

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.253 of 1992

Against the judgment of conviction and order of sentenced dated 07.07.1992
passed by the Additional Sessions Judge, I, Muzaffarpur, in Sessions Trial No.
108 of 1991/10 of 1991 arising out of Maniyari P.S. Case No. 95 of 1989

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1. Baban Sah, son of Nirsan Sah
 2. Ramesh Sah, son of Jhonti Sah
 3. Baidehi Ram, son of Rajendra Ram
 4. Teni Sah, Dularchan Sah, all of village Madhuban, P.S. Maniari, district Muzaffarpur
 5. Dasai Sai
 6. Bechan Sah, both sons of Bhikhari Sah
 7. Manoj Sah, son of Ramji Sah
 8. Naresh Kumar Sah @ Naresh Sah, son of Mahendra Sah (since dead)
 9. Bauchan Sah @ Bahuchan Sah, son of Tilak Sah
 10. Ramlalit Ojha, (since dead) son of Kailash Ojha, appellants no. 5 to 9 all residents of village Raghunathpur, P.S. Musahri, district Muzaffarpur
- Appellants
Versus

State of Bihar
Respondent

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With

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Criminal Appeal (DB) No. 260 of 1992

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1. Kanchan Singh, son of Shatrughan Singh
 2. Ram Lala Singh, (since dead) son of Methura Singh, both residents of village Raghunathpur, P.S. Musahri, district Muzaffarpur
- Appellants
Versus

State of Bihar
Respondent

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With

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Criminal Appeal (DB) No. 343 of 1992

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1. Ram Narayan Sah, son of Mankhi Sah (deceased)
 2. Binod Kumar @ Binod Kumar Sah, son of Ram Narayan Sah, both residents of village Madhuban, P.S. Maniari, district Muzaffarpur
 3. Mahendra Sah, son of Meghu Sah, resident of village Raghunapur Khurd, P.S. Mushari, district Muzaffarpur
-
Appellants

Versus

State of Bihar
Respondent

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Appearance :
(In CR. APP (DB) No. 253 of 1992)

For the Appellants : M/S Nirmal Kumar Sinha no. 3, Arun
Kumar, Advs.
For the Respondent : Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No. 260 of 1992)

For the Appellants : M/S Yogendra Singh & Nirmal Kumar
Sinha no. 3, Advs.

For the Respondent : Ms Shashi Bala Verma, APP

(In CR. APP (DB) No. 343 of 1992)

For the Appellants : M/S. Md. Abu Haider, Md. Abu Saghir &
Sumit Kumar Tiwary, Advs.

For the Respondent : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 05-08-2015

The present batch of three appeals is directed against the judgment of conviction and order of sentence dated 07.07.1992 passed by the learned First Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 108 of 1991/10 of 1991 by which the surviving eight appellants of Criminal Appeal (D.B.) No. 253 of 1992 and the one of Criminal Appeal (D.B.) No. 260 of 1992 were held guilty of committing the offence under Section 201 of the Indian Penal Code and each of them was directed to suffer rigorous imprisonment for three years.

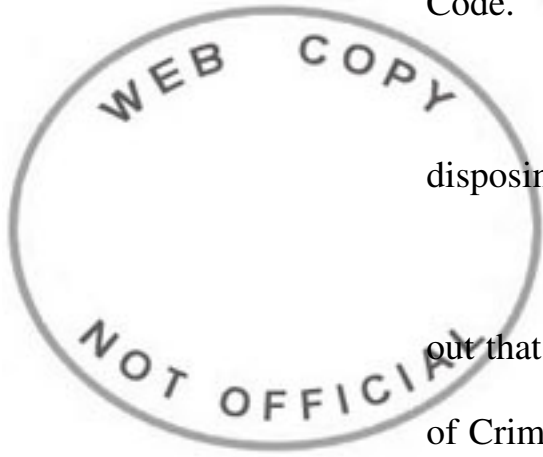
So far as the surviving two appellants of Criminal Appeal (D.B.) No. 343 of 1992 is concerned, each of them was held guilty besides of committing offence under Section 201 of the Indian Penal Code, also under Section 302 of the Indian Penal Code and in addition to being directed to serve rigorous imprisonment for three years Under Section 201 each of them was directed to serve rigorous

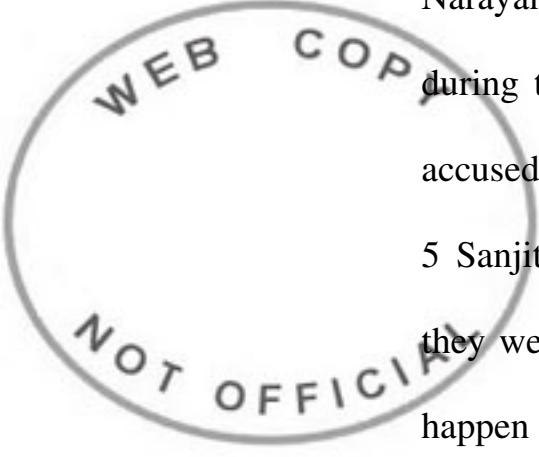
imprisonment for life under Section 302/34 of the Indian Penal Code.

