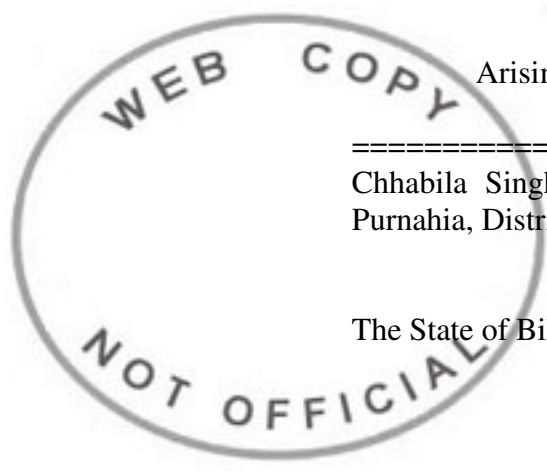




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.76 of 2009

Arising Out of P. S. Case No. - 01 Year- 2007 Thana -Purnahia District-SHEOHAR at Sitamarhi.

Chhabila Singh son of Rupan Singh, resident of village- Sonaul Sultan, P.S. Purnahia, District- Sheohar.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 777 of 2008

Arising Out of P. S. Case No. - 01 Year- 2007 Thana -Purnahia District-SHEOHAR at Sitamarhi.

Prabhu Sah son of late Manchit Sah, resident of village- Parsauni Gote, P.S.- Purnahia, District-Sheohar.

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (DB) No. 778 of 2008

Arising Out of P. S. Case No. - 01 Year- 2007 Thana -Purnahia District-SHEOHAR at Sitamarhi.

1. Biltu Raut son of late Rudal Raut  
2. Arun Raut son of Deni Raut,  
Both resident of village- Parsauni Gote, P.S. Purnahia, District-Sheohar

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :  
(In CR. APP (DB) No. 76 of 2009)

For the Appellants : Shri Murari Narain Chaudhari, Advocate  
For the State : Shri S. N. Prasad, APP.

(In CR. APP (DB) No. 777 of 2008)

For the Appellant : Shri Murari Narain Chaudhari, Advocate

For the State : Shri D. K. Sinha, APP.

**(In CR. APP (DB) No. 778 of 2008)**

For the Appellant : Shri Murari Narain Chaudhari, Advocate.

For the Respondent : Shri Abhimanyu Sharma, APP

**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**

**and**

**HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)**

**Date: 06-04-2015**

The two appellants, namely, Biltu Sah and Arun Raut of Cr. Appeal (D.B.) No. 778 of 2008 and one appellant each in two of the remaining appeals were put on trial by the learned Presiding Officer, Fast Tract Court No. I, Sheohar at Sitamarhi in Sessions Trial No. 190 of 2007/ 39 of 2007 after being charged with committing offences under Sections 120B and 302/34 Indian Penal Code. The learned trial Judge delivered judgment on 19.5.2008 by which he held the four appellants of the three appeals guilty of committing the offences they had been charged with. The appellants were heard on sentence on 22.5.2008 and each of them was directed to suffer rigorous imprisonment for two years under Section 120B Indian Penal Code and also rigorous imprisonment for life and also to pay a fine of Rs.500/- each, else to suffer simple imprisonment for three months for having been found guilty of committing offence under Sections 302/34 Indian Penal Code. The appeals have been filed by the appellants to question the correctness of the findings as regards their guilt and appropriateness of sentences passed upon each of them.

2. The appeals having arisen out of a common judgment, were heard together by us and we are disposing them of by this common judgment.

3. Deceased Meghan Baitha was the younger brother of the informant Nunu Baitha (P.W.9), it was in the evening of the 1st January, 2007, when as per the fardbeyan (Ext-2/2) of P.W.9, appellant Arun Raut came there at the house of the informant at about 7 P.M. and asked the deceased Meghan Baitha to come along so as to enjoy some non-vegetarian recipes as it was the first day of the New Year. The deceased Meghan Baitha went away with the appellant Arun Raut to enjoy the fish and chicken preparations but when he did not return till the next morning, i.e., till 02.01.2007, the informant went to the house of appellant Arun Raut to enquire about the whereabouts of his brother Meghan Baitha who is said to have stated that he did not know anything about his brother. The informant got suspicious and he took some of his villagers and again went to the house of the appellant Arun Raut to question him seriously as to when the deceased Meghan Baitha had accompanied him from his house and that the appellant Arun Raut had taken him away, then he was to account for the non-return of the deceased to his house. The appellant Arun Raut still was pointing out to the informant and his companions that he did not know anything about the deceased Meghan Baitha and

the real reasons could be pointed out by appellant Prabhu Sah.

