

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.911 of 2009

(Against the Judgment of conviction dated 05.08.2009 and Order of sentence dated 10.08.2009 passed by the 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial No.887 of 2006/TR No.311 of 2009).

Md. Mirtuza, son of Md. Tafuzul, resident of village.- Rajpur, P.S.- Nathnagar, District.- Bhagalpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 826 of 2009

- 1. Asho Miyan @ Aaso Miya @ Yasin, son of Late Md. Baris Ali.
 - 2. Md. Badruddin, son of Asho Mian alias Aaso Miya alias Yasin.
- Both resident of village-Balkhuria, P.S. Nath Nagar, District-Bhagalpur.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 877 of 2009

Khargosh Miyan @ Irtiza, son of Sk. Paddi, resident of village- Dariyapur, P.S- Sajour, District- Bhagalpur.

.... Appellant.

Versus

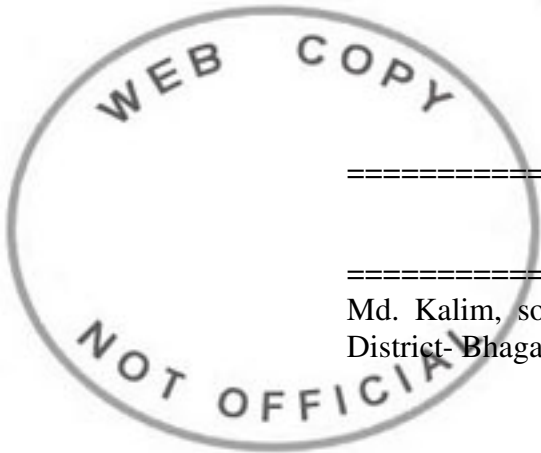
The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 879 of 2009

Md. Bacha @ Bachuawa @ Bechu Miya @ Ali Akhtar, son of Sk. Jalil Miaya, of village-Balkhuriya, P.S.- Nathnagar, District.- Bhagalpur.



..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

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Criminal Appeal (DB) No. 889 of 2009

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Md. Kalim, son of Late Sk. Sajid, resident of village- Rajpur, P.S. Nathnagar,
District- Bhagalpur.

..... Appellant.
Versus
The State of Bihar
..... Respondent.

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Appearance :
(In CR. APP (DB) No. 911 of 2009):
For the Appellant : Mr. Aaruni Singh, Advocate.
For the State : M/s. A.K. Sinha, D.K. Sinha, A. Sharma, S.N. Prasad and
Ajay Mishra, A.P.Ps.
(In CR. APP (DB) No. 826 of 2009):
For the Appellants : M/s. Janardhan Prasad Singh, Senior Advocate and Nand
Kumar Singh, Advocate.
For the State : M/s. A.K. Sinha, D.K. Sinha, A. Sharma, S.N. Prasad and
Ajay Mishra, A.P.Ps.
(In CR. APP (DB) No. 877 of 2009):
For the Appellant : M/s. Nurul Hoda and Shakil Ahmad Khan, Advocates.
For the State : M/s. A.K. Sinha, D.K. Sinha, A. Sharma, S.N. Prasad and
Ajay Mishra, A.P.Ps.
(In CR. APP (DB) No. 879 of 2009):
For the Appellant : Mr. Shiwesh Chandra Mishra, Advocate.
For the State : M/s. A.K. Sinha, D.K. Sinha, A. Sharma, S.N. Prasad and
Ajay Mishra, A.P.Ps.
(In CR. APP (DB) No. 889 of 2009):
For the Appellant : Mr. Swapnil Kumar Singh, Advocate.
For the State : M/s. A.K. Sinha, D.K. Sinha, A. Sharma, S.N. Prasad and
Ajay Mishra, A.P.Ps.

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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: 12-05-2016



All the Appellants have been convicted under Sections 364, 302 and 201/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life under Sections 364 and 302/34 of the Indian Penal Code and to undergo rigorous imprisonment for three years under Section 201 of the Indian Penal Code and further fine of Rs.50,000/- under Section 302 of the Indian Penal Code, in default of which, to undergo further rigorous imprisonment for one year vide Judgment of conviction dated 05.08.2009 and Order of sentence dated 10.08.2009 passed by the 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial No.887 of 2006/TR No.311 of 2009.

2. The case of the prosecution, according to the Fardbeyan of the Informant Shyam Sunder Saha alias Sudin Saha (P.W.6), is that his son Pramod Saha went missing and despite several searches, he could not be found. He alleged that since Appellant Asho Miyan had an altercation with his elder son Subodh Saha (P.W.1), he may have kidnapped and killed him. It was on such suspicion that the First Information Report was instituted only against Appellant Asho Miyan.

3. During trial, the prosecution examined altogether 12 witnesses.

4. P.W.1 Subodh Saha is the son of the informant and

brother of the deceased. He stated that he and his brother used to set up a mat shop in a village fair and even while he returned, his brother Pramod Saha went missing. During search, his 'Chappal' was found in an orchard, so they informed the police, who also looked for his missing brother but he could not be found. He stated that the Appellant Asho Miyan also used to do the same work as himself.

5. P.W.2 Samsul Hoda has been declared hostile.

6. P.W.3 Shambhu Kumar Saha, who is also the son of the Informant and brother of the deceased, is only on the point of the disappearance of Pramod Saha from the village. He also stated that he looked for him but could find him. When he made queries from the Appellant Asho Miya, he stated that he did not know his whereabouts. However, 'Chappal' of Pramod Saha was found 400 yards east near the house of the Appellant Asho Miyan. He then informed the Police Station and it is, thereafter, that the police reached and made inquiry and when the police wanted to question, the Appellant Asho Miyan he alongwith his family disappeared. On 26.12.2005, he found the dead body of his brother with stab injuries on the neck.

