

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.384 of 2007

Arising Out of P.S.Case No.99 Year 1996 Thana -Konch District- GAYA

Sheo Paswan son of Krit Paswan, resident of village-Konch police station Konch, District-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 161 of 2007

Arising Out of P.S.Case No.99 Year 1996 Thana -Konch District- GAYA

Sharwan Das son of Ram Chandra Das, resident of village-Konch, P.S. Konch, District-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 183 of 2007

Arising Out of P.S.Case No.99 Year 1996 Thana -Konch District- GAYA

Sanjay Sao son of Ram Dayal Sao, resident of village-Konch, P.S. Konch, District-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 368 of 2007

Arising Out of P.S.Case No.99 Year 1996 Thana -Konch District- GAYA

1. Kamaldeo Das son of Jamun Das, resident of village-Konch, P.S. and District-Gaya.
2. Uday Paswan son of Late Baldeo Paswan, resident of village-Konch, P.S. and District-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 384 of 2007)

For the Appellant/s : Shri Parwez Ahmad, Advocate.

For the Respondent/s : Shri Dilip Kumar Sinha, APP.

(In CR. APP (DB) Nos. 161/183 of 2007)

For the Appellant/s : S/Shri Kali Kant Jha,
Abhay Kumar Thakur,
Manish Jha, Advocates.

For the Respondent/s : Shri Dilip Kumar Sinha, APP
(In CR. APP (DB) No. 368 of 2007)
For the Appellant/s : Shri Sunil Kumar Yadav, Advocate.
For the Respondent/s : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
(Per: HONOURABLE SHRI JUSTICE ADITYA KUMAR TRIVEDI)
Date: 19-02-2015

Cr. Appeal (DB) No. 384/2007 wherein Sheo Paswan happens to be the appellant, Cr. Appeal (DB) No. 161/2007 wherein Sharwan Das happens to be the appellant, Cr. Appeal (DB) No. 183/2007 wherein Sanjay Sao happens to be the appellant and Cr. Appeal (DB) No. 368/2007 wherein Kamaldeo Das and Uday Paswan are the appellants commonly originate against the judgment of conviction dated 13th January 2007 and order of sentence dated 16th January 2007 passed by Additional Sessions Judge-FTC- 2nd Gaya in Sessions Trial No. 296/2005/397/1998 convicting all the appellants for an offence punishable under Sections 364A/149 IPC and directing each one to undergo RI for life along with fine of Rs.10,000/- in default thereof to undergo SI for five years, under Sections 302/149 IPC, each one has been directed to undergo RI for life as well as fine of Rs.10,000/- in default thereof, to undergo SI for five years, under Section 201/149 IPC and each one has been directed to undergo RI for three years and further directed to run the sentences concurrently, on account thereof, have been heard analogously and are being disposed of by a common judgment.



2. PW-9, Nand Kishore Prasad filed a written report on 14.12.1996 alleging *inter alia* that in the night of 12.12.1996 on the eve of marriage of daughter of his co-villager, Ishwar Chand Gupta, Barat had arrived. He along with his other family members had gone to participate. While dance was going on, he with his brothers, Ashok Kumar and Guddu Kumar along with others were witnessing the same but in between the night of 12/13.12.1996 at about 2:00 a.m., he along with his brother Guddu Kumar returned back while Ashok remained there. He (Ashok) did not return even on the following day and on account thereof, hectic search was made which gone futile. As such, he apprehended against unknown accused to have kidnapped his brother, Ashok for some ulterior motive.

3. After registration of case bearing Konch PS Case No.99/1996, investigation followed. It is apparent that during course of investigation, appellants along with others were apprehended and it has further been alleged that dead body was recovered at the instance of appellants whereupon charge-sheet against the appellants were filed, led to conduction of trial, meeting with ultimate result, the subject matter of instant appeal.

4. The defence case, as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial as well as of false implication. However, neither any DW nor any kind of document has been

exhibited on behalf of defence.

5. In order to substantiate its case, the prosecution had examined altogether ten PWs out of whom PW-1, Pankaj Kumar, PW-2, Bhola Sharma @ Bhola Singh, PW-3, Naresh Singh, PW-4, Arvind Kumar Gupta, PW-5, Dr. Mithilesh Kumar Sinha, PW-6, Bikash Kumar, PW-7, Shyam Kishore Singh, PW-8, Urmila Devi, PW-9, Nand Kishor Prasad and PW-10, Ram Bachan Singh. Also exhibited Ext-1, search-cum-seizure list, Ext-2, Fard-e-beyan, Ext-3, Postmortem report, Ext-4, endorsement over written report, Ext-5, formal First Information Report, Ext-6, inquest report.

6. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that none is an eyewitness to occurrence. Being so, this case rests upon the circumstantial evidence and for that, there should be proper linkage of the events. From the evidence as adduced on behalf of prosecution, it is apparent that there happens to be breakage of link at every crucial juncture and on account thereof, it could safely be held that prosecution had failed to substantiate its case. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court appears to be perverse as well as arbitrary.

7. On the other hand, learned APP opposed the prayer and submitted that the learned trial court had assigned valid as well as legal reason for concluding and arriving the appellants to be guilty of

the offence whereunder they have been convicted and sentenced. Hence, judgment and order impugned did not attract interference.

8. In order to adjudge the finding and sentence recorded by the learned trial court, evidence of PWs have minutely been gone through. It is evident therefrom that PWs-1, 3 and 4 have simply stated that while dance was going on, they had seen PWs-6 and 9 along with victim, Ashok Kumar. They had also seen the appellants. PW-8 is the mother of Ashok Kumar who had not divulged anything incriminating against appellants. PW-6 and PW-9 are the brothers of Ashok out of whom PW-9 is the informant. PW-6 had stated that while he along with PW-9 was sitting while dance was going on. Accused, Sanjay had gone outside and then called his brother, Ashok who also joined and then he also called the other accused. That part of evidence, as it appears from his conduct has, later on, been introduced in the background of the fact that this PW-6 had stated during his cross-examination under para-10 that he had also accompanied PW-9 to the PS during course of informing the police, however, the aforesaid theme is neither present in the written report nor PW-9, Nand Kishore Prasad had introduced the aforesaid theme during his evidence. PW-9 did not say anything against the appellants.

9. Now coming to the evidence PW-10, the Investigating Officer, it is evident that while he was investigating the case on the basis of confidential information, he had apprehended accused



persons, namely, Kamaldeo Das, Sheo Paswan, Sanjay Sao and Sharwan Das. They were taken to the police station, interrogated and during course thereof, Sheo Paswan, Kamaldeo Das and Sanjay Sao had confessed their guilt as well as also disclosed the names of their associates, Udai Paswan and Sharvan Das. They have further confessed that they, after causing murder of Ashok Kumar concealed his dead body in a well. However, the aforesaid theme has become suspicious in the background of his disclosure on cross-examination under para-16 wherein he had stated that Sheo Paswan and Kamaldeo Das have not disclosed that Sanjay Sao after committing murder concealed the dead body in a well. In likewise manner, Sanjay Sao had also not confessed that he after committing murder put the dead body in the well.

10. At the present moment, the evidence of PW-2, one of the search and seizure list witnesses has also be looked into. In para-2 of his examination-in-chief, he had stated that Investigating Officer had come along with appellant, Sheo Paswan and Kamaldeo Das and the dead body was taken out from the well. That means to say, having conjoint reading of para-9 of PW-10 as well as para-2 of PW-2, it is apparent that police had come near the well along with all the three accused, namely, Sheo Paswan, Kamaldeo Das and Sanjay Sao while PW-2 had confined only to the extent of Sheo Paswan and Kamaldeo Das. From para-5 of his cross-examination, it is evident that he had

disclosed that in his presence Sheo Paswan had confessed that the dead body is inside the well which is not at all found corroborated with the evidence of P.W.10, the I.O.

11. Apart from this, so alleged confessional statement of any of the accused has not been brought up on record and in likewise manner, if para-9 of the deposition of P.W.10 is gone through, there happens to be conjoint way of inculpatory extra-judicial confessional statement as flashed by the I.O. himself. Therefore, in the background of aforesaid clumsy situation, it is difficult to pin point any of the accused in terms of Section 27 of the Evidence Act to infer that on his pointing out the dead body was recovered. Moreover, the theme of inculpatory extra-judicial confessional statement followed with recovery of the dead body have not been taken into account as an incriminating material as those incriminating materials have not been confronted to any of the appellants during course of statement recorded under Section 313 of the Cr.P.C. It happens to be settled at rest that the incriminating material if any, would not be used against an accused in case, is not confronted with during course of statement recorded under Section 313 Cr.P.C.

12. In the aforesaid background, the evidence of P.W.5, the Dr. Mithilesh Kumar Sinha who had conducted autopsy on the dead body of deceased Ashok Kumar has lost its relevance, even if, the death being a homicide.

13. Having our anxious and minute analysis of the evidence available on the record, it is apparent that the prosecution could not be able to substantiate its case by way of chain of circumstance and that being so, it looks difficult to concur with the finding arrived at by the learned trial Court.

14. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial Court is set aside. All the four appeals are allowed.

15. Since appellants Sharwan Das, Sanjay Sao, Kamaldeo Das and Uday Paswan are on bail, they are discharged from the liabilities of bail bond. While appellant Sheo Paswan is in custody, he is directed to be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

Brajesh Kr/Perwez

(Aditya Kumar Trivedi, J)

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