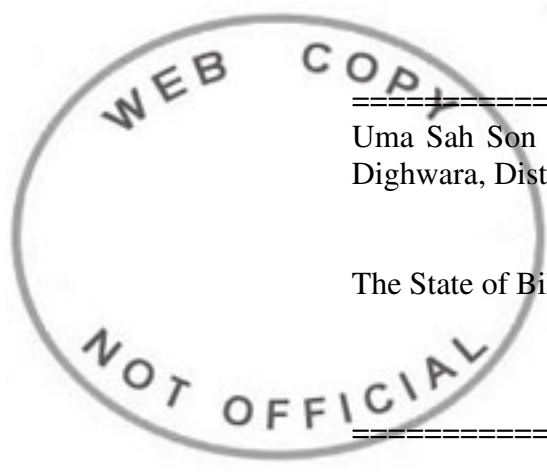




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.670 of 2010

Arising Out of PS.Case No. -75 Year- 2005 Thana -Dighwara District- SARAN

Uma Sah Son of Late Banarshi Sah, resident of Village- Saidpur Dighwara, P.S. Dighwara, District-Saran.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 5 of 2014

Arising Out of PS.Case No. -75 Year- 2005 Thana -DIGHWARA District- SARAN

Sila Sah S/O Late Banarasi Sah Resident Of Village- Saidpur (Dighwara), District-Saran (Chapra) Bihar.

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :
(In CR. APP (DB) No. 670 of 2010)

For the Appellant : Mr. Jitendra Narain Sinha, Advocate.
Mrs. Kumari Vandana, Advocate.

For the Respondent-State : Mr. A.K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.
For the Informant : Mr. Binod Kumar Sinha, Advocate.

(In CR. APP (DB) No. 5 of 2014)

For the Appellant : Mr. Manoj Kumar, Advocate.
Mr. Raj Narayan Mishra, Advocate.
For the Respondent-State : Mr. A.K. Sinha, A.P.P.
Mr. S.C. Mishra, A.P.P.
For the Informant : Mr. Binod Kumar Sinha, Advocate.

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 04-09-2015

Both these appeals arise out of the judgment and order

dated 20/23rd April, 2010 passed by the Additional District & Sessions Judge, Fast Track Court-1st, Chapra, Saran in Sessions Trial No. 311 of 2006, whereunder the appellants have been convicted for the offence under sections 302/34, 201 of the Penal Code and sentenced to suffer rigorous imprisonment for life, three years rigorous imprisonment and also to pay a fine of Rs. 5,000/- each under the two counts, in default of payment of fine to suffer R.I. for one year also. The sentences, however, have been directed to run concurrently.

2. The prosecution case as set out in the fardbeyan of Raj Kishore Prasad Patwa, resident of Saidpur Dighwara recorded by S.I. S.N. Ram at Dighwara Police Station on 26.09.2005 at 9.30 hours in the field of Shiva Shankar Singh of Saidpur Dighwara village is that on 25.09.2005 around 7.30 P.M. his son Ratan Patwa aged about three years was sitting in front of his entrance door and the informant was operating flour mill, meanwhile his daughter Pratima Kumari aged about eight years came and asked him about the whereabouts of her younger brother. The informant told her he must be inside the house, daughter however told him that he is not there, whereafter the informant and his brother Nand Kishore Patwa moved around with the villagers in search of him but he could not be traced though search continued between 9 P.M. to 12 mid night. Announcement through loudspeaker was also made for tracing the child but he could not be



traced. Again in the morning at 6 A.M. loudspeaker announcement was made for searching out the boy. When the informant was about to approach the police station his nephew Ranjeet Patwa came running and informed him that the dead body of Ratan Patwa with cut injury on the neck is lying in the Janera (Masuria) field of Shiva Shankar Singh, whereafter the informant went to the field of Shiva Shankar Singh and saw the dead body of his son with cut injury on the neck. In the fardbeyan the informant also stated that 15-20 days earlier co-villager Sila Sah had knocked his son Ratan Patwa from the platform in front of the house for which he registered complaint against his brother to Raj Kishore Sah and Uma Sah whereafter Sila Sah threatened him that he shall destroy him. In the last paragraph of the fardbeyan the informant claimed that his son Ratan Patwa has been killed by Sila Sah and his associates. He also stated in the fardbeyan that contents of the fardbeyan has been read over to him and having found the contents correctly recorded he put his signature over the fardbeyan in presence of his brother Rajendra Prasad Patwa who also put his signature over the fardbeyan. Scribe of the fardbeyan, Officer Incharge, Dighwara Police Station forwarded the fardbeyan to the police station for registration observing that he has already taken up investigation of the case. Before registration of the fardbeyan as F.I.R. inquest proceeding was conducted over the dead body of Ratan Patwa



