

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.593 of 2009

Arising out of PS.Case No.-64 Year-2007 Thana-Shikarpur District-
WESTCHAMPARAN (BETTIAH)

- =====
1. Dhruv Pandit, Son of Dinanath Pandit, Resident of Village Malda, P.S. Shikarpur, District West Champaran.
 2. Firoj Miya, Son of Salim Mian, Resident of Village Suar Chhap Pipra, P.S. Lauriya, District West Champaran.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Shri Baxi S.R.P. Sinha, Sr. Advocate
Shri Zainul Abedin, Advocate

For the State : Shri 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: 17-04-2015

The present appeal is directed against judgment of conviction dated the 20th May, 2009, passed in Sessions Trial No. 376 of 2007 by the learned Additional Sessions Judge-IV, West Champaran at Bettiah by which the two appellants were held guilty of committing offences under Sections 302, 201 and 120B of the Indian Penal Code. The appellants were heard on sentence on the 23rd of May, 2009 and each of them was directed to suffer rigorous imprisonment for life, rigorous imprisonment for three years and rigorous imprisonment for life under the three respective counts they had been held guilty.

2. A dead body was located at village Tumkariya within police station Shikarpur in the district of West Champaran by



Dafadar Virendra Mani Tiwary (P.W.8) and he made a report to the police station. The *fardbeyan* of P.W.8 (Ext.2) was recorded by Nishant Kumar Tiwary (P.W.4), the Probationer Assistant Superintendent of Police who was acting as Officer-in-Charge of the police station and on that basis the First Information Report of the case, i.e., Ext.3 was drawn up. P.W.4 himself took up the investigation and during that course he held inquest upon the dead body and sent the same for post mortem examination.

3. It appears that for quite sometimes the identity of the dead body could not be established and as may appear from the evidence of P.Ws. 5, 7 and 11, i.e., Madan Pandit, Ravindra Pandit and Ranti Devi. Some advertisement was put into some newspapers with the photograph of the deceased which attracted the three above said witnesses to come to the police station Shikarpur. The police showed the clothes which were found on the dead body and by looking at them, the three witnesses, i.e., P.Ws. 5, 7 and 11 who happened to be the father-in-law, Sala and wife of the deceased identified the clothes and thus, the identification of the dead body was established as that of Jag Pandit who happened to be the full brother of appellant Dhruv Pandit.

4. There was a turn in the investigation. Dhruv Pandit was arrest and he confessed to his guilt, as per the police, and led it to recover the clothes which were identified by P.Ws. 5, 7 and 11. Appellant Dhruv Pandit gave statement to the police in which he

pointed out that he hired appellant no. 2 Firoj Miya and had paid Rs. 1,000/- for killing his brother and the said Firoj Miya, as per the Investigating Officer (P.W.4) led him to recover a bag which was lying near the house of one Savita Devi from which a knife said to be stained with blood was recovered.

5. The statement of Ranti Devi (P.W.11) indicated to the police that her husband had gone in company of the two appellants from his house telling her that he was going to purchase bullock-cart tyre and he did not return. On inquiry appellant Dhruv Pandit stated to P.W. 11 that her husband had gone to the house of appellant Firoj Miya. These evidences came quite sometimes after the holding of the post mortem examination and the stage of confusion had ended after the establishment of the identity of the dead body.

6. However, if the recovery of clothes were indeed made as per the information which was received by P.W.4 from Dhruv Pandit and that too from his house as appears told by P.Ws. 9 and 10 Kiran Devi and her husband Subh Narayan Kushwaha then we could not still digest as to how the doctor had found the same on the dead body. This is one evidence which is very well recorded by Dr. Sarangdhar Jha (P.W.12) in the post mortem report (Ext.9) when he was writing that the dead body along with clothes etc. as per the inquest had been handed over to the accompanying police. If the police itself had the custody of the clothes which were on the dead body then the



larger question remained to be answered by the prosecution was as to how it could reach the house of Dhruv Pandit so as to be recovered, as per the claim of the police, from his house at being pointed out by him. This unanswered riddle creates a serious doubt as regards the veracity of the prosecution case. Moreover while examining the records, we found that that particular circumstance which was raised by the learned trial judge in convicting appellant Dhruv Pandit that he led the police to the discovery of the clothes belonging to the deceased from his possession was not put to him and, as such, the trial, in our opinion, got vitiated on account of the non-application of Section 313 Cr.P.C.

