

IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.1 of 2016

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In the matter of reference dated 12th February, 2016 under Section 374 Cr. P.C. for confirmation of death sentence awarded to the convict-Lala Chaurasia and in the matter of an appeal under Section 374(2) read with Section 389(1) Cr. P.C. against the judgment and order dated 08.02.2016 and 09.02.2016 respectively, passed by the Additional Sessions Judge-III, Nalanda at Biharsharif, in Sessions Trial Case No. 645 of 2014.

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The State of Bihar

.... Petitioner/s

Versus

Lala Chaurasia @ Lala Kumar, son of late Kamlesh Chaurasia @ Kamlesh, resident of village Bari Pahari, P.S. Laheri, District Nalanda.

.... Respondent/s

with

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Criminal Appeal (DB) No. 230 of 2016

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Lala Kumar @ Lala Chaurasiya, son of Late Kamlesh Chaurasiya, R/o Bari Pahari, P.S.- Laheri, District- Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 213 of 2016

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Shankar Kumar @ Chammo @ Shankar Mistri. S/o Late Jamun Mistri @ Jamuna Mistri, Resident of Mohalla- Mansoor Nagar, P.S.- Sohsarai, District Nalanda

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In D. REF. No. 1 of 2016)

For the Petitioner/s : Mr.

For the Respondent/s : Mr. A.K. Sinha, A.P.P.

(In CR. APP (DB) No. 230 of 2016)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Satya Prakash, Advocate

For the Respondent/s : Mr. S.C. Mishra, Advocate

(In CR. APP (DB) No. 213 of 2016)

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

For the Respondent/s : Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 21-07-2016

The Death Reference Case No. 1 of 2016 as well as Criminal Appeal (D.B.) No. 230 of 2016 and Criminal Appeal (D.B.) No. 213 of 2016, arise out of judgment of conviction, dated 08.02.2016 and order of sentence, dated 09.02.2016, passed by learned Additional Sessions Judge-III, Nalanda at Biharsharif. By the aforesaid judgment, learned Trial Court convicted both the Appellants under Sections 302/34 and 394/34 of the IPC. For the offence under Section 302/34 IPC, Lala Kumar @ Lala Chaurasia, Appellant of Criminal Appeal (DB) No. 230 of 2016, has been handed capital sentence along with a fine of Rs.10,000/-, whereas, Shankar Mistry @ Chammo @ Shankar Kumar has been sentenced to life imprisonment, along with a fine of Rs.10,000/-. For the offence under Section 394/34 IPC, both the Appellants, Lala Kumar @ Lala Chaurasia and Shankar Mistry @ Chammo @ Shankar Kumar, have been sentenced to imprisonment for life along with a fine of Rs.10,000/- each and in default of payment of fine, to undergo simple imprisonment for

further three months.

2. The prosecution case as recorded in the self-statement of PW-2, Rajesh Malakar, giving rise to Sohسرائ P.S. Case No. 42 of 2014, under Sections 302/394, in short, is as follows:-

3. The informant stated that on 01.06.2014 at about 05:00 a.m., he received information on his official mobile from the local Ward Commissioner that dead body of a person is lying below the eastern side of Bari Pahari on Singarhat Mamu-Bhagina road. After recording Sanha, the informant along with the Officer-in-Charge and other Police Officials, left for the place of occurrence, where he saw dead body of a man, aged about 25 years, and a mobile lying on the ground. By that time, a large number of persons had also assembled at the place of occurrence. No one was able to identify the dead body. An inquest report was prepared in presence of local people and thereafter, the dead body was sent for postmortem. The local people informed that some more dead bodies and injured could be found on the hill. He immediately informed the Officer-in-Charge of Bihar P.S. and Laheri P.S. of the incident and proceeded for Bari Pahari to verify the informations about more dead bodies, as informed by the local people. In course of search, the informant located an injured in an underwear lying in the south-west corner of ditch of Sheo Mandir. The injured disclosed his name as Lala Chaurasia, who is one of the appellants. A Nokia mobile and ATM card of SBI Bank

was also lying nearby the injured.

