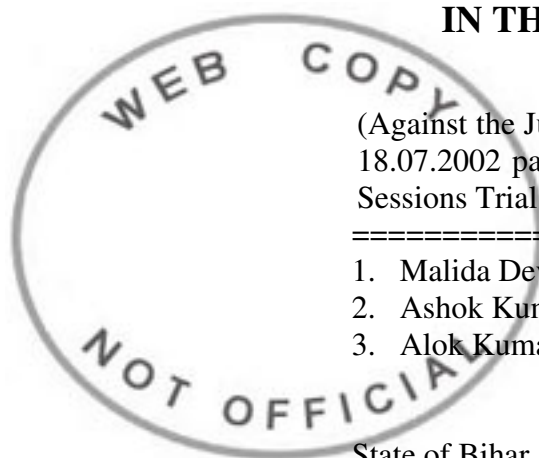




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.439 of 2002

(Against the Judgment of conviction dated 17.07.2002 and Order of sentence dated 18.07.2002 passed by the learned Presiding Officer, Fast Track Court, Munger in Sessions Trial No. 117 of 1994).

- =====
- 1. Malida Devi wido of late Gopal Sharma (appellant).
 - 2. Ashok Kumar Kashyap son of late Gopal Sharma
 - 3. Alok Kumar Kashyap son of late Gopal Sharma.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 436 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- MUNGER

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Bijay Kumar Sinha son of Mathura Sinha @Mathura Prasad resident of Mohalla Sadipur, P.S. Kotwali, District. Munger.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :
(In CR. APP (DB) No.439 of 2002 & CR. APP (DB) No.436 of 2002)

For the Appellant/s : Mr. Rakesh Kumar Sinha-1, Adv.

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

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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: 04-07-2016

1. This Appeal has been taken for out of turn hearing on the submission of the counsel for the Appellants, that the wife of deceased Appellant No. 1 Gopal Sharma, who has been substituted has not got pensionary benefit on account of pendency of the Appeal.



2. The Appeal has been filed against the judgment passed by the Presiding Officer, Fast Track Court, Munger dated 17.07.2002 in S.T. No. 117 of 1994 convicting the Appellants for the offence under Sections 302/34 of the Indian Penal Code and by order dated 18.07.2002 sentencing the Appellants to undergo Rigorous Imprisonment for life and also to pay a fine of Rs. 2500/- and in default of payment of fine further sentencing him to undergo Simple Imprisonment for two years.

3. The case of the informant Fazle Azim not examined, is that on 6.11.1989 the Appellant Bijay Kumar Sinha has called away his brother Ali Mansoor even though he did not want to go. However, later he learnt that his brother had been kidnapped by four persons. A correspondent gave information about the occurrence to the Officer In-charge at which the police force came to his house and started to make inquiry and arrested the Appellant Bijay Kumar Sinha. He did not give statement there because there was no cogent proof. However he alleged Appellant Gopal Sharma who was a clerk at Sadar Hospital, Munger had asked for bribe of Rs. 30,000/- for securing a job and also threatened him for non-payment whereas Appellant Bijay Kumar Sinha an Assistant in Lok Shikayat Cell, Collectorate, Munger was on intimate terms with his brother In course of inquiry his dead

body was recovered from a canal with serious injuries on his person. He alleged that the accused persons had committed the occurrence and that the deceased had been last seen with the Appellant Bijay Kumar Sinha.

4. To prove its case the prosecution examined 11 witnesses whereas the defence examined three witnesses.

5. P.W. 1 Md. Afsar and P.W. 2 Md. Sabir Hussain Siddique are formal in nature.

6. P.W. 3 Sakina Begum mother of the deceased stated that in 1989 she had herself gone to the office of the Civil Surgeon for taking pension when Appellant Gopal stated that Ali Mansoor would not be able to get the job till Rs. 30000/- was paid to him. So her son became ready to pay part of the amount. She confirmed the Appellant Gopal Sharma was posted as a Head Clerk in the Civil Surgeon office while the Appellant Bijay Sharma was a clerk in the Collectorate who had promised to get him a job in the Civil Surgeon Office. There were three more candidates for the same post. She further stated that the Appellant Bijay Sharma was a good friend of her son and on the previous evening he had called him away. The police had come to her house the same night making enquiries about her son and she was informed that somebody had telephonically

informed them that her son was being kidnapped. The next day the dead body was recovered from the ditch.

