

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.473 of 2010

(Against the Judgment of Conviction dated 25.03.2010 and Order of sentence dated 26.03.2010 passed by the Second Additional District and Sessions Judge, Gaya, in Sessions Trial No.267 of 2009/762 of 2008).

Chandan Mandal, son of Satyaranjan Mandal, resident of village-Chanchli, P.S. Muraroie, District-Virbhum(West Bengal).

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :

For the Appellant : Mr. Rajesh Kumar, Amicus Curiae.

For the State : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 27-10-2015

The sole Appellant has been convicted vide Judgment dated 25.03.2010 passed by the Second Additional District and Sessions Judge, Gaya, in Sessions Trial No.267 of 2009/762 of 2008 under Section 302 of the Indian Penal Code and was sentenced vide Order dated 26.03.2010 to undergo rigorous imprisonment for life and fine of Rs.3000/-, in default of which further simple imprisonment for three months. He has also been convicted under Section 452 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and fine of Rs.3000/-, in default of which once again simple imprisonment for a period of three months.

2. The case of the prosecution, according to the Informant

Priyatosh Das (P.W.7), is that he used to work in Bharat Sewaashram Sangh, the President of which was Swami Agwanand and the Deputy President was Swami Thirthesanand and the Cashier was Swami Agwanand, who had gone to Kashmir on 31.07.2007. The affairs of the Sangh was being managed by Swami Thirthesanand (deceased), who used to live in a room by the side of the of the room of other office bearers. Next to him was the room of the present Appellant who used to cook the food in the Ashram. On 06.08.2007 at around 01.30 P.M., as usual, bell rang for payment of salary and for taking lunch and all the members came to take the lunch but Swamiji did not come. At around 02.00 P.M., he, Swami Thirthesanand (deceased) and Swami Chiratmanand went together to take lunch and after taking lunch Swami Thirthesanand and Swami Chiratmanand retired to their respective rooms to sleep. Then the Informant, Baidyanath Mana (cook), Baijoram (Sweeper), Parwatia Devi (Sweeper) at around 04.20 P.M. went to ask for their wages from Swami Thirthesanand and called out to him from outside his door but they did not hear any sound. Then Swami Chiratmanandji pushed the door open and they found Swamiji lying on a 'Chowki' with his neck cut and blood scattered on the floor around the wall. He suspected that some one after hatching a deep conspiracy had committed the murder of Swami Thirthesanand and his estimation the occurrence had taken place in between 02.00 P.M. to

04.00 P.M. His statement was recorded at about 06.00 P.M. on the same day by P.W.11 on the basis of which the F.I.R. was instituted against unknown.

3. During trial, the prosecution examined altogether 12 witnesses.

4. P.W.1 Srishthi Haldar stated that he was a cook in the Sewaashram and corroborates the factum of occurrence. He further stated that on information the police alongwith the police dog had come which had entered the room of the Appellant and recovered a 'Fasuli', which was taken away by the police. The Appellant was arrested then and there and a seizure list was also prepared of which he was also a witness. However, he further stated that he did not sign any document but had been examined by the police but did not know as to what it had got done. He was unable to explain since when the Appellant had been working as a cook in the Sewaashram. He further stated that in the room of Chandan Mandal, another person also used to stay.

5. P.W.2 Chiratmanand stated that on the date of occurrence 4 to 5 persons had gone to the room of Swami Thirthesanand to take payment but he did not reply, so he pushed the door open and found that Swamiji was lying on a 'Chowki' with his neck cut and blood splattered on the floor and wall. The police was informed at which it came alongwith a police dog, which entered the



room of the Appellant Chandan Mandal where he was found lying down. One 'Fasuli' was recovered from the room of the Appellant which had been washed off which was seized. The clothes of Chandan Mandal were also found blood splattered which was also seized by the police. He stated that the Appellant was staying in the Sewasashram since last 3-4 years and cooking the food there but it was not part of his duty to look after the deceased. He further stated that the door of the deceased had been found closed from inside, which had been forced open by some persons. He stated that there were 4-5 rooms next to that of the deceased and number of Swamijees used to live in the said rooms. He, however, stated the articles had been seized in his presence but he had not signed any document nor did he find anyone else doing the same. He further stated that the deceased did not have any animosity with any one.

6. P.W.3 Swami Agwanand is a tendered witness. He has merely stated that he had got information that the Appellant had murdered the deceased.

