

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1074 of 2010

(Against the Judgment of conviction and Order of sentence dated 17.08.2010 passed by the 3rd Additional Sessions Judge, Darbhanga, in Sessions Trial No. 64 of 2008).

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Sujit Kumar Pathak @ Guddu Pathak @ Guddu Pathak son of Suryakant Pathak @ Gochh Pathak, resident of village Simri, P.S. Simri District Darbhanga

.... /s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the : Mr. Girish Chandra Jha, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 09-11-2015

1. The appellant has been convicted under Sections 302 and 201 of the Indian Penal Code and sentenced for RI for life and a fine of Rs. 20, 000/- under Section 302 IPC and in default, 2 years RI and 7 years RI under Section 201 IPC with fine of Rs. 1,000/- and in default, one year imprisonment by the 3rd Additional Sessions Judge, Darbhanga in Sessions Trial No. 64 of 2008, vide judgment and order of conviction dated 17.08.2010.

2. The case of the prosecution, according to the informant, Tarkeshwar Sharan Srivastava @Laxmanji P.W. 17, is that his brother Ravi Shankar Charan Srivastava @ Dablu (deceased) aged about 35 years was missing so a 'Sanha' had been instituted on 03.11.2007 at Simri Police Station bearing Sanha no. 63 of 2007 in its regard. While



the police and the general public were making enquiry in regard to the incident, on personal enquiry, the informant suspected the role of the Appellant Sujit Kumar Pathak @ Guddu who used to work part time in his shop because of his changing statements. On enquiry Guddu disclosed that he was with Islam Sahab who runs a medical shop. When they contacted Islam Sahab he said that he was not with him and said that Guddu had instructed him to say that he was along with him for the last four days. On 07.11.2007 in presence of Sashi Rajan @ Gopaljee P.W. 5, Sanjay Kumar Sinha @ Pappu P.W. 3, Mohan Raut P.W. 1 and other villagers on interrogation the Appellant admitted his guilt. The Appellant stated that he had illicit relationship with the wife of the deceased on account of which the deceased had assaulted her. Then he decided that he would remove him. To pursue this goal, on 07.11.2007 both of them left together for Darbhanga. Deceased told the Appellant to proceed to Darbhanga and he would come later. Guddu thereafter proceeded to Darbhanga and started waiting for him. On the same day in the afternoon the deceased asked the Appellant, on his mobile, as to where he was, Appellant explained that he was at the Bus Station, Darbhanga at which the deceased told him that he would also join him shortly. When the Appellant learnt that the deceased was coming, he went to the medicine shop and bought 10 tablets of valium and powdered it and kept the same with him in a piece of paper. At about 05.30 P.M he met Chandan Kumar



Pathak P.W. 7 and both of them went to have beer after which Chandan Kumar Pathak left the place. The deceased then reached the Bus Station at about 07-07.30 P.M and it was proposed to him that they should both go and have some food and drinks. They then went to a certain shop and ordered food and drinks and surreptitiously the Appellant mixed the powder of valium in the glass of the deceased. When the deceased was sufficiently drunk he started feeling unwell and wanted to vomit so he took him to nearby a place where the deceased fell down. The Appellant then thought that it was an appropriate time so he went to the 'Pan shop' and took a 'Sarauta' (which is used for cutting betel nut) and then he assaulted the deceased with that and pushed the dead-body in a hutment which was situated near a toddy shop and wrapped one point of wire around his neck and another to door of the hutment. Then he went on the road and threw the 'Sarauta' in the water. In course of the same, his mobile fell down in water which he was kept somewhere. The Appellant then agreed to get the dead-body and the 'Sarauta' recovered at which he was taken to the police station. The Appellant allegedly made phone calls from Delhi to the father of the deceased showing that the deceased was well and would return in a few days.

3. In course of interrogation the had sustained injuries because the villagers had become aggressive. On the basis of the written statement, the first information report was instituted on the

same day at 07 P.M.

