

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1443 of 2007

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Radha Krishna Chaubey, Son of Late Chandradip Chaubey,
resident of Village-Vaina, P.S.-Nawanagar, District-Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Vinod Tiwary, Son of Ram Kripal Tiwary, resident of Village-
Suraundha, P.S.-Dumraon, District-Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Pandey, Adv.

For the Respondent/s : Mr. Md. Fahimuddin, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 30-11-2016

This criminal revision application, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, (*hereinafter referred to as the Code*), has been filed against the judgment and order of acquittal, dated 03.09.2007, passed in Sessions Trial No. 167 of 2004, arising out of Nawa Nagar P.S. Case No. 76 of 2003 corresponding to G.R. No. 867 of 2003, registered for the offences punishable under Sections 302 read with Section



34 of the Indian Penal Code (*hereinafter referred to as the IPC*).

2. The sole private opposite party, who was charged of commission of the offences punishable under Section 302 read with Section 34 of the IPC, at the trial, stands acquitted by the impugned judgment and order aforementioned.

3. The case of the prosecution, as unfolded in the *Fardbeyan* of the informant, who is petitioner herein, is that his son (the deceased) had gone to his in-laws place, viz, Village *Tar* on 25.06.2003 and on the next date, i.e., 26.06.2003, he returned back along with his in-laws, up to Ara, in a Commander Jeep arranged by opposite party No. 2. From Ara, the deceased had gone to Patna and thereafter to another destination his dead-body was found at Newari road side at a distance of half kilometer from Sonbarsa Bazar. Allegedly, Opposite party No. 2 being the co-brother of the deceased was, on account of some annoyances, was nurturing ill-will for certain reasons, against the deceased and on that basis he was implicated in the case.

4. On completion of investigation, the police submitted charge-sheet, whereafter the trial commenced after framing of the charge, since the accused persons



denied the allegation.

5. At the trial altogether seventeen (17) witnesses were examined in support of the prosecution, no prosecution witness claimed to be an eye-witness and the case of the prosecution was, thus, based on circumstantial evidence.

6. This is to be noted that at the trial the defence witness, D.W.1, namely, Nirmal Kumar Pandey, deposed that the deceased had gone to his in-laws place and he had accompanied him. He deposed that on 26.06.2003, he had accompanied the deceased from village-Tar (in-laws place of the deceased) up-to Ara in a Commander Jeep. The occurrence took place thereafter. No evidence could be adduced at the trial that opposite party No. 2 had accompanied the deceased either from village-Tar to any other destination.

7. Out of total seventeen (17) prosecution witnesses, P.Ws. 1 and 3 were formal witnesses, who proved the First Information Report. P.W.-11, namely, Bishwkarma Sharma, was declared hostile to the prosecution. P.W. 2, namely, Arun Kumar Choubey (the brother of the deceased), deposed that the deceased was wearing a *Kurtta*, whereas, P.W.-4, namely, Radha Krishna Choubey (the father of the deceased), deposed that the



deceased was wearing shirt-paint.

8. P.W.-5, namely, Hari Singh, the owner of a bus, bearing Registration No. BR-24-P-7701, in which the deceased and opposite party No. 2 are said to have travelled from Ara, did not say that opposite party No. 2 had travelled with the deceased from Ara. P.W.-6, namely, Kedar Mishra, deposed before the Court that on 01.07.2003, when opposite party No. 2 was going to village-Tar, he had met him at Sonbarsa Bazar. He did not, however, depose to the effect that opposite party No. 2 had accompanied the deceased on the date of occurrence. The driver and conductor of the bus were not examined by the prosecution. P.Ws.-7 and 8, namely, Suraj Singh and Munna Kumar, also did not give any substantial evidence to the effect that opposite party No. 2 was accompanying the deceased at any point of time before he was killed, though they deposed that on the date of occurrence they had seen five persons going when they were there at the mill/shop, but they did not identify any person. The accused persons were not put on Test Identification Parade (TIP). P.W.9, namely, Hari Shankar Choubey, deposed that the police had seized the blood stained *Gamachcha* and a plastic rope and one pair of *Chappal*, whereafter the seizure list was prepared by the police. At the trial, illicit relationship of



opposite party No. 2 with the sister of the wife of the deceased, which was being protested by the deceased, was attempted to be shown as the motive behind killing of the deceased by opposite party No. 2. However, the motive could not be established at the trial inasmuch as the wife of the deceased denied existence of such relationship. The allegation of existence of such motive was not supported by other prosecution witnesses.

9. Considering the evidence available on the record, learned trial Court reached the conclusion that the evidence of the prosecution witnesses could not establish the motive behind the occurrence and it being a case of circumstantial evidence, since all chains of circumstances could not be joined, the prosecution failed to establish the charge against opposite party No. 2 beyond all reasonable doubt. Learned trial Court has specifically referred to in the impugned judgment and order, the circumstances which were missing in order to establish the case of prosecution beyond all reasonable doubt, which can be briefly summarized as follows:-

[i] The prosecution could not establish that opposite party No. 2 was accompanying the deceased and other members of his in-laws family on 26.06.2003 from village-Tar to Ara.



[ii] It could also not be established that in the evening of 28.06.2003, opposite party No. 2 had proceeded with the deceased in a bus from Patna to Sonbarsa along with three other persons.

[iii] The prosecution did not produce the driver of the Commander Jeep when the deceased was travelling from village-Tar to Ara Railway Station.

(iv) It could not be established that opposite party No. 2 accompanied the deceased from Ara to Patna and stayed there for two days at Patna.

(v) There was no cogent evidence to establish that opposite party No. 2 and the deceased had travelled together from Patna to Sonbarsa.

[vi] There was nothing clinching to come to a conclusion that thereafter unknown criminals had taken away the deceased at Sonbarsa Newari Road and had strangulated him with the said plastic rope and *Gamachcha*.

[vii] Non-examination of T.I. Parade has been found to be fatal for the prosecution, by the learned trial Court.

10. Learned counsel for the petitioner has attempted to persuade this Court that on the basis of circumstantial evidence, the prosecution was able to establish the charge under Section 302 of the IPC and read



with Section 34 of the IPC against opposite party No. 2 beyond all reasonable doubt. According to him, the impugned judgment and order needs interference in a criminal revision jurisdiction.

11. As can be easily noticed and has been mentioned at the very outset that there is no eye-witness to the occurrence and it is a case of circumstantial evidence.

12. In a case of circumstantial evidence, circumstances from which the conclusion of guilt is to be drawn must be fully established so that such facts can be linked together and when all such facts in such circumstances are joined as a chain, there should not be any missing link. Negative test or reverse test, in case of circumstantial evidence, is also applied in chain of circumstances that would exclude hypotheses of accused's innocence. The facts so established, in a case based on circumstantial evidence, should be consistent with the hypothesis of the guilt of the accused only. The chain of evidence, in case of circumstantial evidence, should be so complete as to leave no reasonable ground for any theory which may be consistent with innocence of the accused.

13. Rule of circumstantial evidence requires that for proof to be beyond all reasonable doubts; the



evidence must not be merely consistent with the guilt, but inconsistent with innocence.

14. As has been noticed hereinabove, there are numerous missing links, which have been noted by learned trial Court. Appreciation of evidence and conclusion reached thereon cannot be said to be wholly erroneous, requiring interference by this Court, in a revisional jurisdiction, with the judgment and order of acquittal.

15. I do not find any merit in this application, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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