7. Many witnesses, like, P.Ws. 5, 7 and 11 had come to say that Dhruv Pandit had strong motive for killing his brother who was issueless and who was asked by appellant Dhruv Pandit to relinquish his land in his favour. Evidence also suggested as if he had paid Rs. 1,000/- to hire the killer, i.e., appellant no. 2 Firoj Miya and one of the notes of Rs. 500/- denomination was produced by appellant Firoj Miya but again except the confession of Firoj Miya made before the police there was nothing on record to indicate that the currency which was produced by appellant Firoj Miya had been given to Firoj Miya by appellant Dhruv Pandit. It is very difficult to say considering the quantum of the amount that it could not be found in possession of a person like Firoj Miya. As regards the case of Firoj Miya, as per the prosecution evidence, he was a hired killer and as appears from the



cross-examination part evidence of P.W.4, the Investigating Officer he led him to a place which was a *Jhopri* near the house of certain Savita Devi from inside which a bag was recovered and a *Chhura* said to have been used in killing the deceased was recovered from inside the bag. The Investigating Officer has admitted that merely by looking at the stain which was appearing on the knife, he inferred that it could be blood stain and he did not send the knife for chemical examination. Any confession was recorded by P.W.4 or any authority or any police officer which had led to the recovery of that bag from the *Jhola* near the house of Savita Devi or the recovery ultimately of the knife, is completely absent from the record. Thus, we again find ourselves in a state of suspicion as to how P.W.4 took appellant Firoj Miya to that particular *Jhopri* so as to recover firstly the bag and thereafter, the *Chhura*. These are some of the riddles the prosecution could not unfold before us by satisfactorily explaining to us from the evidence the connection between the killer and the weapon.

8. The learned trial judge wrote a very long judgment, but lastly was using the confession made by the accused persons made before the police. While perusing some parts of the judgment, like, paragraph-14 of it, we were simply perturbed to find that statement which was clearly hit by the mischief of Sections 24 to 26 or even other provisions of that particular series of sections on confession of an accused were used by the learned judge in raising inferences though the

very statements were inadmissible.

9. The wife had said that the two appellants had taken the deceased with them for purchasing the tyre for a bullock cart, but if it was so and if the deceased had not returned in spite of an attempt made by her to trace him out, we could not find as to why she was sitting tight. Her evidence indicated as did the evidence of P.Ws. 5 and 7 that she had gone to her *Maika* and had informed her father and brother and they all come. Her own evidence was that they came to the police station and lodged the report also. We could not know as to what happened of that record which could have been made on the statement of the lady as we were anxious to know as to what was the initial version given to the police initially.

10. The evidence of being seen last in the company of the accused is too weak to sustain conviction. The motive was there for Dhruv Pandit but during cross-examination P.W.11 pointed out that there was a partition long time back in the family and the appellant Dhruv Pandit had never demanded any parcel of the land which had fallen in the share of her husband. Thus, the motive part of the prosecution story also gets suspect.

11. Considering these aspects of the case which arise from the material evidence adduced by the prosecution, we are of the view that the prosecution has failed miserably to bring the charges home the two appellants. The appellants, as such, deserve to be

acquitted and they are acquitted by altering the judgment and setting aside the judgment of conviction and order of sentence. The appellants are acquitted of the charges they had been held guilty of. The two appellants are in custody. They shall be released forthwith if not wanted in any other case.

12. We want to point out the need of training of judicial officers on their sentencing jurisdiction. Only yesterday we had found that a judge in the rank of Sessions Judge had directed the accused persons to suffer rigorous imprisonment and had again directed that the sentences shall be simple which were completely contrary to the provisions of Section 53-A. In the present case the learned judge had held the two appellants guilty of committing offences under Sections, 302, 201 and 120B of the Indian Penal Code which offences have necessarily to be accompanied by the sentence of fine but what did he do was to consolidatedly impose a fine of Rs. 5,000/- on each of the two appellants on all counts. It was an approach completely erroneous as regards the exercise of sentencing jurisdiction by a judge. Sentences for the three counts under which the appellants had been convicted carry substantive sentence of imprisonment each as also sentence of fine. It was required as appears from Section 354 Cr.P.C. that when the learned judge was convicting the appellants of these three offences, he ought to have specified the sentence of fine separately under each of the three heads of conviction. We feel that it is high time that the Bihar

Judicial Academy undertakes a work shop of officers who man the courts of sessions so as to sensitizing them on the jurisdiction of their sentences.

13. Let a copy of this judgment be communicated to the Bihar Judicial Academy for needful with a copy of the impugned judgment.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Sanjay/N.A.F.R.

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