4. During trial the prosecution examined 20 witnesses. P.W.

1 Mohan Raut stated that Dablu had gone missing and that the Appellant and the deceased were friends and 4-5 days later Appellant had confessed that he had killed the deceased with 'Sarauta' and has thrown the same in the water at Shivdhara. The extra judicial confession was given in his presence and other villagers. In cross-examination he stated that Pappu Babu P.W. 11, Gopal Babu and Navin Raut who were not examined, had taken the Appellant to the house of the informant and then from there to the police station. He stated that the dead-body was recovered from the water in a decomposed stage and he was examined two days after the dead body was recovered. His attention was drawn towards the previous statement with regard to the content of the extra judicial confession but it appears the attention of the Investigating Officer has not been drawn to the same.

5. P.W. 2 Sheetal Sahni stated that on the date of occurrence while he was at the door of the informant the Appellant was brought to his house where the Appellant confessed that he had illicit relationship with the wife of the deceased and had poisoned the deceased. The Appellant was then taken to the police station and handed over. One hour later the police took Guddu to the hutment where the dead-body of the deceased was recovered. When the police

asked the Appellant, he disclosed that he had killed the deceased by wrapping his neck with wire. The dead body was thereafter sent for post-mortem. In cross-examination he stated that he had not seen the occurrence.

6. P.W. 3 Sanjay Kumar Sinha stated that the deceased was missing at which a 'Sanha' had been instituted on 03.11.2007. On 07.11.2007 at about 5 P.M the Appellant in front of them had confessed that on 02.11.2007 he had administered 10 tablets of valium in liquor of the deceased and when he became unconscious he murdered him and his dead-body was kept in a Gumti. They then took the Appellant to the police station, where a written report was given on which he also signed as witness. He identified the same as Ext. 1. He further stated that the dead body was recovered from the hutment which was taken out with a great difficulty since it was tied with wire. The Appellant had allegedly stated that he had illicit relationship with the wife of the deceased. P.W. 3 further stated that the mobile was recovered from the house of the Appellant of which seizure list was prepared upon which he signed and proved his signature as Ext 1/1. In cross-examination he stated that no part of occurrence had taken place in front of him and he had narrated only what had been confessed in his presence.

7. P.W. 4 Binod Kumar stated that on 03.11.2007 a 'Sanha, had been given with regard to disappearance of the deceased.



They suspected the Appellant because he and the deceased used to stay, drink and eat together. On 07.11.2007 the Appellant confessed before the villagers that he had killed Dablu at which they took him to the Police Station. He also proved his signature on the written statement as Ext. 1/1. He further stated that the Officer-in-charge with the Appellant had gone to the 'Gumti' where the dead-body was recovered which was taken out with a great difficulty since it was tied with rope from roof. He stated in his cross-examination that no part of the occurrence had taken place in his presence and he had narrated what the Appellant said.

8. In cross-examination it was suggested to him that the Appellant had been assaulted and force had been used for extraction of confession but he denied the same. He stated that the 'Choukidar' and 'Sweeper' had taken out the dead body. When the dead body was taken out he had attempted to see it from close but had moved away because it was stinking. He further stated that he identified the dead-body on the basis of hair, cloths and his physical form. He stated that the clothes were wet there were injuries on the head of the deceased

9. P.W. 5 Sashi Ranjan stated that on 07.11.2011 at about 05.30 P.M. during interrogation by the villagers the Appellant disclosed that he and the deceased had consumed wine. He placed the wine to the deceased with valium 10. Then the Appellant brought a 'Sarauta' from a shop and assaulted on his head and threw him in the



water and took him to a hut where he tied him with a wire from the roof. He also disclosed about the Appellant having illicit relationship with the wife of the deceased. The villagers then forwarded the Appellant to the Simri Police Station where the informant gave a written statement on which he signed and proved his signature as Exbt. 1/3.