7. P.W.4. Swami Shobhanand stated that on 06.08.2007 at around 04.00-04.30 P.M. Swami Sanghitanand and Das Babu told him that Swami Thirthesanand had been murdered. Then he went to his room on the second floor and found him dead. He stated that the salary is disbursed to the employees on 5th of every month and the



salary was to be disbursed to the employees which was not done and salary was going to be disbursed on 06.08.2007, i.e., one day later. The Appellant had been demanding his wages since morning and saying then he would go away. At around 04.00 P.M. Swamiji was murdered, the information of which was given to the police. The police searched the room of the Appellant and found a 'Fasuli' upon which seizure list was prepared in his presence and he signed the same as a witness, marked as Ext.1. Police also recovered blood stained clothes of the Appellant and prepared the seizure list marked as Ext.1/1 and his signature as Ext.1/2. In his cross examination, he stated that he did not know as to who had murdered Swamiji. He once again stated that the Appellant was demanding his wages and that he himself used to live in the ground floor whereas the deceased on the second floor. Other Swamijees used to live beside the room of the deceased. He stated that the Appellant used to cook and also look after the deceased Swamiji and used to often come to the Ashram for the last 3-4 years and work there. He stated that he himself did not read the contents of the seizure list.

8. P.W.5 Swami Punayanand alias Krishna Maharaj stated that on 06.08.2007 he received information on telephone that Chandan Mandal had committed the murder of the deceased and confessed the same before the police and narrated as to how he had done so. He also

learnt that a 'Fasuli' with which vegetable was cut was recovered from the Appellant. In his cross examination, he has not stated anything importance.

9. P.W.6 Baidyanath Mana stated that he learnt that Appellant had committed the murder of the deceased. He stated that the Appellant used to work with him as a cook and that the Appellant had not given any statement to the police in his presence. He stated that he used to work in the kitchen since even before the Appellant.

10. P.W.7 Priyatosh Das is the Informant, who stated that it was the practice of the Ashram to disburse the payment on 5th day of every month but it was not done and the scheduled date was 6th. At around 04.00 P.M. he alongwith others went to the room of the deceased and called the deceased for salary but on getting no reply, the door was pushed open and it was found that the deceased was lying in a blood splattered condition. The police had come after the occurrence and found 'Fasuli' from the wooden box from the room of the Appellant and blood stained clothes of which seizure lists were prepared marked as Exts.1/2 to 1/5. Describing the place of occurrence, he stated that the number of other Swamijeas used to reside next to the room of the deceased and other Swamijeas had returned to their respective rooms after lunch. Even though he supported that the occurrence had taken place at the Ashram but did not state about

hearing of any sound. He further clarified that some sounds may have been heard in the adjacent rooms. He once again stated that number of Swamijees used to reside in the rooms next to the room of the deceased and there was bathroom and store room also on the same floor.

11. P.W.8 Swami Sanghitanand stated that on the date of occurrence he was in the office of Bharat Sewaashram Sangh and at about 04.00-4.30 P.M., the Informant informed him that the deceased had been murdered at which he went and found the news confirmed. The police was then informed which came and recovered the 'Fasuli' from the room of the Appellant and arrested him. In his cross examination, he stated that he could not give the time of occurrence as when he went, he found the door already opened and that none of the Swamijees, who used to reside next to the deceased, had learnt about the occurrence. He further stated that there was only one main door of entry in the room of the deceased and that the case was instituted at his instance.

12. P.W.9 Baiju Ram stated that on the date of occurrence he had gone to demand his wages from the deceased and when they knocked at his door and they received no answer so they pushed the door open and found him murdered. The police was informed which came with a police dog which started barking at the Appellant Chandan Mandal. Thereafter, one 'Fasuli' was recovered from the room of the

Appellant. He stated that he was not in the Ashram when the police dog had come and nothing was recovered from his possession in his presence.

13. P.W.10 Dr. Parma Nand Sinha conducted the post-mortem examination of the deceased on 07.08.2007 and found the following injuries on his person:

- (i). Incised wound 6" X 1/4" X bone deep at front of neck at the level of thyroid extending from the level of left mastoid up to the right side of the neck one inch(1") below mandibular angle. All the intervening structures were found sharply cut with gapping all around and tailing on right side. Depth was less on right side. The vessels, nerves and muscle were also sharply cut. Dark blood clots were present in and around wounds. Bones were, however, intact.
- (ii). Incised wound 1/2" X 1/4" X bond deep at the left anterior chest wall upper part 1" below lateral end of left clavicle in the third intercostals space.

He stated that death was on account of the injuries caused by sharp cutting weapon.