We have heard the three appeals together and we are disposing them of by this common judgment.

Before we come to the facts of the case, we may point out that during the pendency of the appeals, appellants no. 8 and 10 of Criminal Appeal (D.B.) No. 253 of 1992, namely, Naresh Kumar Sah @ Naresh Sah and Ramlalit Ojha respectively, and appellant no. 2 of Criminal Appeal (D.B.) No. 260 of 1992, namely, Ram Lala Singh, and appellant no. 3 of Criminal Appeal (D.B.) No. 343 of 1992, namely, Mahendra Sah, were reported dead and the fact being found true after enquiry conducted by the Senior Superintendent of Police, Muzaffarpur, the criminal appeals so far on their behalf were directed to abate.

The informant of the case was P.W. 5 Sanjit Kumar who on the date of occurrence was aged about 11 years. He stated that he and his younger brother, P.W. 6 Dina Kumar (aged about 8 years on the date of occurrence) were sleeping with their mother Sumitra Devi in the night intervening 15-16 of December, 1989, after having taken their meals. In between 09-10 P.M. the door of the room was knocked out and on enquiry from inside, assailant Binod Kumar Sah stated to her (deceased) that it was he upon which





the deceased Sumitra Devi opened the door of the room and Narayan Sah, Binod Kumar, Mahendra Sah with Asharfi Devi (died during trial) and Deoki Devi entered inside the room. Seeing the accused persons entering inside the room the two brothers, i.e., P.W. 5 Sanjit Kumar and P.W. 6 Dina Kumar, were so frightened that they went made the bed kept in the room to see as to what was to happen therein. It was stated that the accused persons caught hold of the deceased, Sumitra Devi, and it was appellant Ram Narayan Sah who strangled her to death. During the course of Sumitra Devi was being strangled, other accused persons were catching her feet and hands. After Sumitra Devi was strangled the dead body was brought out of the room and was taken into the worshiping room of the house and with the help of a rassi (rope) which was carried by accused Deoki Devi, Sumitra Devi was hanged up to the wooden beam which was put up in that particular room.

After having accomplished their goal, the accused persons closed the door of the room in which the deceased was sleeping with P.Ws. 5 and 6 and also closed the door of the worship room and went away from there to reappear in the morning to firstly open the door of the room in which Sumitra Devi was strangled to death. P.W. 5 had stated that he and his brother came out of the room. The accused persons thereafter put the dead body on a cot

and started proceeding towards Raghunathpur Cremation Ground, which was not their family cremation ground. By and by, the villagers also accompanied the accused persons so much so that the cremation procession swelled up to 16-17 persons. The allegation was that no rituals were followed and the two brothers, P.Ws. 5 and 6, were also taken away by the accused persons with them and when P.W. 5 refused to lit the pyre an axe was put on his neck and it was P.W. 6 who was asked to lit the pyre and accordingly, P.W. 6 lit to the pyre.

P.W. 5 stated that while he was accompanying the funeral procession, he slipped out of the procession to ask one Raju Mahato (not examined) his friend to inform P.W. 1 Nagendra Sah that his mother had been murdered by the accused persons and they had taken away the dead body to the cremation ground for cremation. P.W. 3 Dharmendra Sah came there to stall the cremation of the dead body but the accused persons put a Kulhari on the neck of the informant and threatened that they would kill the informant as well and kept Dharmendra Sah in their confinement. After some time the police, along with P.W. 4 Durga Sah came there seeing which the accused persons ran away from there.