On further search, the informant located one more injured and a dead body in a ditch 50 mtr. from the spot where injured Lala Chaurasia was lying. The injured, on inquiry, disclosed his name as Samarjeet (PW-4), son of Chandrika Mandal, resident of village Bhatsara, P.S. Badahara, District Purnia and disclosed the name of the dead person lying near him as Prem Kumar, son of Ramesh Prasad Sah, resident of Banmankhi Bus Stand, Chaklapur, Ward No.4, P.S. Banmankhi, District Purnia.

With the help of the local people, an inquest report of Prem Kumar was also prepared after pulling him from the ditch. The injured as well as the dead body were taken to Sadar Hospital. The injured Samarjeet Kumar further disclosed that Rahul Kumar, son of Laxaman Yadav, resident of village Bennipatti, P.S. K.Nagar; Rahul Kumar, son of Jainendar Mandal, resident of village Hurmudhi, P.S. Banmankhi; and Prem Kumar, son of Ramesh Prasad Sah, resident of village Banmankhi Bus Stand Chakla, P.S. Banmankhi, all from district Purnia, had come in the evening of 31.05.2014 to appear in the Polytechnic examination. All of them had met at the 'Hospital More' and after taking some snacks, they had gone to visit Bari Pahari Mandir. At about 07:00 p.m., four persons met them. However, all the four persons, after taking them into custody, took them towards hill side. Thereafter, they snatched all their money as well as ATM cards.



They forced them to disclose the code numbers of the ATM cards. After taking away the ATM cards, two of the persons left the place, whereas, two accused persons remained on the hill guarding them. After sometime, a phone call was received on the mobile of one of the accused persons stating that the code of one of the ATM cards is not correct. As the Prem Kumar refused to give the correct code, the two accused persons pushed him down the hill. Samarjeet further disclosed that they tried to save Prem Kumar, however, the accused guarding them frustrated their effort. Taking advantage of the situation, Rahul Kumar, son of Laxaman Yadav, fled away from the place of occurrence. However, in the process of scuffle, Prem Kumar also pushed one of the accused in the ditch. The accused persons, thereafter, also pushed him down, whereupon, he became unconscious. On gaining consciousness, he found dead body of Prem Kumar. He again became unconscious and gained consciousness only on the following day.

4. The prosecution, in support of its case, examined seven witnesses, which are as follows:-

5. PW-1, Sonu Kumar, is a seizure witness and has identified his signatures on the seizure lists, which is annexed as Ext. 1 and 1/1.

6. PW-2, Rajesh Malakar, Sub-Inspector of Police at Sohسرائ P.S., is the informant of the case. In his evidence, he has



reiterated the prosecution case at length. In short, he submitted that on 01.06.2014, he received information from a local Ward Commissioner that a dead body is lying behind eastern side of Bari Pahari on Mamu-Bhagina road. After recording a Sanha, the informant along with other Police Officials, reached the place of occurrence, where he found a dead body as well as a mobile lying on the ground. After preparing the inquest report, steps were taken to send the dead body for postmortem. In the meantime, some local people informed that there are more dead bodies and injured could be found on the hill. On such information, PW-2 along with his Police Party went atop the hill, where he found a dead body and an injured, lying behind the Sheo Temple. The injured disclosed his name as Lala Chaurasia, who is one of the Appellants. A mobile and an ATM card was also lying near him. At some distance, a boy in injured condition was lying, who, on inquiry, disclosed his name as Samarjeet. On query, he disclosed the name of the deceased as Prem Kumar. In his evidence, he stated that he along with three other boys had came to Biharsharif for appearing in the Polytechnic examination, details of which has already been mentioned in the foregoing paragraphs.

This witness has identified his self-statement as well as signature on it, which has been marked as Ext.-2. He also proved the inquest report of Prem Kumar and Rahul Kumar, which were marked as Ext. 3 and 4. The witness was cross-examined on behalf of the two



appellants. In his cross-examination, he stated that he left the main column for name of the deceased as blank to be filled-up later, after ascertaining his name. He further stated that the 2nd inquest report was prepared after 3 hours of preparation of 1st inquest report. On being queried on behalf of Lala Chaurasia, this witness stated that Samarjeet (PW-4) was conscious, when he was retrieved from the ditch and he made necessary inquiries from him. However, Samarjeet did not disclose the name of any of the accused.