In cross-examination she stated that several attempts were made to find the boy and it appears that there was a communal angles to the incident. She further conceded that there was no talk about getting a job for the deceased in her presence. There is nothing else which is of note in the cross-examination.

7. P.W. 4 Rajendra Prasad stated that on 6.11.1989 he was informed by the sister of the deceased that her brother had gone missing and he had been last seen with the Appellant Bijay Sinha. He subsequently stated about the recovery of the dead body and the situation in the Civil Surgeon Office in regard to filling up vacancies. He also stated that a demand had been made for a certain amount of money for getting employment.

In cross-examination he stated that two months back the Appellant Bijay Sharma had stated about getting employment on payment of money in the Civil Surgeon Office. He conceded that it was the Civil Surgeon who was In-Charge of the appointment whereas the Appellant Gopal Sharma was merely a clerk.

8. P.W. 5 Jahana Begam also stated about payment of some money by her husband for employment in the Civil Surgeon

Office on the insistence of Appellant Gopal Sharma and she suspected that this was the reason her husband was killed in conspiracy with others.

In cross-examination her attention was drawn to the earlier statement that she had not stated that she was threatened many times for payment of gratification for employment of her husband.

9. P.W. 6 Dr. Rana Pratap Singh conducted the post-mortem on the person of the deceased and found the following injuries.

“ (i) incised multiple over lapped wound-on the front of the neck about 8” to 10” long x cutting the mandible bone i.e. oesophagu trachea and all the structures lie muscles fascle, soft tissues big vessels through and through up to the cervical vertebra.

(ii) incised wound horizontally placed 4” x ½ x muscles deep just below the left occipital region.

(iii) deep incised wound horizontally placed extended from up to right scapular region measuring 10” x 3” muscles deep.

(IV) deep incised wound front of the upper portion of the chest just by the side of the left boarder of the externach up to right axilla cutting all brachial muscles softy tissues and vessels.

(v) Deep incised wound on the right flank of abdomen 3” above measuring 4” x 2” abdominal cavity through which omentum protruding.

(vi) deep incised wound 3” x ½” x abdominal cavity on the back of the left lower portion of the rib. Further dissection reveals abdominal cavity full of blood and spleen punctured.

(vii) Fingers of the left foot chopped off and structure like muscles of fascia tender badly lacerated.

Death is due to hemorrhage and sock caused by

the above injuries specially no. 1 and 6 and due to cumulative effect of other injuries caused by sharp cutting weapons.”

10. P.W. 7 Nishar Ahmad Khan is a formal witness who is on the point of proving the *fard beyan* and signature thereon which he proves as Ext. 1/3 and 1/4.

11. P.W. 8 Mahendra Prasad Singh has been declared hostile whereas P.W. 9 Md. Sahin Passa is a formal inquest witness who has proved his signature as Ext. 3/1. Similarly. P.W. 10 Md. Saeed is also on the point of proving his signature on the inquest report as Ext. 1/5.

12. P.W. 11 Possan Kumar Singh is a Court Clerk who proves the certain pages of the case diary as Ext. 5.

13. As per defence witness, we find that the D.W. 1 Man Singh. D.W. 2. Baijnath Ashrai Prasad and D.W. 3 Mishri Prasad are on the point of alibi of Appellant Bijay Sharma that he was not at the place of occurrence.

14. On a fair assessment of the prosecution case, we find evidently there is no eye-witness to the occurrence. Only suspicion has been expressed against the two Appellants and there is a vague statement about the Appellant Bijay Sharma having been last seen with the deceased who was his good friend but had no motive to kill

him. The motive, as against now dead Appellant no. 1 Gopal Sharma also appears highly remote and does not inspire confidence. In such circumstances, when there is complete lack of any cogent evidence to sustain the conviction of the Appellants and in view of the well-known principle of law that suspicion no matter how grave cannot take place of proof, the Appeals are allowed and the impugned judgment of conviction dated 17.07.2002 and order of sentence dated 18.07.2002 passed in Sessions Trial No. 117 of 1994 by the Presiding Officer, Fast Track Court, Munger is hereby set aside.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.07.2016
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