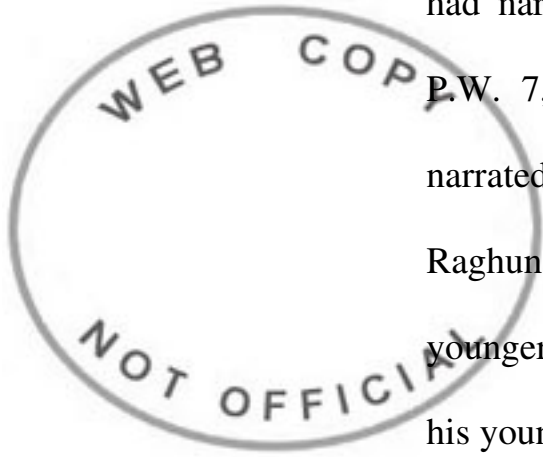
It is the case of the prosecution that P.W. 7 Digamber Prasad, the Officer-in-Charge of Maniari Police Station had arrived

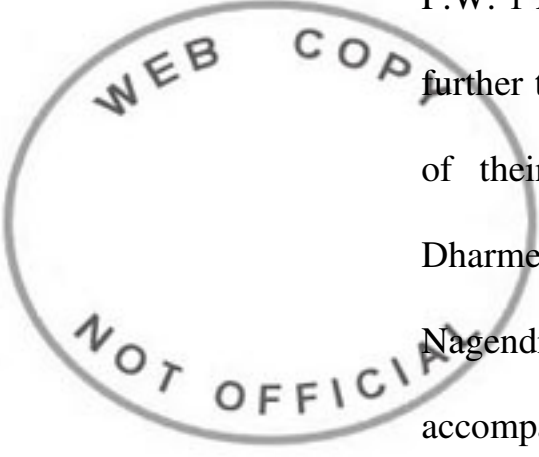
there and had doused the flames of pyre, retrieved the dead body, prepared the inquest report and sent the dead body for post mortem examination to Dr. Manoranjan Kumar Srivastava, (P.W. 8) who stated that the injury inside the neck was ante mortem and the burn was post mortem and the neck muscles were highly congested and the tracheal rings and hyoid bones were found fractured with blood clots on account of physical pressure which could not have been exerted by means of a ligature. Thus, as per P.W. 8 Dr. Manoranjan Kumar Srivastava, Sumitra Devi had been strangled to death.

P.W. 7 Digamber Prasad, the investigating officer, recorded the statements of the witnesses, inspected the place of occurrence, collected the post mortem examination report besides seizing broken bangles, etc. from the cremation ground and finding material sufficient sent the appellants and other accused persons for their trial, which ended in the impugned judgment.

While perusing the record we could find that P.Ws. 1 to 4 were not eye witnesses of the real part of the occurrence, i.e, the killing of Sumitra Devi by strangulation. The eye witness account of the occurrence came from P.W. 5 Sanjit Kumar, and P.W. 6, Dina Kumar, the two brothers who were aged about 11 and 8 years respectively on the date of occurrence and who were sleeping with their mother, Sumitra Devi, in the night intervening 15-16 of

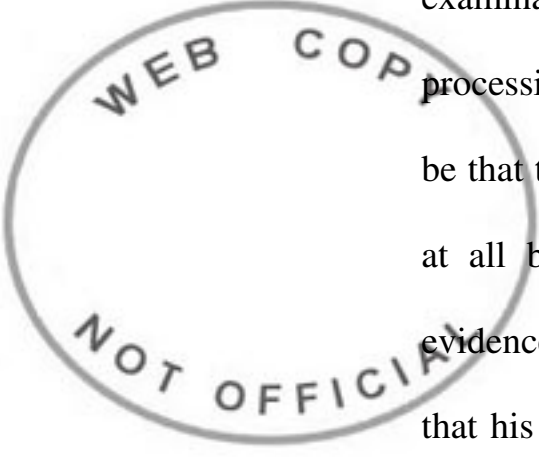
December, 1989. P.W. 5 Sanjit Kumar supported the story which he had narrated in exhibit 4, his fardbeyan, which was recorded by P.W. 7, Sub Inspector of Police, Digamber Prasad, and further narrated the other part of the story of the dead body being carried to Raghunathpur cremation ground for cremation and that he and his younger brother were put under duress by the accused persons and his younger brother, on the refusal of the informant lit the pyre of his mother was forced to lit the same. However, what appears from his evidence is that he was stating that while the funeral procession was going to the cremation ground, he slipped out of the procession to reach the house of Raju Mahto which was about 1-1½ KMs away from the place he had departed for the cremation procession. We could not digest the story given by P.W. 5 that he had slipped out of the cremation procession and had gone to the house of Raju which was situated at a distance of 1-1½ KMs from the cremation ground to return back to the cremation ground for being present there. Even if he had already slipped out of the cremation procession and as such from the duress and confinement of the accused persons, we did not see any particular reason as to why P.W. 5 should return back at the same place which could not have been acceptable to us. Raju Mahto has not been examined and as such we do not have any source to test the claim of P.W. 5 that he had indeed slipped out of the cremation