7. PW-3, Dr. Faisal Arshad, who conducted the postmortem report on the dead bodies of Prem Kumar and Rahul Kumar, son of Jainendra Kumar, has proved the postmortem report of the deceased, which were marked as Ext. 5 and 5/1. He stated that injuries are anti-mortem and cause of death was due to fall.

8. This takes us to the evidence of PW-4, Samarjeet Kumar, who is an important witness, as the prosecution case is largely based on his statement. PW-4 stated that he had come to Biharsharif on 31.05.2014 at 05:30 p.m. to appear in Polytechnic examination. The centre of examination was Government Middle School, Lehari Sarai, Nalanda. At about 03:30 p.m., on 31.05.2014, he reached Biharsharif Railway Station. The examination was scheduled for 1st July, 2014. He had gone to Subhash Park to find the location of examination centre. When he reached Subhash Park, he met his friend Rahul Kumar, son of Laxman Singh who was from Baniapatti.



Thereafter, both of them took snacks in the nearby shop. In the meantime, another friend of Rahul, whose name was also Rahul (son of Jainendar Mandal), came there along with his friend Prem. All of them had come to appear in the Polytechnic examination. Both Rahul and Prem took snacks. After taking snacks, Rahul Kumar inquired whether there is any lodge, where he can have his accommodation. On inquiry, a shopkeeper suggested that they should go to the hill where some more boys too had gone. They also, then, moved towards the hill. On reaching the hill, they sat in a park. They saw a number boys returning from near a temple, situated at a distance of about 10 to 15 yards. PW-4 along with others also proceeded for the temple. In the meantime, one person coming from temple side inquired as to whether they take tobacco, to which they replied in negative. However, by the time they reached, the Shiv temple closed, and as such, they proceeded to the nearby Hanuman temple, which was open. As soon as they entered the temple, one person closed the exit grill by locking it. Three persons were present in the temple from before. The person, who locked the grill, introduced himself as man from Administration and made inquiries about their identities. They disclosed that they had come to appear in an examination. Thereafter, he asked for the admit cards and at the same time, also took ATM cards from their bags. He took all the money that they were carrying. After taking out the ATM cards, they asked for the respective code numbers. Prem Kumar, who



had two ATM cards, correctly disclosed the code of only one of the ATM cards. Rahul Kumar, also disclosed correctly the code of his ATM card. Two of the four persons went down the hill with the ATM cards. In the meantime, the PW-4 and others were forced to sit nearby the temple. After sometime, a phone call came that the code of three ATM cards have been correctly given, whereas, the code of one of the ATM cards, which belongs to Prem Kumar, was not correct. One of the two persons guarding them, in anger, pushed Prem Kumar down the hill as he had not disclosed the ATM code correctly. In spite of their best efforts, they could not protect Prem Kumar and the accused succeeded in pushing him down the hill. Thereafter, accused persons next tried to push Rahul down the hill. PW-4 again tried to save him, but in vain. A scuffle took place and in the process, Rahul Kumar, son of Jainendar Mandal and also one person fell in the ditch. Taking advantage of the situation, the other Rahul Kumar, son of Laxaman Yadav, fled and made good his escape. The accused persons then caught this witness and also pushed him down the ditch on account of which, his left leg got fractured. He was taken by the Police in the morning at about 05:30 a.m. to the Sadar Hospital, Bihar Sharif, from where, he was referred to PMCH. He stated that at the relevant time, he was unconscious. He had identified both the appellants in court.

The witness has extensively been cross-examined. He stated that after the occurrence and before he left for his house, the Police



contacted him three to four times and also showed photographs of the criminals. In his cross-examination, at para-23, he stated that because of the fall from the hill, he became unconscious and regained his consciousness on the next day. On the next day, when the Police came, neither he gave any information nor was his statement recorded by them. Two hours after regaining consciousness, he was referred to PMCH. Prior to being shifted to PMCH, none of the family members has come to see him. He also had no talk with the Police in the meantime. Only after ten days, the Police took his signature on a paper.

