

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.200 of 2006

Arising out of PS.Case No.-109 Year-2002 Thana-Kamtaul District- DARBHANGA

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1. Paltu Das, Son of Batahu Das.
2. Munnar Devi, Wife of Paltu Das.
Both residents of Village Karjapatti, P.S. Kamtaul, District Darbhanga.
.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Sri Ajay Kumar Thakur, Advocate
Sri Imteyaz Ahmad, Advocate
Sri Bimal Kumar, Advocate
For the State : Sri Dilip Kumar Sinha, 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: 09-02-2015

The two appellants, spouses between them, were tried by the learned Presiding Officer of Fast Track Court No.-I, Darbhanga in Sessions Trial No. 260 of 2003 for committing offences under Sections 302/34 and 201 of the Indian Penal Code and by judgment dated the 9th of January, 2006 were held guilty of committing the two offences. The learned judge heard the appellants under Section 235 Cr.P.C. and directed each of them to suffer rigorous imprisonment for life under Section 302 and rigorous imprisonment for three years under Section 201 of the Indian Penal Code which sentences were directed to run concurrently. The appellants, being aggrieved by and dissatisfied

with the judgment of conviction and order of sentence, have preferred the present appeal.

2. The son of Fool Kumari (P.W.5) went to play with Santosh who happened to be the minor son of the present appellants. He did not come back and the minor son of the appellants, namely, Santosh was questioned by the villagers who pointed out that it were the two appellants who had killed the son of P.W.5 and that the dead body was lying under water of a pond. Santosh, the son of the two appellants, threw a stone to point out where the dead body was lying in the pond. The dead body was recovered.

3. On the basis of the First Information Report lodged by one Sustain Malik (P.W.7), and the investigation ended in the submission of the charge sheet for the trial of the two appellants.

4. Eleven witnesses were examined by the prosecution in support of the charges. However, what appears recorded by the learned trial Judge himself is that it was a peculiar case in which there was no eye witness to the occurrence of murder of the minor boy Akhilesh and the prosecution only placed circumstances before the trial court for its judgment. The learned trial Judge thereafter enumerated the circumstances appearing to

him from the evidence in paragraph-14 and held that it were these two appellants who had committed the murder.

5. The first circumstance was the death of the child which was based on the opinion of the doctor, i.e., Dr. P.K. Das who had stated that he had found a bruise over an area of 6"x3" on the forehead of the child and had found further that there was a fracture in the form of sutural separation in the left deporal suture and left lower part of the cornal suture with further finding of an extra-dural haematoma over the left hemisphere of the brain which had caused the death of the deceased. But, that evidence of the doctor, by itself, could not be sufficient to convict any person unless the evidence indicated that the death had either directly or indirectly being caused by accused persons. There is no evidence, as per the learned Judge himself, to indicate that it were the two appellants who had killed the child. The only evidence was that the villagers caught Santosh, the son of the two appellants, and before them, the minor son of the two appellants stated that it were these two appellants who had murdered the deceased. It was thus, neither a confession nor the statement of an eye witness as the son of the appellants had not claimed that he seen the murder bring committed by his parents. What we find from the evidence is that the whole village had assembled to question the little child and



there may not be any wonder that the child was speaking anything out of fright. Besides the above frailty showing that the statement might not be voluntary, what we further find is that the child was confessing to an offence which was not committed by him. It was committed by persons who probably were not seen by the child also doing that. We hardly want to point out that the confession of a co-accused before any authority may not be admissible against the other as the record shows that the child was also arrayed as an accused in the case. Again, the confession was not implicating the maker of it in the commission of the offence and, as such, was exculpatory which was necessarily to be excluded from consideration when the court was inclined to consider it as a piece of evidence.

6. The learned trial Judge has recorded that the two appellants had not said anything in their explanation. If the accused had not done anything and if the evidence was not of such quality as could be creating a circumstance against them then law does not require any explanation to be offered by such an accused. An accused can be required to explain any circumstance appearing against him only when it appears from the evidence adduced by the prosecution. It is not the requirement of law that only because the trial court was desirous of eliciting some explanation from the

appellants, they could have made certain statements. They were making a simple statement that they have falsely been implicated and in our opinion their explanation was sufficient. The evidence which was adduced on record was not admissible and was again not sufficient and, as such, the conviction of the appellants on that basis appears completely out side the four walls of law.

7. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence dated 09.01.2006, passed in Sessions Trial No. 260 of 2003, arising out of Kamtaul P.S. Case No. 109 of 2002 by the learned Presiding Officer of Fast Track Court No.-I, Darbhanga. The appellants are acquitted of the charges, they had been held guilty of, by setting aside the impugned judgment. They are in custody. The appellants are directed to be released forthwith if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

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