10. In cross-examination he stated that before 07.11.2007 he had expressed suspicion on the Appellant at which the Appellant was taken to the police station for interrogation. He did not know as to how long the Appellant had been detained at the police station. Other persons were also interrogated by the police including the informant but they all had returned. After interrogation the informant brought the Appellant with him but he kept suspecting him even after his return from the police station. On 03.11.2007 Chandan Kumar P.W. 7 had been taken for interrogation. He also denied that any force had been used upon the Appellant for extracting the confession. His attention was drawn towards his earlier statement with regard to the content of the extra judicial confession but since the attention of the Investigating Officer has not been drawn to the same it is of no avail.

11. P.W 6 Jawala Prasad @Chunnu stated that on 07.11.2007 the Appellant was interrogated on which he disclosed that he had committed murder of the deceased on account of his illicit relationship with wife of the deceased. On his pointing out the dead-

body was recovered. On 08.11.2007 the Investigating Officer had come with the Appellant and recovered his mobile. A seizure list was prepared and he was a signatory to it which is marked as Exbt. 1/5 and 1/6.

12. In cross-examination he stated that before 07.11.2007 he did not suspect the Appellant and he had seen the Appellant in the village in this period. He further stated that the deceased was in habit of consuming intoxicants and he had never heard any complaint about the Appellant before the occurrence from the informant or his family.

13. P.W. 7 Chandan Kumar Pathak stated that on 02.11.2007 he had gone to Darbhanga at 05.30 P.M and reached the bus stand where he met the Appellant. The Appellant had seen him at the bus stand. He had offered for taking beer at which he had gone to the Restaurant and both of them had consumed beer and some snacks, after which he had left. He had given statement on 08.11.2007 in the evening that Appellant was his brother by village relationship.

14. P.W. 8 Satya Narayan Mandal was the 'Pan shop' owner who stated that on the date of occurrence one person came and asked for a blade and thereafter for 'Sarauta'. But he did not identify the Appellant. He further stated that the dead-body was not recovered in his presence.

15. P.W. 9 Md. Islam stated that the Appellant had asked

him to cover up for him to which proposal he had denied. Two days later the dead-body had been recovered. He did not remember the date on which the Appellant had asked him to cover up.

16. P.W. 10 Sanjay Kumar Das was egg seller and inquest witness who stated that on the date of occurrence the dead-body was recovered and the inquest report was prepared on which he was a signatory. He proved his signature as Exbt. as 1/7. He does not said anything of occurrence in cross-examination.

17. P.W. 11 Pappu Kumar Paswan stated that the police had asked him to sign on the seizure list with regard to 'Sarauta'. He proved his signature as Exbt. 1/8.

18. P.W. 12. Awdhesh Kumar also stated likewise and proved his signature as Exbt. 1/9.

19. P.W. 13 Ravi Paswan who is labourer stated that the Appellant had disclosed that he had killed the deceased and there was a big crowd at the Police Station. He had also reached the police station at 07.15 P.M. He was asked to accompany the Officer-in-charge on the jeep. On pointing out of the Appellant, the Officer-in-charge recovered the dead-body which was wrapped with wire. In cross examination he stated that the Appellant used to work for the informant since a long time. He further stated that the Officer-in-charge had caught him at the police station and taken him along with three other persons to the place from where the dead-body was

recovered. After thinking he stated that the Appellant was also seated in the same jeep. He stated that the dead-body was pulled to the road from where it was taken by the police. He further stated that the dead-body was identified by Laxmi Babu and Shivjee Babu on the road.

20. P.W. 14 Sone Sahni stated that he was summoned by the Officer-in-charge through the Chukidar at which he had gone to search for 'Sarauta' along with Shobit Sahni, Bilash Sahni, Ghorakh Sahni. He further stated that Bilas Sahni had found Sarauta. Incidentally none of the three persons have been examined. He stated the police had not recorded his statement.

21. P.W. 15 Ram Balak Ram stated that he had gone with Officer-in-charge of the Police Station along with Ravi Paswan P.W. 13, Lalit Mallik (who was not examined) and the Appellant. On the pointing out of the Appellant, the dead-body was recovered which was pulled out by them. He stated that the place where the dead-body was found was full of water and the body was floating in the same.