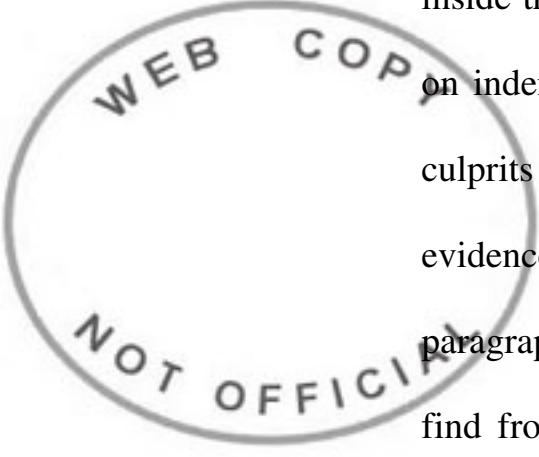
procession to go to his house to ask him to inform maternal uncle P.W. 1 Nagendra Sah about the killing of his mother. What appears further to us is that P.Ws. 5 and 6 were continuously in the custody of their Mamas P.Ws. 2 and 3, namely, Rajendra Sah and Dharmendra Sah respectively, as per the evidence of P.W. 1, Nagendra Sah, and on each day of their evidence, they had been accompanied by their Mamas up to the Court room for giving evidence. They were children aged about 11 and 8 years on the date of occurrence and even on the date they had deposed in Court below P.W. 5 was aged about 14 years and P.W. 6 was aged about 11 years. There is always a tendency in persons to tutor witnesses and if it is a child witness then it is very easy to plant facts in the minds of a child witness by repeatedly telling him a story which he maidly narrates to the Court. This is the reason for the Courts which it is very cautious in appreciating the evidence of a child witness because the children are easily prone to be tutored.

The above fact that P.W. 5 might have been tutored by his maternal uncle like P.Ws. 1, 2 and 3 gets some sort of support from the fact that P.W. 6, Dina Kumar, had indeed supported the prosecution story that his mother was strangled to death, but, he stated that he had not identified the offenders who had entered the room during the night intervening 15-16 of December, 1989, to kill



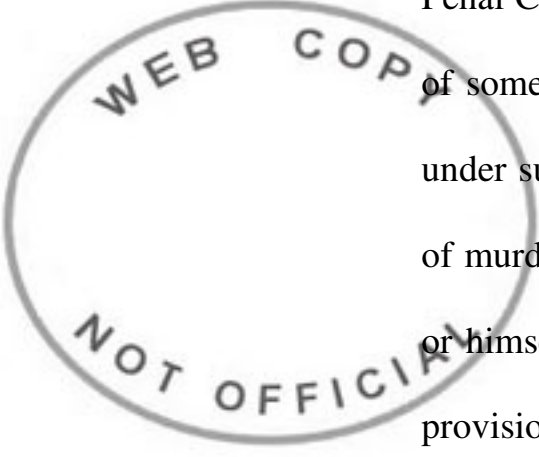
his mother. Not only that the part of his evidence of cross examination indicates as if it could be a normal cremation procession which was taken out by the accused persons and might be that the death had occurred under circumstances which could not at all be natural. That particular inference also arises from the evidence of P.W. 5 in paragraph 54 of his evidence when he stated that his mother used to have regular attacks of epilepsy on account of which she used to fall down from the bed. The villagers who had accompanied the accused persons could never have gone to cremate the dead body if at all they were aware of the fact that the lady had been murdered.

More over, what we find is that if we act upon the evidence of P.W. 5, Sanjit Kumar, then we have to accept that P.W. 6 Dina Kumar was also present inside the room and that appears the most natural situation as children of 8 and 11 years could not be sleeping away from their mother. P.W. 5 has given a story which was different from that narrated by P.W. 6 so much so that P.W. 5 was identifying certain accused persons by seeing certain accused persons but P.W. 6 did not identify any one. Not only that while being cross examined in paragraph 51 of his evidence, P.W. 5 also stated that he had not identified any accused person because he had stated in that paragraph 51 that he had hid himself inside the bed and



he had not exactly seen the faces of the accused who had entered inside the room. Thus, what we find is that the evidence of P.W. 5 on identification of the accused persons and naming them as real culprits as appears from his examination-in-chief part of the evidence gets erased by the evidence of the same witness in paragraph 51. We want to refer to the further circumstance which we find from the evidence of P.W. 5 when he stated the manner of carrying the dead body. As per P.W. 5 the dead body was carried by putting it on a cot, but, during cross-examination he appeared with a different story when he was stating that it was a carriage which was created for carrying the dead body to the cremation ground. The evidence of P.W. 5 as regards the same in his examination-in-chief and in cross examination to creates doubt about the veracity of the witness. In addition to that the evidence of P.W. 6 makes it utterly unsafe to place reliance upon the evidence of P.W. 5 as the natural situation of the two brothers sleeping with their mother makes them the competent witnesses and their conflicting testimony in support of the charges creates a serious circumstance of doubt as regards the charge at all.