4. The informant P.W.9 went to the house of appellant Prabhu Sah along with his accompanying villagers and questioned him as to why his brother did not return. It was stated by the informant that appellant Prabhu Sah was also not forthcoming and was making many contradictory statements and ultimately, he stated that it could be only appellant Arun Raut who could be telling the truth as regards his brother.

5. Having not been successful in knowing as to what had happened to his brother Meghan Baitha, the informant convened a Panchayati of his villagers at about 8 P.M. on 02.01.2007 which was attended, among others, by Manoj Kumar Singh (PW.4), Rambali Singh (not examined), Arvind Yadav (PW-6), Baidyanath Baitha (not examined), Manki Paswan (not examined), Banti Paswan (not examined), Satyendra Singh (not examined), Congress Baitha (not examined), Baso Baitha (not examined), Manju Baitha (not examined), Shivshankar Baitha (not examined), Upendra Singh (not examined) and others. The two appellants, namely, Arun Raut and Prabhu Sah were questioned by the villagers on the reasons for which deceased Meghan Baitha had not returned to his house and during that course, the two appellants started making accusation and counter accusation upon each other. Ultimately, they pointed out that it was



appellant Biltu Raut who had sent appellant Arun Raut to bring the deceased Meghan Baitha and it could be appellant Biltu Raut only who could be accounting for the deceased. Panches summoned appellant Biltu Raut immediately and on questioning by them appellant Biltu Raut confessed to his guilty and stated that the four appellants had taken deceased Meghan Baitha in the evening of the 1st of January, 2007 for feeding him chicken, etc. to a place near the bridge situated on road running between Kolhua Tikha and further stated that after feeding chicken to the deceased Meghan Baitha, he was taken to a place at about a distance of two bighas south of the road where his throat was slit and the head was chopped off. Appellant Biltu Raut stated that his dead body was carried by them two kilometers away from the outskirts of Kasopur where the head of the deceased was severed from the trunk of deceased Meghan Baitha and the dead body was thrown away while the head of the deceased was put into a gunny bag which was stuffed with soil and the bag was put into water and the trunk was buried in Yogiakund. After the name of appellant Chhabila Singh appeared in the confession of appellant Biltu Raut, the villagers also went to village-Sonaul Sultan and brought him to the Panchayati and he also confessed to his guilt in the same manner as did appellant Biltu Raut.

**6.** It was stated that murder of deceased Meghan Baitha



was committed to satiate their greed for money. It was further revealed by appellant Chhabila Singh that before beheading, the deceased was strangled by use of a rope which was used as a ligature around his neck and thereafter, the dead body was disposed of in the manner as stated by appellant Biltu Raut. The places where the parts of the dead body had been concealed or thrown along with the places where the rope or other articles were thrown or concealed were pointed out to the panches in the Panchayat whereafter they handed over the custody of the four appellants to Chaukidar Tapeswar Paswan (not examined) and they further informed the police by telephone.

7. It was alleged by the informant that the murder of his brother had been committed by the four appellants because Sukul Baitha the younger brother of the informant who was elder to the deceased had borrowed Rs.4,000/- from appellant Biltu Raut who had started viewing the wife of the deceased Meghan Baitha with some greedy eyes which act of the appellant Biltu Raut was protested by the deceased and it was the reason that the deceased Meghan Baitha had been murdered by the four appellants.