22. P.W. 16 Sibeshwari Charan Srivastava is the father of the deceased who stated that he was living along with his wife and mother at Simri where he was running a business. On 02.11.2007 his wife had called him at about 05.00 A.M saying that the deceased was missing since 10 A.M. and had not returned. On the same day at about 11 P.M the Appellant came at which he asked him about the deceased at which he said that he may be at Simri. He found the



trouser of the Appellant wet at which the Appellant stated that he had fallen down in water and dragged into his lungi slept beside him. On 03.11.2007 the Informant took him on the motor-cycle to look for his son but he was not found. Then a 'Sanha' was instituted by the Informant. On 04.11.2007 the Appellant looked for the deceased in the house of his relatives and on 05.11.2007 he received an information that the deceased was at Delhi. The phone call had come from a telephone booth and on 06.11.2007 he suspected the role of the Appellant at which he started interrogating him. On 07.11.2007 at about 05.00 P.M the Appellant in the presence of others disclosed that he had illicit relation with the wife of the deceased on account of which he had committed his murder. He also stated that he had tied the dead-body with iron wire. On such statement he was taken to the Police Station where he fell down and became unconscious. Then on pointing out of the Appellant, the dead-body was recovered.

23. In cross-examination he stated that he was not well since last 3-4 days of the occurrence and even while the deceased did not consume intoxicant, the Appellant was used to do so. His attention was drawn to the earlier statement with regard to the confessional statement.

24. P.W. 17 Tarkeshwari Charan Srivastava @ Laxmanji is the informant of the case who stated that on 02.11.2007 the deceased left Simri at 10.30 A.M. but did not return. They searched him along



with the Appellant but he could not be found. On 03.11.2007 an information was given to the police. He proved the 'Sanha' as Ext. 2. On 07.11.2007 in the morning everyone interrogated the Appellant at which he confessed that he had killed the deceased on 02.11.2007 since he had illicit relationship with his wife and had concealed the dead-body in a hutment. He was then taken to the police station and then went to the place of occurrence with the Officer-in-Charge where he found the dead-body of his brother and identified the same. In cross-examination he stated that he had never suspected the Appellant in the intervening period and before he had confessed his crime. He further stated that the dead-body was stinking and there was no hair on the head and the skin was peeling and back was covered with a shirt and full-paint.

25. P.W. 18 Dr. Vijay Prasad Singh conducted the post-mortem on 08.11.2007 and found the following injuries.

“(a) Body was found decomposed with peeling of the skin and formation of maggots over face, neck and upper part of chest. Tongue was found protruded. Elbows were sunken.

The following antemortem injuries were found over the body of deceased.

(i) Incised wound 4 “x1” muscle deep over anterior of mid-neck.

(ii) Incised wound 2 “x1 bone deep over posterior of left side of skull. Underline bone was found fractured.

(iii) Incised wound 2 “x1 “x bone deep over left temporal

region, underline bone was found fractured.

(iv) Two parallel incised wound 3 "x1 "x bone deep 2 cm part over occipital region. Fracture of occipital bone was found.

(v) Incised wound 1 1/2 "x1/2" x bone deep over mid frontal region depressed fracture of underline frontal bone was found.

(B) Brain water was found liquefied.

Both side of mandibular bones were found fractured. Both the lungs were found pale. Both sides of the heart were found empty. All abdominal viscera wee found pale. Stomach and balder were found empty. All the above noted injuries were ante-mortem. Injury no. (i) caused by sharp cutting weapon and injury no. (ii) to (v) caused by heavy sharp cutting weapon may be by Sarouta. Cause of death hemorrhage and shock.

Time since death-Four days two days since the time of post mortem examination. This post mortem report has been marked as Ext. 4."

During the cross-examination he had stated that in any type of injuries which causes bleeding be declared death as hemorrhage and shock. These injuries may be caused by fall on sharp surface. (we as found from the evidence of the Doctor that the same was completely decomposed.

