

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.433 of 2014

(Against the Judgment of conviction dated 01.04.2014 and Order of sentence dated 03.04.2014 passed by 5th Additional Sessions Judge, Muzaffarpur (Bihar), in Sessions Trial Case No. 125 of 1995).

Pawan Kumar Yadav, Son of Bechu Lal Yadav, resident of village- Narsam, Police Station- Bisfi, District- Madhubani.

.... Appellant/s
Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate.

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

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 08-08-2016

Heard learned counsel for the Appellant and learned
counsel for the State.

2. The Appellant has been convicted under Sections 302 and 201 of the Indian Penal Code vide Judgment of conviction, dated 01.04.2014 and Order of sentence, dated 03.04.2014 passed by the 5th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 125 of 1995. For the offence under Section 302 of the Indian Penal Code, the Appellant has been sentenced to undergo Rigorous Imprisonment for life and fine of Rs. 10,000/-. For the offence under

Section 201 of the Indian Penal Code, he has been sentenced to undergo Rigorous Imprisonment for three years and fine of Rs. 1000/- . In default of payment of fine, to undergo Simple Imprisonment for one year for both offences. Both sentences are directed to run concurrently.

It would be relevant to state here that the Appellant had earlier filed Criminal Appeal (DB) No. 346 of 2007 against the Judgment of conviction, dated 01.03.2007 and Order of sentence, dated 02.03.2007 passed by the Additional Sessions Judge, Fast Track Court No. IV, Muzaffarpur, in Sessions Trial No. 125 of 1995, which was disposed of vide Judgment, dated 22.11.2013, remanding the matter to the learned court below with a direction to examine the Appellant, under Section 313(1)(b) of the Code of Criminal Procedure, and dispose of the case in accordance with law. Consequent to the direction of this Court, the Appellant was examined, under Section 313 (1)(b) of the Code of Criminal Procedure, whereafter the Trial Court disposed of the Sessions Trial by convicting and sentencing the Appellant as stated above.

3. The prosecution case as set out in the self statement (Ext.1) of Yogendra Thakur (P.W.1), an Assistant Sub-Inspector of Town Police Station, Muzaffarpur, is as follows:

(i) On 11.08.1994, at about 3 A.M., while the informant



(PW 1), an Assistant Sub-Inspector of Police, was on patrolling duty along with other police personnel, they saw a person moving towards river on a bicycle with a *motri* (a bundle) on his carrier. The informant asked him to stop, but he started fleeing on his bicycle. Getting suspicion, the police patrolling party, headed by PW 1, then, chased and caught him finally. On being so apprehended, the accused disclosed his name as Pawan Kumar Yadav. He also disclosed his address and admitted that he had contracted two marriages and was carrying, in the said bundle, the dead body of his second wife, whom he had done to death by pressing her neck. He had cut her neck, leg and hand and had disposed the same earlier. Now he was carrying, in the said bundle, remaining part of his second wife's dead body to the river to dispose it as well. On being so informed, PW 1 took the accused into custody and, on opening the bundle, found remains of some part of the human body, whereafter *inquest* was held and *inquest report* (Exhibit-3) was prepared. The accused was brought to the Muzaffarpur Town Police Station and information, in writing, was lodged, in this regard, at the same police station by PW 1. Treating the said written information as First Information Report (in short, the "FIR"), Muzaffarpur Town Police Station Case No. 225 of 1994, under Sections 302 and 201 of the Indian Penal Code, was registered against the accused.



(ii) PW 1, thereafter proceeded for the house of the accused along with other police personnel. On entering his house, PW 1 noticed that the floor of the room has been washed and all signs of blood have been wiped off. *Dabiya* (a sharp-edged instrument used for cutting grass) was recovered and the same was seized as Exhibit-4. The part of the body, which had been recovered from the possession of the accused, was sent for *post mortem* examination. Having obtained *post mortem report* and having completed investigation, a *charge sheet* was laid, under Sections 302/201 of the Indian Penal Code, against the accused.

4. At the trial, the accused pleaded not guilty to the charges framed against him under Sections 302 and 201 of the Indian Penal Code.