14. P.W.11 Md. Zamiruddin is the Investigating Officer who stated that on 06.08.2007 he got information that Swami Thirthesanand had been murdered at which he recorded the statement of the Informant Priyatosh Das (P.W.7). He proved the Fardbeyan (Ext.3) and, thereafter, started the investigation. He described the place

of occurrence being in Bharat Sewaashram Sangh Campus of which he made a map (Ext.4). He stated that on the top floor there was one room which was on the eastern side and number of rooms were located on the same floor and next to the room of the deceased, Swami Chintamayanand used to reside. He stated that in the room of the Appellant there were two 'Chowkies' and one wooden box in which blankets etc. of the Ashram were kept and on top of the box the clothes of the Appellant were found. He found blood scattered on the floor and the blood splattered articles. He then prepared the inquest report and sent the dead body for post-mortem examination. He looked for the Appellant Chandan Mandal who was sitting quietly in the kitchen. He was brought to the upper floor where he gave a confessional statement which was duly recorded by him marked as Ext.5. On his pointing out, one 'Fasuli' was recovered from his room of which a seizure list was prepared. His personal clothes etc. were also found blood splattered, which was also seized. He recovered some cash from the room of the deceased of which seizure list was prepared. He stated that he had sent the blood stained clothes of the deceased and that of the Appellant for forensic testing. In his cross examination he stated that the clothes which were found in the room of the Appellant was not blood stained but those which he had been wearing were found blood stained. He stated that he did not get any witness to sign on the seizure list nor he

recorded their statement. He did not get the edge of the 'Fasuli' tested nor he did get finger prints on the same tested because it had already been washed.

15. P.W.12 Baban Ram who is Police Constable has stated that on 06.08.2007 he had gone with a dog to Bharat Sewaashram Sangh which had entered the room of the Appellant after sniffing the blood, which was, thereafter, noted down marked as Ext.7. In cross examination he stated that he had not noted as to from where the police had come. He stated that no incriminating articles was recovered from the room of the deceased nor did the dog sniff anything which could have led to the culprit.

16. From the evidence, discussed above, we find that there is no direct evidence suggesting the complicity of the Appellant, however the following circumstances emerge, which are required to be tested.

(i). The fact that the Appellant was living next to the room of the deceased.

(ii). The police dog had entered the room of the Appellant.

(iii). The clothes of the Appellant were found blood stained.

(iv). A 'Fasuli' was recovered from the box lying in the room of the Appellant.

17(i). As far as the first circumstance is concerned, we find

that the positive statement of P.W.1 Sristhi Haldar is that another person used to reside in the said room with the Appellant, which thus proves that the room was not in exclusive possession of the Appellant.

17(ii). As far as the second circumstance is concerned, we find that the Investigating Officer has not mentioned the police dog having been put into action to locate the culprit. This is unexplainable since it was expected that the Investigating Officer alone and none other would have requisitioned the police dog. We also find that the fardbeyan (Ext.3) has been given at 06.00 P.M. and that is the time noted about the police dog having led to the Appellant is also 6 P.M. but this fact is not mentioned in the fardbeyan which makes this story unreliable.

17(iii) (iv). As far as third and fourth circumstances are concerned, we find that Exts.6/1 and 6/2, which are the seizure lists prepared at 08.40 and 08.50 P.M. on the same date in respect to a 'Fasuli' kept in a wooden box in the room of the Appellant and blood stained clothes found on his person. From the Ext.6/1, we find that the Appellant has signed in English as 'Chandan Mandal' whereas in Ext.6/2 we find that he has done so in Hindi and that one copy is received by him. This makes the preparation of the two seizure lists highly suspicious. Further, on both the seizure lists, we find that Swami Shobhanand and Priyatosh Das, P.Ws.4 and 7 respectively had signed

as witnesses. However, P.W.4, Swami Shobhanand in Court stated that he did not read the contents of the documents. P.W.7 merely stated that he had signed on the seizure list but not specifically that the articles were recovered in his presence. As far the relevance of these seized articles it would have to be tested in the light of the Forensic Science Report marked Ext.8. We find from the same that it merely says that articles contained blood. It does not say that the blood recovered from the clothes of the Appellant and the 'Fasuli' matched with that of the blood stains recovered from the room of the deceased. We also find from the evidence of Investigating Officer that when he came to the place of occurrence, the Appellant was found sitting quietly in the kitchen which is not normal conduct of an accused who despite all opportunities to run away in the meanwhile would still be around. It is also not believable that he would still be wearing the same blood stained clothes making himself further vulnerable to suspicion and arrest. We find that there is complete absence of motive. In the circumstances, when the Appellant used to cook in the Ashram for the last 3-4 years and also used to look after the deceased what was the immediate motive for such an act is not explained which is important in a case based on circumstantial evidence. The map which has been prepared by the Investigating Officer also does not explain as to where the deceased was residing and, hence, the oral statement that the

Appellant used to reside in a room next to him does not appear to be very probable when the rest of the rooms were being occupied by the Swamijees, who belonged to another category of residents of the Ashram.

18. For the reasons aforesaid, we are inclined to hold that even though the above circumstances against the Appellant do not point conclusively to his guilt we are inclined to give him benefit of doubt.

19. In the result, this appeal is allowed. The impugned Judgment of conviction and Order of sentence passed against the Appellant is set aside. Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/N.A.F.R.

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