9. PW-5, Rahul Kumar, son of Laxman Singh, in his evidence has submitted that the incident took place on 31.05.2014 at about 09:30 p.m. He too had come from Purnia to Bihar Sharif for appearing in Polytechnic examination. He met another boy of Purnia district with whom he had gone to R.P.S. Kutchery More for finding out the examination centre. Later on, while he was sitting near the Shiv Mandir down the hill, he met Samarjeet (PW-4) at about 03:00 p.m. Thereafter, he and Samarjeet went out for food. In the meantime, Rahul, son of Jainendra Kumar, and Prem, who were coming from Patna, contacted them. All of them met at Sadar hospital. Rahul and Prem took snacks and thereafter, they went to see temple. On the hill, three persons were sitting from before. One person, who had earlier met them before they had arrived at the gate of the temple, introduced



himself as person from the administration. He was first to enter Bajarang Bali temple, while three of his friends were stopped outside for the purpose of checking their articles. The persons indulged in checking took their admit cards and cash amounting to Rs.2500/- from Rahul. Then, they also took money as well as ATM cards from his purse, as also from Prem Kumar. They took cash worth Rs.500/- from the Samarjeet (PW-4). They forced them to disclose the codes of their ATM cards. Thereafter, they forcibly took them towards 'Chautara' situated behind the temple. Two persons left the place with the ATM cards for withdrawal of the money. After sometime, one of the accused guarding them received a call that the code of one of the two ATM cards, has not been correctly disclosed. Prem Kumar had not disclosed the correct code of one of his two ATM cards, as result of which, the accused being peeved, pushed him down the hill. Taking advantage of the situation, this witness managed to flee away. He tried to stop a Police Jeep passing by on the road, but it did not stop. He somehow managed to call his father and disclosed the entire incident. His parents, thereafter, rang up the local Police Station. He reached Bihar Thana at about 05:00 a.m. in the morning. The person present in the Thana informed him that the place of occurrence fell under Leharia P.S. The police told him to come after giving his examination. After examination, he came to Bihar P.S. from examination, where he narrated the entire story. One day thereafter, the Police took him to the



place of occurrence, where S.P. of the district was also present. When he again returned to Bihar P.S., they showed him photographs of Samarjeet and Rahul Kumar (deceased). The mobile photoes also contained photographs of one of the person, who assaulted them. In his chief, he further stated that at the time, when Prem was thrown from the hill, there were only two persons. One of the persons, who threw Prem Kumar from the hill, is present in the Court, whom he duly identified, who disclosed his name as Lala Kumar @ Lala Chaurasia (appellant). He also identified another accused, who snatched the ATM from them as Shankar Kumar @ Shankar Mistry (appellant). Later on, he learnt that Rahul and Prem have been murdered.

In his cross-examination, he stated that only after finishing his examination, at about 01:30 p.m. on 01.06.2014, he narrated the entire incident to the Police. He also met Samarjeet at Bihar Police Station. He remained with the Police till 14.06.2014. In his cross-examination, he denied the suggestion that he was shown photoes of the accused.

10. PW-6, Dinesh Chandra Srivastava, who is the Inquiry Officer of the of the case, at the relevant time on 01.06.2014, was Officer-in-Charge of Sohsarai Police Station. On the basis of *fardbeyan* of Rajesh Malakar (PW-2), he registered a formal F.I.R. (Ext.7). In course of investigation, he received inquest report of Prem