5. In support of its case, the prosecution examined altogether eight witnesses. Out of eight witnesses, P.W. 1 Yogendra Thakur is the informant of the case, whereas P.W. 2 Arther Masid and P.W.6 Rajesh Kumar Sah are the witnesses of the seizure of *Dabiya* recovered from the rented premises of the accused/appellant. P.W.8 Ram Janam Thakur is the witness of Inquest Report (Ext.3). P.W.4 Dr. Mumtaz Ahmad is the Doctor, who conducted the Post-Mortem Examination of skeleton seized from the bicycle of the accused/appellant. P.W.6 Rajesh Kumar Sah is tender witness.



6. P.W.1 Yogendra Thakur is the informant as well as the Investigating Officer of the case. He stated that, on 11.08.1994, he was posted in Town Police Station as Assistant Sub-Inspector. On the date of incident, at about 3 A.M., he along with other police officials was on patrolling duty. In course of patrolling, they reached Bhakhara Ghat and saw a person going towards Balughat on a bicycle, carrying a big bag on the carrier of his bicycle. The informant signaled him to stop. But as the cyclist did not stop, the informant chased and caught the accused/appellant, who disclosed his name as Pawan Kumar Yadav. On query, the cyclist (accused/appellant) disclosed that he was carrying the dead body of his second wife, namely, Lipikia. He further stated that he had done her to death by pressing her neck. He then cut her neck, legs and hands and threw them in the river. At present, he was carrying the remaining part of the body of his second wife, for disposal.

This witness has proved his self statement (Fardbeyan) as Ext. 1. He further stated that Sri R.N. Ray, the then Sub Inspector of Town P.S., had endorsed the Fardbeyan, on the basis of which, a formal F.I.R. was registered, which he proved as Ext.2. He further stated that he prepared the Inquest Report, which was signed by Ramdeo Sahni (now examined) and Yamun Sah (P.W.8). He also prepared the seizure of the bag, containing the dead body as recovered



from the carrier of bicycle, on which, Surajdeo Narayan Singh and Mohan Ji (both not examined) have put their signature's. He identified their signatures as Exts. 4 and 4/1. He also prepared the seizure of *Dabiya* recovered from the rented premises of the accused/appellant in presence of Rajesh Kumar Sah (P.W.6) and Arther Masid (P.W.2). He handed over the charge of investigation on 14.09.1994 to one Ram Janam Thakur (P.W.7) and thereafter recorded the confessional statement of accused/appellant, who confessed his guilt. He also visited the place of occurrence, which is on pitch road in Akhagara Ghat. According to him, the second place of occurrence is rented premises of accused/appellant, which is the house of Ashok Ramani (not examined), from where, the *Dabiya* was seized. He further inspected the room as well as bed, on which, the deceased was killed by pressing and cutting her neck, hands and legs. Floor of the room was cleaned with water to remove all signs of blood. In his cross-examination, he stated that he had not caught the accused/appellant in presence of independent witnesses. He further stated that he did not make any inquiry regarding the identity of the deceased and name of her father. He further stated that he prepared the Inquest Report in presence of Ramdeo (not examined) and Yamun (P.W.8).

7. P.W.2, Arther Masid, stated in his evidence that he has tea stall in Purani Gudri where Ashok Ramani also had his



house, in which, the accused/appellant used to stay. On 11.08.1994, Daroga Ji did not get the room of the Appellant opened in his presence. One *Dabiya* was recovered in his presence and the seizure was prepared, in which, he put his signature, proved his signature on it as Ext.4/1. This witness has stated in his cross-examination that the *Dabiya* was rusted and blood stains were not found. It would appear that at best his evidence is to effect of recovery of rusted *Dabiya* from the rented room of the accused/appellant.

8. P.W.3, Lallan Prasad, is a formal witness and has proved the formal F.I.R. as Ext.3.

9. P.W. 4, Dr. Mumtaz Ahmad, who was posted as Tutor in S.K.M. College, Muzaffarpur, has stated that on 12.08.1994 he received a sealed packet containing a portion of dead body. On opening the packet, he found human bones attached with some muscles pipes. He stated that all the bones are of a female and the age of skeleton was about 25 to 26 years. According to him, the time elapsed since death would be 45 to 50 days. He also stated that the cause of death was due to shock and hemorrhage as a result of cutting of the neck.