in the field of Shiv Shankar Singh. Perusal of the inquest report indicates that the same was made in presence of Ram Gopal Rai and Nand Kishore Prasad Patwa and that Ratan Patwa died because of cut injury on his neck. After inquest proceeding the dead body of Ratan Patwa was sent to Sadar Hospital, Chapra for postmortem and his postmortem was conducted on 26.09.2005 at 3.25 P.M. The postmortem report also confirmed that neck of Ratan Patwa was slit open interiorly approximately $2/3^{\text{rd}}$ circumference at the level of trachea. On dissection all tissues were pale, Stomach empty, vertebra was half cut interiorly. In the opinion of the doctor cause of death due to shock and haemorrhage due to slit throat by sharp cutting weapon. In the light of the fardbeyan statement of the informant and the police statement of the witnesses as also contents of the inquest, postmortem report the investigating officer found the offences alleged in the F.I.R. against the suspect named in the F.I.R and his brother true. In the light of the charge sheet and after supply of police papers to both the accused persons the case was committed to the court of Sessions. The Sessions Court framed charge under order dated 06.06.2006 to which both the accused persons pleaded not guilty and claimed to be tried.

3. In support of the charge the prosecution has examined as many as nine witnesses. P.W. 1 Rajendra Prasad Patwa is brother of the informant and uncle of the deceased and the attesting

witness to the inquest report and the fardbeyan. P.W. 2 Ashok Kumar Singh is co-villager of the informant saw the dead body of Ratan Patwa in the field of Shiva Shankar Singh. P.W. 3 Raj Kumar Prasad @ Sah is also co-villager of the informant and has come forward to state that alarm was raised in the village that Ratan Patwa has disappeared. P.W. 4 Dr. Ajay Kumar Sharma was posted as Civil Assistant Surgeon/ Medical Officer at Sadar Hospital, Chapra and conducted postmortem on the dead body of Ratan Patwa. P.W. 5 Omprakash Dubey is resident of adjoining village Manpur and was present in the tea shop of Uma Sah when Uma Sah brought a child in his shop and introduced the child to the visitors present in the shop including P.W. 5 as the son of Raj Kishore Patwa and gave him one piece Samosha whereafter appellant Sila Sah of Cr. Appeal (D.B) No. 5 of 2014 took away the boy to the house after some time child's cry was heard, Uma Sah went running inside the house and on return informed those present in the shop including P.W. 5 that his nephew had fallen down from the bed. P.W. 6 Chandrashekhar Sharan Srivastava is also resident of Manpur and was present in the tea shop of Uma Sah when he brought the child and disclosed the identity of the child to those present in the shop and in his presence the child was taken inside the house by Sila Sah and thereafter his evidence is also on the same lines as that of P.W. 5. P.W. 6 has further admitted in



cross-examination that he heard general announcement made on loudspeaker that Ratan Patwa Son of Raj Kishore Prasad Patwa has gone missing, but did not inform the informant that he has seen the child in the tea shop being taken to the house by Sila Sah. The witness, however, stated that he did inform the police that he has seen the child at tea shop of Uma Sah being taken to the house by Sila Sah, and that he heard loud cry after some time. P.W. 7 Sumitra Devi is the mother of the deceased child and wife of the informant. She has stated about disappearance of his son and the threat extended by Sila Sah and Uma Sah 10-15 days earlier that they shall kill her son. P.W. 8 Rajkishore Prasad Patwa is father of deceased Ratan Patwa and informant of the case. P.W. 9 Shiv Narayan Ram is the scribe of the fardbeyan and investigating officer of the case.

4. Learned counsel for the appellants in both the appeals submitted that conviction of the two appellants for sharing common intention to kill Ratan Patwa as also for concealing his dead body cannot be maintained as there is hardly any evidence on the basis of which it can be concluded beyond all reasonable doubts that these appellants had killed the child and thrown his dead body in the Janera (Masuria) field of co-villager Shiva Shanker Singh. It is submitted that the informant (P.W.8) and his wife (P.W.7) have only succeeded in establishing that the two appellants had extended threat



to them 15-20 days earlier but have not proved appellants were connected in any way in the murder of Ratan Patwa. Extending threat in a petty matter by the appellants may not connect them with the murder of the child with whom they had no enmity. It is submitted that other prosecution witnesses, namely, P.Ws. 2, 3 have only deposed about disappearance of the child and alarm raised about his disappearance, but mere disappearance of the child may not connect the two appellants with the murder. It is submitted that there are only two material witnesses whose evidence this Court is required to scrutinize to consider merit of conviction or otherwise and submitted that P.Ws. 5, 6 both residents of adjoining village Manpur which is at a distance of half kilometer from the place of occurrence village claimed in their evidence that after they returned from village market and were taking tea in the tea shop of Uma Sah, they saw Uma Sah coming to the shop along with a child of three years. Uma Sah introduced the child to those present in the shop as son of Raj Kishore Prasad Patwa and offered a Samosha to the child. After some time child was taken by Sila Sah inside the house wherefrom after some time child's cry was heard. Hearing the cry Uma Sah went inside the house and came out to inform those present in the shop that his nephew had fallen from the bed. P.W. 6 further confirmed in his evidence that he even heard general announcement about son of



