. Thereafter, he and the co-villagers Mangla Rai (P.W.7), Ram Ekbali Rai (P.W.10), Hari Sharan Chamar (P.W.13), Ajit Rai (P.W.8), Ramashish Rai and several other persons went there and in presence of all of them and the police, the appellant confessed his guilt and stated that he had killed the deceased with spade with the help of Bhup Ram and Sheo Mohan Ram, concealed parts of the dead body in the Bahaya bush. The appellant claimed to trace out the dead body. Thereafter, all the aforesaid persons and several others went to Bahaya bush wherefrom parts of the dead body were dug out by the appellant. The dead body was identified by the wife of the deceased by his underwear and by the mark of a healed wound below the knee of the deceased. The other witnesses also identified the parts of the dead body to be of the deceased. The Gamchha stained with blood was also found there which was identified to be of the accused Sheo Mohan Ram which was also seized by the police. He is witness to the seizure list. On the next day the police officer also came there and the appellant handed over the spade by bring it out from the fodder store with which he had killed the deceased.

In his cross-examination he has stated that prior to the occurrence, there had been land dispute between his family and Sheo Mohan Ram and Bhup Ram. He has no land dispute with the appellant Dinanath. This witness has also been cross-examined at a great length, but there is no vital contradiction in his evidence.

19. P.W.10 has also deposed as P.W.9. He has also been cross-examined at a great length. There is no material to disbelieve his evidence.

20. P.W.11 is the doctor, who has held the post mortem examination on the limbs of the dead body. He has stated that on 19.2.1989 he held the post mortem examination on the limbs of the dead body of Ashok Kumar Rai at 4 P.M. and the following points were observed at the time of post mortem examination on the fragments of human body of Ashok Kumar Rai. The following parts were brought by constable no.788 Madan Singh :-

- i) Both upper limbs below shoulder joints separated by sharp cut wounds, full of soil, skin absent.
- ii) Both lower limbs below knee joints separated by sharp cut wounds. Skin peeled off in state

of advanced decomposition with soil.

iii) A hip joint, with fifth lumbar vertebra with attached penis and pubic hair. Rest of the human parts not brought.

(2) On the above points it can be said that the body was cut into pieces by a sharp edged weapon and the injuries were anti mortem.

The spade is also a sharp edged weapon.

(3) The time of death was opined within three weeks of holding of the post mortem examination. This post mortem report is ext.3.

In his cross-examination he has stated that the above fragments of the body could have been cut by sword or dagger or any other sharp edged weapon. The fragments of the body were identified to be of Ashok Kumar Rai on the basis of the inquest report. There were no separate fragments of the body from knee to foot. It was from the hip joint up to foot. The skins were peeled off from all the fragments. It was not a fact that the above fragments could not have been separated by spade.

21. The appellant had also lodged a Sanha to

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mislead the police and he had himself pretended to search the deceased and had concocted a story that the deceased went to Sasaram to purchase tyre on 4.2.1989.

22. Not only that the appellant told his mother (P.W.1) that the deceased had gone to Gangasagar and he might have been killed by someone. But, prior to this he had also said to several persons that the deceased had gone to purchase tyres. It appears from the evidence of P.W.1 that the appellant had confessed his guilt before her (P.W.1). Later on, the appellant had also confessed his guilt before the police which had led to recovery of the dead body of the deceased. The appellant had himself gone to different places where the parts of the dead body were buried under earth and had dug out the parts of the dead body which were concealed by him. The parts of the dead body had been recovered in presence of the police and the co-villagers. The dead body was identified by the underwear and the mark of a healed wound below the knee of the right leg by the wife of the deceased (P.W.12) and Ajit Rai (P.W.8), who is the sister's son of the deceased as well as of the appellant. P.W.8 is also an independent witness, near and dear to both the appellant and the deceased. The blood-stained spade was produced by the appellant from his



fodder store.

23. It appears that there is no delay in lodging the case. It is apparent from the evidence of P.W.12 that she had gone to Ara with her mother-in-law (P.W.1) for her treatment as she had no issue. She returned to Balia on 6.2.1989. Her husband (deceased) was not there. A query was made from the appellant by P.W.1 and P.W.12 with regard to the deceased. The appellant told that the deceased had gone outside. On 7.2.1989 she again went to Ara with P.W.1. On 13.2.1989 the appellant came to Ara and enquired from her uncle Ram Janam Singh (P.W.2) as to whether the deceased had gone there. Thereafter, the appellant told him (P.W.2) that the deceased had gone to Sasaram on 4.2.1989 but did not return. On 6.2.1989 also the appellant had told that the deceased had gone out with the vehicle. Again on 13.2.1989 he had stated that the deceased had gone to Sasaram to purchase tyre. P.W.12 has further stated that on 14.2.1989 she returned to Balia with her uncle Ram Janam Singh (P.W.2), cousin brother Ram Awadhesh Singh (P.W.4) and mother-in-law (P.W.1) and they made queries from the appellant. Again he told that the deceased had gone to purchase tyre from Sasaram. P.W.12 returned to Ara. Brother (P.W.4) and uncle