8. The fact that the police was informed by the villagers after the accused persons had confessed their guilt before them appears stated by P.W.10 S.I. Jagdish Mahto who had received the



information on 03.01.2007 at about 4 A.M. that deceased Meghan Baitha had been murdered by appellant Biltu Raut and his companions after making him drunk and had disposed of the dead body somewhere by concealing it. The information which was received by P.W.10 S.I. Jagdish Mahto was that the accused persons had been apprehended by the villagers and they had been put into the custody of local Chaukidar Tapeswar Paswan (not examined) P.W.10 on receipt of the information took P.Ws.11 and 12 with him and came to the place of occurrence at about 4.30 A.M. and P.W.11 S.I. Daya Shanker Prasad recorded the fardbeyan Ext-2/2 of the informant. He recorded further statement of the informant and went on to recover the trunk part of dead body by the side of the river on the pointing out of the accused and further recovered the head of the deceased Meghan Baitha from a place 50 yards away from the place where the trunk part of the dead body was found. The recoveries were made at the pointing out of the accused persons. P.W.10 had held inquest upon the dead body and prepared the inquest report (Ext3/1). He, thereafter, recorded the confessional statements of the four appellants which have been marked Exts-4 to 4/3. P.W.10 Jagdish Mahto inspected the place of occurrence, sent the dead body for postmortem examination and after winding up the investigation, sent up the accused persons for their trial which ultimately ended in the

impugned judgment.

**9.** The defence of the appellants was that they had falsely been implicated and the confession which was the basis allegedly for discovery of the dead body were never made by them and even after they were made the same could not be covered by Section 27 of the Evidence Act.

**10.** The learned trial Judge held that deceased Meghan Baitha was taken away by appellant Arun Raut and thereafter, he was killed by the appellants and his head was severed from the trunk and the two parts of the dead body were recovered at the pointing out of the appellants and, as such, the charges were proved to the hilt.

**11.** Addressing us on the merits of the three appeals, Shri Murari Narain Chaudhary, learned counsel appearing on behalf of the appellants has submitted that the decision of the three appeals hinges upon the acceptability of the evidence of confession before the villagers and further acceptability of the evidence leading to discovery of the dead body at the information received from the accused persons. As regards the story of the deceased having been taken away from his house, it was contended that it was, firstly, denied by the accused persons and secondly, the said circumstance was not put to the appellants during their examination under Section 313 Cr.P.C. so as to eliciting explanation and, as such, it was at all not lawful for the



court below to use that circumstance as a conclusive link in itself so as to holding the appellants guilty of committing the offences. It was further contended that there was a motive alleged in the FIR but no witness stated a single word on it or on the existence of any other motive which had impelled the accused to commit the murder of deceased Meghan Baitha.

**12.** Shri S.N.Prasad, learned counsel appearing on behalf of the State was initially opposing the submissions tooth and nail and was submitting that the village Chaukidar Tapeswar Paswan (not examined) was present there during Panchayati and the accused persons made their confessions before the villagers in his presence and, as such, the confession was admissible under Section 27 of the Evidence Act as information which ultimately led the police to discover the dead body. It was contended that even if the court was not inclined to treat the evidence of discovery of the dead body as admissible under Section 27 of the Evidence Act, the extra judicial confession of the appellants was itself enough to record their conviction. It was, thirdly, contended that the evidence of last scene was consistent and that was also conclusive. However, Shri Prasad was conceding that no witness had stated a word as to for what reason or motive the accused persons could be coming together to commit the murder of deceased Meghan Baitha.



**13.** We first take up the admissibility and acceptability of the evidence of confession made by the accused persons allegedly before the villagers, when they had sat in a Panchayati which was convened by the informant P.W.9. The witnesses are consistent that a village Panchati had been convened and one after the other four appellants had been summoned to appear before them. There might be some variance in the evidence of one and the other witness as regards the appearance of the four appellants before the villagers but there is again consistency in it that they had appeared before the villagers when the Panchayati had been convened. It is also consistently spoken of by the witnesses, like, PWs.2,3,4,5,6 and 9 that the accused persons had stated as to how deceased Meghan Baitha had been taken away from his house under the promise of being fed with fish and chicken so as to celebrating the Ist day of New Year and how he had been strangled to death and thereafter, the head had been severed from the trunk part of the dead body as well. However, while scanning the evidence of witnesses, we came across some of the lines in the evidence of witnesses, like, P.W.2 in paragraph-14 when it was stated by the witness that about 50 persons who were present in the Panchayati had questioned appellants Biltu Raut and Chhabila Singh after they had questioned the remaining two appellants Arun Raut and Prabhu Sah and the four appellants confessed to their guilt. However,