Kumar and Rahul Kumar, which is marked as Ext. – 3 and 4 respectively. He also seized a white Nokia mobile of Lala Chaurasia as well as ATM card of SBI. He also seized blood stain T-shirt of Lala Chaurasia (appellant), which has been exhibited as Ext. 1. He also visited the place of occurrence. The first place of occurrence was Singra Hat, which is on Mamu-Bhagina Road, from where a dead body was recovered. Thereafter, he visited another place of occurrence at Bari Pahari, from where another dead body was also recovered. He also found Lala Chaurasia in injured condition lying in a ditch nearby. He also visited third place of occurrence, which is also a ditch, situated west to the Shiv Mandir, located on Bari Pahari, from where dead body of Prem Kumar, was found lying on the ground. He also found Samarjeet (PW-4) in injured condition, nearby the dead body. In course of investigation, he took the statement of Rahul Kumar (PW-5), the injured Lala Chaurasia (appellant) as well as Samarjeet Kumar, another injured (PW-4). He also took confessional statement of Lala Kumar, who disclosed the name of his other associates as Nata @ Santosh Chamo @ Shankar Mistri, Vivek Kumar @ Sukha. He got the Test Identification Parade of both Lala Chaurasia as well as Santosh Kumar done. Lala Chaurasia was identified by both PW-4 and 5, whereas, Santosh Kumar was identified by PW-5. He took call details of mobile of Lala Chaurasia, who frequently contacted on the Mobile No. 7562089451,

7277623910, 7544828014. On verification, it transpired that the mobile respectively belongs to Santosh @ Nata, Sukha @ Vivek and Shankar @ Chamo. He got the postmortem of both the accused done and after investigation, submitted charge-sheet against two accused (appellants), showing the other two accused namely, Santosh @ Nata and Vivek Kumar as absconders.

11. PW-7, Ranjan Kumar Mishra, at the relevant time, was the Judicial Magistrate, in whose presence the Test Identification Parade was conducted at Sadar Hospital Bihar Sharif. The Test Identification Parade was performed under his supervision on 23.06.2014 at Sadar Hospital, Bihar Sharif, in which the appellant, Lala Chaurasia was identified by PW-4 and 5, whereas, the other appellant Shankar Kumar was identified by PW-5, Rahul Kumar.

12. Learned counsel for the appellant submits that the prosecution failed to bring home the charge against them beyond all reasonable doubt. The prosecution has not come out with clean hands in so much so that the F.I.R. has been manipulated. He submits that the informant PW-2, Rajesh Malakar, in his self-statement, which is the basis of F.I.R., narrated the entire incident, said to be disclosed by PW-4, Samarjeet Kumar, on 01.06.2014, at the place of occurrence itself. However, the facts stated in the self-statement of PW-2 is completely destroyed by the statement of PW-4, Samarjeet Kumar, who in his evidence at para-23, stated that he did not make any



statement to the Police nor did the Police make any query for full ten days. PW-4 stated that only after regaining his consciousness, he gave his statement after ten days. He next submits that Lala Chaurasia, who is one of the appellants, in fact is also one of the victim, as he was found in injured condition in an underwear, with fractured injuries on his person. The aforesaid fact would establish that the miscreants were some terrorists, who not only assaulted the students, but also assaulted Lala Chaurasia. He next submits that the seizure of ATM cards from nearby the place, where Lala Chaurasia was lying, also becomes doubtful as the ATM cards were taken away by the other accused. Furthermore, Lala Chaurasia was kept in the same ward as PW-4.

13. Learned counsel for the State submits that this is an unfortunate case, in which, two of the boys, who had come all the way from Bihar Sharif to appear in the examination, have been murdered. He stated that appellant, Lala Chaurasia has been identified by both PW-4 and PW-5, whereas, the other appellant i.e. Shankar Kumar @ Chammo has been recognized by PW-5.

14. On hearing counsel for the parties, we find force in the submissions of the counsel for the appellant. The prosecution case is made out on the basis of self-statement of PW-2, who himself a Police Officer, based his statements on the evidence of PW-4, who has denied to have made any statement to the Police in the first 10 days of the occurrence. As such, the statement of PW-2 appears to be

doubtful and consequently, the prosecution case, as narrated, becomes also doubtful.

15. In view of the above, we are of the considered view that the Trial Court ought to have at least given benefit of doubt to the appellants.

16. In the result, the Death Reference is answered in negative and both the appellants are discharged and acquitted of the charges and directed to be released forthwith, if not wanted in any other case. The Cr. Appeal No. 230 of 2016 and Cr. Appeal No. 213 of 2016 are accordingly allowed.

(Samarendra Pratap Singh, J.)

(Rajendra Kumar Mishra, J.)

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AFR/NAFR	NAFR
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