In the result, what is obtained by us from the appreciation of the evidence of the two witnesses is that the charge under Section 302/34 of the Indian Penal Code was not proved.



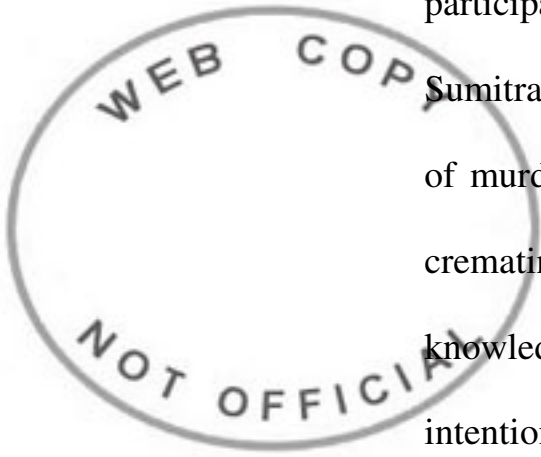
So far as the charge under Section 201 of the Indian Penal Code is concerned, the mere provision speaks of the existence of some reason to believe that an offence had been committed and under such belief some one was causing the offence of commission of murder to disappear with the intention of screening the offenders or himself from legal punishment he has to be punished under that provision. Thus, what appear is that an accused who had been charged under Section 201 of the Penal Code must know that an offence defined and punishment made by the Indian Penal Code has indeed upon committed and the next ingredient which is required to be established is that he had with some knowledge had caused the disappearance of the evidence of an offence. The third ingredient which is required to be established for establishing the charge under Section 201 of the Indian Penal Code was that the evidence of the offence and disappearance thereof have been caused by the accused with an intent either to save himself from a lawful punishment or any one who could be accused of committing that offence.

We have held just now that the prosecution has not succeeded in establishing the fact that an offence under Section 302/34 of the Indian Penal Code was committed by an accused. It is a case in which the prosecution has failed to prove the charges. Even if we had assumed that the charge had been established we

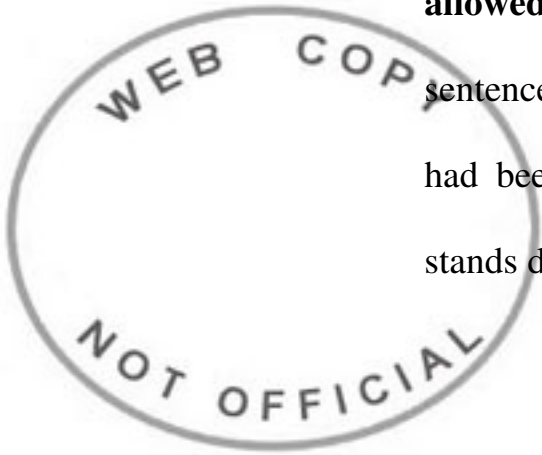
could not find any evidence that those persons who had allegedly participated in the cremation were indeed knowing that murder of Sumitra Devi had been committed and the evidence of that offence of murder, i.e., the dead body was being disposed off by them by cremating, it. There is no evidence that the appellant having the knowledge regarding the commission of the offence of murder had intentionally and knowingly proceeded to dispose of the dead body of the deceased with further intent of screening themselves from lawful punishment. Even they had participated in the cremation of the dead body, they were, that's the appellants in Cr. Appelas no. 253 and 260 both of 1992 were not accused of having caused by any means and in any manner the death of the deceased and as such there was no question of those appellants destroying evidence with an intent to screen them from any lawful punishment.

We have already referred to the evidence in some details and we have already found that the offence of murder and the charge framed against the accused persons does not appear to be established from the evidence of the record.

As such the necessary ingredients of committing offence under Section 201 of the Indian Penal Code, that is, to have the knowledge about the commission of the offence and to cause the disappearance of the dead body appear not established.



In the result, the appeals succeed and the same are **allowed** by setting aside the judgment of conviction and order of sentence. The appellants are acquitted of the charge/charges they had been held guilty of. The appellants are on bail. They shall stands discharged from the liabilities of their respective bonds.



(Dharnidhar Jha, J)

(Gopal Prasad, J)

S.A./PC

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