the witnesses stated in the last line of paragraph-14 that the confession was made at the presence of the villagers. So far as P.W.3 is concerned, he has not stated anything as to what were the circumstances under which the accused persons had made confession but what he has stated is that the Panchayati which had continued for about 5-6 hours and had ended at 12 O' clock. The accused persons had not initially confessed to their guilt, but subsequently they did whereafter they had been put into the custody of the Chaukidar. However, the evidence of P.W.4 in paragraph-9 states that the Panchayati was attended by villagers who were 200 in number and the villagers were in a turbulent mood. Thus, what we find is that there could be some element of coercion under which the accused persons could have confessed to their guilt. If the confession is obtained under threat, coercion, or undue influence or in presence of an authority, then the law prohibits the use of such confession for basing the order of conviction. The evidence which we have just perused appears not an improvement rather if we recall the statements of the informant made in the fardbeyan, he had stated that the accused persons were made to confess to their guilt under some undue influence. The informant had stated that “झांसा देकर बिल्टू राउत और छबीला सिंह को पंचायती में बुलाया”. This very line points out as to how difficulty it is for the Court to place reliance upon to extra judicial confession said to have

been made by the accused persons.

**14.** Section 27 of the Evidence Act could be attracted only when there are certain conditions which are fulfilled. The provisions is an exception to earlier provisions if Sections 24 to 26 which bars the use of confession against an accused under various circumstances. Section 27 makes the part of the confession which could be by way of an information to the police officer who had taken an accused into his custody if that information should lead the police to the discovery of a particular fact which may distinctly relate to the commission of the offence. What appears from the bare perusal of the Section is that the person who had given the information to the police (i) must be accused of an offence (ii) must be in the custody of a police officer (iii) must have made a statement to it which has to be treated as an information, and (iv) which must lead the police to discover a fact distinctly related to the commission of the offence. Shri Prasad was referring to us the evidence of P.W.4 who stated in paragraph-7 that when the accused persons had confessed to their guilt and had pointed out to the place where the parts of the dead bodies could be found, there was the Chaukidar who was very much present there. The cross-examination of P.W.4 was made by the defence in paragraphs-14 to 16 on the above fact which appeared in the examination-in-chief of P.W.4. What appears from the combined



reading of those paragraphs-14,15 and 16 is that the Panchayati had lasted for about five hours and had ultimately ended at 12 'O' clock in the night when the accused persons had confessed to their guilt and whereafter they had been put into custody by the villagers of the Chaukidar. The timing which is given by P.W. 4 appears contrary to the evidence of other witnesses as regards its inception and end. What we find is that the evidence of other witnesses is also contrary to the fact that the accused persons had confessed in the presence of police. We may refer to the evidence of Arvind Yadav (P.W. 6) who was one of the persons sitting in the Panchayati. We may also refer to the evidence of P.W. 6 Arvind Yadav in his examination-in-chief in its entirety. A bare reading of the evidence of Arvind Yadav points out that after the Panchayati had been convened, appellants Arun Raut and Prabhu Raut were firstly summoned by the Panches and they pointed out that it was appellant Biltu Raut who had sent Arun Raut for bringing deceased Meghan Baitha. Appellant Biltu Raut was called thereafter and he confessed to his guilt before the Panches and stated that appellant Chhabila Singh also be summoned in the Panchayati and, accordingly, he also appeared thereafter, the story of taking deceased Meghan Baitha away from his house for feeding him chicken, etc. and thereafter killing him firstly, by strangulating him and thereafter beheading his dead body was narrated by P.W. 6.



During that course, he stated in paragraph 3 that the confession was made by the accused persons after appellant Chhabila Singh had arrived there and as soon as they had made the confession, the Chaukidar was called there and the accused persons were handed over to him. The next step taken by the villagers was that the police was informed telephonically about the incident. Thus, what appears is that at the time when the accused persons had made confession, the Chaukidar was not present in the Panchayati though P.W. 4 had stated that he was very well present there. However, we have taken a view on constructing the evidence of P.W. 4 as well that the evidence of the witnesses may be interpreted either way that after the accused persons had confessed, they were put into the custody of the Chaukidar just after the Panchayati was over. At any rate, what appears definitely coming out of the evidence of witnesses is that the four appellants were not accused at the time they had made the confession of committing the offence and they had never been in custody of any police officer either. Whatever confession was made by them was before the villagers and not before the police. An information even if it was a confession made to the police which had distinctly led the police to discover a fact, is admissible. Here in the present case, the information was never made to the police and the details of the concealment of the parts of the dead body were already