Rajkishore Prasad Patwa having gone missing in the evening on loudspeaker but did not come from his house to inform Rajkishore Prasad Patwa about having seen the child in tea shop of Uma Sah. P.W. 7, however, admitted in cross-examination that he also came to the place of occurrence in the morning of 26.09.2005 around quarter to ten and saw the dead body of the same child. He further stated in the evidence that he also informed the police about the fact that he had seen the child in the previous evening in the tea shop of Uma Sah. Learned counsel for the appellants submitted that the evidence of P.W. 6 that he informed the police of having seen the deceased child, i.e. Ratan Patwa son of Rajkishore Prasad Patwa in the previous evening in the tea shop as has been confirmed by the Investigating Officer also should not be accepted by this Court. It is submitted that from the evidence of the investigating officer it will appear that after conducting inquest proceeding at the place of occurrence, i.e. Janera (Masuria) field of Shiva Shanker Singh the investigating officer recorded further statement of the informant and the police statement of the witnesses and drew formal F.I.R thereafter at the police station which fact would appear from paragraph-8 of his evidence, but in paragraph-8 of his evidence investigating officer has referred to paragraph-7 of the case diary to corroborate his evidence recorded in paragraph-8. It is submitted that perusal of para 7 of case diary by this



Court as has been referred to in the evidence of the investigating officer will indicate that police statement of Chandrashekhar Sharan Srivastava P.W.6 has been recorded on 27.09.2005 and not at the place of occurrence on 26.09.2005. Having made such submission learned counsel further submitted that it could thus appear that though P.W. 6 was present at the place of occurrence when the witnesses were recording police statement he did not inform the investigating officer that he had seen the child in the tea shop of Uma Sah. Uma Sah had brought the child and offered Samosha and thereafter Sila Sah took the child inside the house. It is submitted that had P.W. 6 seen the child in the previous evening in tea shop of Uma Sah nothing prevented him from disclosing such fact to the informant and the investigating officer at the time when police statement of other witnesses was recorded in the janera field of Shiv Shankar Singh. P.Ws. 5, 6 having not informed the informant and investigating officer about the fact that they had seen the child in the tea shop of Uma Sah in the previous evening at the first opportunity which was available to them on 26.09.2005 soon after inquest proceedings were conducted their further statement made to that effect before police on 27.09.2005 may not persuade this Court to maintain conviction of the appellants.

5. Counsel for the State and the informant supported the judgment but could not explain the delay in receipt of the F.I.R. in



Court on 28.09.2005 although the same was drawn on 26.09.2005 and dispatched from the police station to court on 27.09.2005 but received in the court on 28.09.2005. They further could not explain as to why the two important witnesses of the prosecution, i.e. P.Ws. 5 and 6 did not inform the informant, investigating officer about the fact that they had seen the child being brought to the tea shop of Uma Sah in the evening of 25.09.2005 and was taken to the house by Sila Sah.

6. In view of rival submissions, we have carefully examined the contents of the fardbeyan of P.W. 8 Rajkishore Prasad Patwa in the light of his evidence and the evidence of his wife P.W. 7 wherefrom it appears that these two appellants extended threat to the informant that they shall annihilate the family as he had come to register complaint about their conduct but such threat alone, though established, may not persuade us to hold the appellants responsible for inflicting cut injury on the person of Ratan Patwa as the two prosecution witnesses, namely, P.Ws. 5, 6, who claim to have seen the child last in the company of the two appellants in the previous evening had not stated such fact at the first opportunity when they got such opportunity to disclose the fact that they had seen the child in the company of the two appellants in the previous evening in the tea shop soon after recording of the fardbeyan of P.W. 8 and conduct of inquest proceeding by P.W.9 at the place of occurrence itself where

other co-villagers who heard about the child gone missing in the previous evening by general announcement through loudspeaker made their statement. The two witnesses P.Ws. 5, 6 who had seen the child in the tea shop of Uma Sah and were present at the place of occurrence when other prosecution witnesses were recording their statement, in our opinion, should have come forward to disclose such fact at that time to the informant and also to the investigating officer. Both having not made such statement at the first opportunity their statement made later on 27.09.2005 may not persuade us to maintain the conviction of the two appellants.

7. In the circumstances, we give benefit of doubt to the two appellants in the two appeals. Both the appeals are allowed and the impugned judgment of conviction and order of sentence is set aside.

8. Appellant Sila Sah (in Cr. Appeal (D.B) No. 05 of 2014) is in jail custody, as such he is directed to be released forthwith, if not wanted in any other case. Appellant Uma Sah (in Cr. Appeal (D.B.) No. 670 of 2010) is on bail. He is discharged from the liability of his bail bonds.

(V.N. Sinha, J)

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(Jitendra Mohan Sharma, J)