10. P.W.5, Shankar Singh, was the member of patrolling party led by P.W.1. He stated that in course of patrolling on 10.08.1994, at about 3/4 A.M, when they reached near Akharaghat



bridge, they saw a person on bicycle carrying a heavy bag on the carrier. On seeing the police party, the person tried to flee away, but on chase was caught. On query, he disclosed his name as Pawan Kumar Yadav, residing at Gudri Mohalla on rent. The accused/appellant stated that he was carrying the remains of the body of his second wife for disposal. On disclosure of the apprehended person, a *Dabiya* was recovered from the rented house and the seized body was sent for Post-Mortem Examination. In his cross-examination, he stated that the bag was opened and was carried to the police station. The bag contained parts of the body, other than legs, hands and neck.

11. P.W.6, Rajesh Kumar Sah, is the witness to seizure of *Dabiya*, who has been tendered.

12. P.W. 7, Ram Janam Thakur, is the second Investigating Officer of the case. He took charge of investigation on 14.09.1994 and submitted charge sheet.

13. P.W.8, Yamun Sah, has stated in his evidence that he does not know anything about the occurrence. He does not know whether the Daroga Ji took his statement or not. He further stated that the bag containing the dead body was carried to the police station where the inquest report was prepared. He proves his signature on the inquest report as Ext.3.

14. The appellant submits that the only material against him is the evidence of the informant (P.W.1), to the effect that the part of the dead body was recovered from a bag, said to be carried by him on the carrier of his bicycle and that he had confessed that the dead body was of his second wife, whom he had killed. As per his confession, he had cut the neck, legs and hands of his second wife and thrown the same in the river earlier, and on the relevant date he was also carrying the rest part of the body of his second wife for disposing it in the river. The Appellant submits that there is no independent witness on the point that the dead body was recovered from the bag carried on the carrier of the bicycle of the appellant on the death of the night. On the contrary, it would appear from the F.I.R. as well as evidence of P.W.1 that the bag containing skeleton was seized in presence of two persons, namely, Surajdeo Narayan Singh and Mohan Ji, but both were not examined during trial. He next submits that the *Dabiya* was said to be recovered from the rented premises of the appellant, but no blood stain was found on it. He further submits that neither P.W.1 nor P.W.7 (both Investigating Officer) have tried to find out whether the appellant had two wives and deceased was the second wife, who was residing in the rented premises of the appellant in Purani Gudri Mohalla in the house of Ashok Ramani. Learned counsel for the defence on these premises states that the prosecution

has failed to establish the guilt of murdering his second wife and carrying her skeleton with a view to dispose them of. He lastly submits that the appellant is in custody for over 10 years.

15. Learned A.P.P. appearing for the State submits that informant (P.W.1) found the appellant with a bag containing skeleton at about 3 A.M. in the night of 10th/11th August 1994. He further submits that the medical report supports the prosecution case that the skeleton was of a female aged about 25 to 26 years, who was done to death by cutting her neck about 45-50 days back.

16. On going through the evidence on record and the witnesses as discussed above, we find that the prosecution case is that bag containing skeleton was seized from the carrier of the bicycle of the appellant but none of the seizure list witness came before the court to support its case that a bag was seized from the carrier of the bicycle of the appellant. We further find that the Investigating Officer (P.W.1) did not take care to find out whether the appellant had a second wife and she was residing with him in the rented house. In this context, neither the statement of the owner of the house or any one living in the vicinity was taken. As such, we are of the considered view that the prosecution has not succeeded in establishing the guilt of murder against the appellant beyond all reasonable doubt.

17. In the result, this appeal is allowed. The impugned Judgment of conviction, dated 01.04.2014 and Order of sentence, dated 03.04.2014 passed by the 5th Additional Sessions Judge, Muzaffarpur, in connection with Sessions Trial No. 125 of 1995 is set aside. The Appellant is discharged from the liabilities of his bail bonds. The Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Samarendra Pratap Singh, J)

Bhardwaj/-

(Rajendra Kumar Mishra, J)

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