known to the entire world. This is more evidently clear, when we look to the evidence of P.Ws.10,11 and 12, the three police officers who had deposed to the above facts. None of the three witnesses, i.e., P.Ws.10,11 and 12 stated that they had got information from any of the accused persons after they had been arrested at their village. The three police officers have stated that they questioned the accused persons at the police station in a room and there they had confessed which led to discovery of the parts of the dead body. This fact stated by P.Ws.11 and 12 appears again contrary to the evidence of P.W. 10, S. I. Jagdish Mahto who stated in the very few first lines of his examination-in-chief that the villagers had telephonically informed him about the places where the dead body had been thrown or had been concealed. Thus, what appears to us is that the whole statement which was claimed admissible and which had ultimately led to the discovery of the parts of the dead body were at all not admissible under Section 27 of the Evidence Act. In fact, what we find is that the police had attempted to create an evidence in consonance with the provisions of Section 27 of the Evidence Act so as to surmounting the difficulty. The villagers had known and through the villagers the police establishment had known as to where the parts of the body could be lying. It is too well-known to be pointed out that if the place of concealment of a fact is already known prior to the discovery of it,

then the whole evidence of discovery of fact is not admissible. The same could not impart any conscious knowledge about the participation of an accused in commission of the offence.

**15.** The third contention was that it was a case of the deceased being last seen in the company of the accused persons. The solitary circumstance which appears on last seen is that appellant Arun Raut had come to the house of the deceased and had taken him away by telling him that he should go out to enjoy some non-vegetarian diet on the first day of the new year. No other accused person had come to the house of the informant to take him away. Even if it could be the evidence of last seen, it could be attracted only against appellant Arun Raut and none else. We have already discussed that the confession was not admissible and acceptable.

**16.** Moreover, that circumstance of being seen last in the company of the deceased which could have appeared only against appellant Arun Raut was not put to him or to any other accused persons while they were being generally questioned on the circumstances appearing against them through evidence under Section 313 Cr.P.C. No question was put that anybody had seen appellant Arun Raut last in the company of the deceased. The purpose of questioning an accused under Section 313 Cr.P.C. is only to afford him an opportunity of explaining the circumstance which might have



appeared against him by giving a plausible and acceptable explanation. If the circumstance itself was not put to the accused, then the law is well-known that the same could not be treated as a circumstance adverse and thereby implicating the accused persons. The learned trial Judge appears unmindful of proper appreciation of law and the requirement of putting the circumstances appearing against the accused from evidence under Section 313 Cr.P.C. Moreover, appellant Arun Raut had given an explanation that he could not be accountable for the deceased as he did not know anything or it could be other accused who could be telling as to what happened of the deceased. When there is an explanation which could be explaining away the supposed guilt of the accused and when the fact may appear consistent with his theory of innocence, then the circumstantial evidence could not be handy for recording the conviction of the appellants. It is only when the explanation is either absent or it is found insufficient, false or otherwise by the court concerned that such a circumstance could be used against an accused as a conclusive link in the chain of circumstance. The evidence was lacking the quality of evidence, making it as inconclusive as to justify using the same for convicting the appellant. We find it improper on the part of the learned trial Judge to have used it.

**17.** After having considered the evidence of witnesses on

its face value and in its entirety, we find that deceased Meghan Baitha was indeed murdered but as regards culpability of the four appellants in committing his murder, the evidence appears quite unsatisfactory, inadmissible which could have never been used for recording the conviction of the appellants.

**18.** In the result, the three appeals succeed and they are allowed by setting aside the judgment of conviction and order of sentence. The four appellants, namely, Chhabila Singh, Prabhu Sah, Biltu Raut and Arun Raut are acquitted of the charge, they had been found guilty of. All the appellants except Chhabila Singh (Cr. Appeal (D.B.) No. 76 of 2009) are on bail, they shall stand discharged from the liabilities of their respective bonds. As regards appellant Chhabila Singh, he shall be released forthwith, if not wanted in any other case.

**(Dharnidhar Jha, J.)**

**(Amaresh Kumar Lal, J.)**

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