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(P.W.2) of the informant (P.W.12) started searching the deceased but he was not traced out. Thereafter, on 17.2.1989 P.W.2 called her uncle, father and brother to go to police station and lodged the F.I.R. On 18.2.1989 the police arrested the appellant and he made confession and thereafter, he dug out the dead body from Bhanas Badhar and the dead body had been identified as stated earlier.

24. In the case of Balwinder Singh (supra), the accused had made confession regarding commission of the crime to one of his relatives, who had lodged the complaint with the police after the delay of three days although she was with the police for two days in connection with some other case. It was held that the confession was surrounded by suspicious circumstances. Similar is not the situation in the present case. The appellant had made confession before his mother (P.W.1) and later on after his arrest he had also made confession before the police and his confession led to the recovery of parts of the dead body. He had himself gone to the barren land and had dug out the parts of the body which were buried under the earth. As such, Balwinder Singh (supra) is not applicable to the facts of the present case.

25. In the case of Ahir Raja Khima (supra) it has



been held that confession cannot be used against an accused unless the court is satisfied that it was voluntary and there should not be any threat or coercion. In that case the confession was not leading to recovery. Prior to confession the police had already known where the articles had been hidden. The information was not derived from the accused but from an other person who was a suspect. Such is not the fact in the case in hand. The appellant had confessed his guilt before his mother (P.W.1) and secondly, the confession had been made by him before the police and thereafter recovery had been made at the instance of the appellant, who had himself dug out the parts of the dead body from a bush from two places. As such, this decision is also not helpful to the appellant. Moreover, the question is not about acting on confession treating it as evidence, it is regarding whether it was admissible under the Evidence Act. One may only refer to Section 27 of the Evidence Act to note that an information, given by a person accused of commission of an offence given to the police by him while he was in custody, if leads to the discovery of a fact, that part of the confession is admissible as an information leading to the discovery of a fact and for nothing else.



26. In the case of Gowrishankara Swamilagu (supra) the appeal was against acquittal. Reappreciation of evidence was not called for. The trial court had accorded a judgment of acquittal assigning sufficient and cogent reasons and it was held that it was one of the rarest of rare cases where necessary deeper scrutiny was not done by the High Court. There was inconsistency between circumstantial evidence and the prosecution case. There were discrepancies in the prosecution case and, as such, it was held that the reversal of acquittal by the High Court was not required.

27. In the case in hand, it has been found that earlier confession had been made by the appellant before his mother (P.W.1) and thereafter before the police and the co-villagers and thereafter he had himself dug out the dead body. The dead body was identified by P.W.12 the wife of the deceased and P.W.8, Ajit Rai, bhagina of the appellant as well as the deceased and P.W.4, the brother-in-law of the deceased. The deceased was apprehended and there were several persons including the prosecution witnesses. The appellant confessed to his guilt that he had committed the murder of the deceased with the help of accused Bhup Ram and Sheo Mohan Ram (absconders) and the dead body was cut into pieces and hidden



in the canal. Thereafter, the appellant had dug out the parts of the dead body from two places. From the evidence it appears that the places, where the dead body of the deceased was hidden, were unknown to the witnesses and the police. The appellant had himself located those places and dug out the dead body. Thus, it is a case of confession leading to discovery. In the facts and circumstances stated above, the decision in the case of Gowrishankara Swamilagu (supra) is also not applicable in the case of the appellant.

If an accused drops an information to the police while being in custody of the police which leads the police to discover a fact, the presumption is that only the accused had the special knowledge about the circumstances attending on the commission of the crime. Moreover, if he had himself dug up the parts of the dead body, as in the present case, it further reinforce the inference of special knowledge and there could not be any other inference than that it was the accused, like the appellant, who had definitely committed the offence.

28. Considering the facts and circumstances discussed above, we do not find any ground to interfere with the impugned judgment of conviction and sentence. This

appeal has got no merit. As such, it is dismissed.

29. The appellant is on bail. The bail bond of the appellant is cancelled and he is directed to surrender before the trial court within a month from this judgment to serve out the sentences. In case he does not surrender, let the trial court ensure that he is arrested and remanded to custody for undergoing the sentences.

(Amaresh Kumar Lal, J)

Dharnidhar Jha,J. I agree.

(Dharnidhar Jha, J)

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