26. P.W. 19 Ajit Kumar produces the material exhibits i.e. mobile phone, Sarauta, wire and one Ganji in a polythene bag.

27. P.W. 20. Sri Prakash Singh is the Investigating Officer he stated that on 03.11.2007 he had received a Sanha which was already marked as Exbt. 2. Later on the informant had given a written statement on 07.11.2007 at 07 P.M and had produced the Appellant. He himself initiated the investigation and after having recorded the

confession of the Appellant he proceeded to recover the dead-body on his pointing out. He further recovered a mobile phone from his house but did not get it tested. He proved the confessional statement as Ext. 9/1 -9/3 and the seizure list as Ext. 8/1. There is nothing important in the cross-examination.

28. We find that there is no direct evidence against the Appellant and the case is based on circumstantial evidence. To consider as to what evidence can be relied upon, we will have to examine as to what are the circumstances which have been put to him under Section 313 Cr.P.C. We find following questions have been asked.

- (i) There is evidence against you that on 02.11.2007 you had gone with Dablu to Balbhadrapur, Laheriasarai, Darbhanga and at 10.P.M in night you had purchased valium 10 tablets and mixed the same in liquor and administered it to the deceased.

The reply was in the negative.

- (ii) There is evidence that on the same night you obtained a 'Sarauta' from the 'Pan Shop' and thereafter committed murder of the deceased and wrapped the dead body with wire and put it in a hutment.

The reply was in negative once again.

- (iii) You had confessed before the villagers and accepted

your guilt but once again the reply was in negative.

29. We find that not a single witness has stated that the deceased and the Appellant had left together. In fact, evidence is to the contrary that the plan was that deceased and Appellant would meet at Darbhanga. As for the next witness, the Pan shop owner i.e. P.W 8 he did not identify the person who had borrowed his 'Sarauta' and hence this circumstance cannot be used against the Appellant.

As per the extra judicial confession it is a well known Principle of law that it can be a basis of conviction only when the same is corroborated on all material particulars. We find that the alleged extra judicial confession was in the following sequence :

- (i) That he had motive to kill since he had illicit relationship with the wife of the deceased. There is no evidence in this regard at all. On the contrary one of the witnesses i.e. P.W. 6 had stated that there was never any complaint against the Appellant who was working with the informant's family since he was a child.
- (ii) There is also no evidence that he and the deceased left together for Laherai Sarai and Balbhadarapur.
- (iii) There is no evidence that the Appellant had purchased valium 10 tablets or that the Appellant and the deceased consumed liquor together in a

Restaurant.

- (iv) That the Appellant had firstly asked for a blade from the Pan shop and not being available had asked for a 'Sarauta'. The Pan Shop owner who has been examined as P.W. 8 did not identify the Appellant and hence this material cannot be relied upon.
- (v) We find that the circumstance of the dead body being recovered at his instance has not been put to the Appellant under Section 313 Cr. P.C and hence . this circumstance cannot be against him.

30. We further find that the factum of extra judicial confession having been given by the Appellant is highly unreliable. P.W. 17 the informant stated that the Appellant had confessed his guilt in the morning but we find that the written report was given at 7. P.M in the evening. There is no explanation as to why despite the Appellant having confessed his guilt in the morning itself he was taken to the police after such a long gap especially when it is stated in the written statement that the Appellant had been assaulted by the villagers.

31. In the circumstances discussed above, we are not inclined to place reliance on the evidence adduced on behalf of the prosecution in support of the charge. Hence the Appeal is allowed.

In the result the impugned Judgment of conviction and

Order of sentence dated 17.08.2010 passed against the Appellant by the 3rd Additional Sessions Judge, Darbhanga in Sessions Trial No. 64 of 2008/G.R. No. 2323 of 2007 arising out of Simiri P.S. Case No. 98 of 2007 is hereby set aside. The , 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)

Prakash/-
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