In cross examination, he confirmed that he was not an eye witness to the occurrence.

7. P.W.4 Khurshid stated that he knew nothing about the occurrence nor had he disclosed anything to the police but he was

caught and brought to the court where he was made to sign a certain document. He proves his signature on the same as Ext.2.

In cross examination, he stated that he did not remember as to what statement he had given before the court.

8. P.W.5 Murshid is also on the same lines as P.W.4.

9. P.W.6 Shyam Sunder Saha, the Informant, stated that about three years ago, his son Pramod Saha had gone missing after village fair so the police was informed. The dead body was recovered by the police which was taken by them to the Police Station where he was made to sign on the document but it was not read over to him. He proves his signature on the document as Ext.3.

In cross examination, he stated that he still did not know as to how Pramod Saha had been killed.

10. P.W.7 Ashok Saha is also on the point of preparation of the Dead Body Challan which he signed as Ext.3 but in cross examination he stated that he did not know as to when Pramod Saha was murdered and from where the dead body had been recovered.

11. P.W.8 Md. Tafazzul stated that on 26.12.2005, the police had gone to the house of Appellant Asho Miyan from where some small mats with blood stains was recovered of which the seizure list was prepared. He signs the seizure list as Ext.4.

In cross examination, he stated that nothing was recovered

in his presence.

12. P.W.9 Manki Prasad Yadav stated that 6-7 years ago while he was returning, he had seen the Appellant Asho Miyan standing near the orchard of Gore Miyan.

In cross examination, he stated that he could not say as to on what date he had seen the Appellant Asho Miyan near the orchard of Gore Miyan.

13. P.W.10 Ram Bachan Singh is the Investigating Officer, who stated that on 25.12.2005 when he was posted at Nath Nagar Police Station, he learnt information on his mobile that some untoward incident had taken place in village-Belkhariya at which he went for verification after recording a 'Sanha' of such information. On 26.12.2005 at about 01.00 A.M. he recorded the Fardbeyan of P.W.6 Shyam Sunder Saha upon which the case was instituted. He identifies the handwriting of ASI Sheo Pujan Singh as Ext.5 and endorsement of S.N. Yadav on the F.I.R. as Ext.5/1. He stated that he had gone to the village for investigation alongwith Constable Janardan sharma and 'Chowkidar' Sanjay Paswan. He then learnt that the dead body had been found in the orchard of Rais Miyan at which he proceeded for the said place and verified that it was of abducted Pramod Saha and then prepared Inquest Report (Ext.7). He examined the witnesses of the seizure list and he proves their signatures as

Ext.8. He inspected the place of occurrence and described the position of the dead body.

He further stated that a small mat with blood stains was recovered from the house of the Appellant Asho Miyan, who was not present in the house. He proves the seizure list and signatures of the witnesses on the same as Ext.8/1. None of the accused were present in their houses. He allegedly recorded the confessional statements of Md. Khurshid, Md. Murshid, Md. Kalim and Md. Murtuza and on the recovery statement of Md. Murtuza and Md. Kalim, they went to the village and near the shop of the Appellant Asho Miyan, they recovered a white full shirt which allegedly had dry blood stains. A seizure list of the said article was prepared in presence of the witnesses which he marks as Ext.3. A bicycle of the deceased was recovered from a bamboo grove which he proves as Ext.8/4. He then stated that the non F.I.R. named accused persons were taken on the police remand and charge-sheet had been submitted against them.

In cross examination, he conceded that in the entire investigation, he did not find a single eye witness nor did he receive FSL Report till the submission of the chargesheet. He stated that he had not entered the house of the Appellant Asho Miyan and it was Officer Incharge who had gone himself. He stated that he did not find any documentary proof to show that there was any dispute between

the deceased and Appellants Asho Miyan and Badruddin.

14. P.W.11 Sunil Kumar stated that nothing was recovered in his presence from the house of the Appellant Asho Miyan but he proves the signature on the seizure list as Ext.4/1 but he did not remember as to when he signed on the said document.

15. P.W.12 is Dr. A.K. Mallik, who conducted the Post-mortem Examination of the dead body of the deceased and found the following injuries on his person:

Clots were soiled with dried blood and blood clots.

- (i). One incised punctured wound 1" X 1/4" nasal cavity deep was present on upper part of right ala of nose.
- (ii). One incised punctured wound 1" X 1/2" X 1/2" was present on lower part of neck on right side soft tissues, blood, vessels and a portion of trachea was sharply cut. Trachea contained blood and blood clots and its mucosa was pale.
- (iii). One incised punctured wound 1" X 1/2" leading to right chest cavity was present on the right side of chest wall at the knee of fifth rib and one inch away from mid line. On opening the chest cavity, the lower lob of right lung was found sharply cut, the right chest cavity contained blood and blood clots.

Both lungs were pale, chambers of both side of heart were empty.

In the opinion of the doctor, all the above noted injuries were ante-mortem and caused by sharp pointed weapon. Injury no.(i) was simple and (ii) and (iii) were grievous and dangerous to life in ordinary course of nurture.

Cause of death-Hemorrhage and shock.

Time since death-within 12 to 24 hours from the time of P.M. Examination.

He proves the Post-Mortem Report as Ext.10.

16. On going through the evidence of the witnesses, which we have discussed above, we find that there is a vague statement that some recovery was made at the behest of the Appellant Md. Murtuza but there is no indication as to how it was connected with the present occurrence. Moreover, no independent witness supports the fact of recovery on the statement of Appellant Murtaza. There is complete paucity of any evidence against rest of the Appellants in respect to the murder of the deceased.

17. As for Appellant Asho Miyan, we find the only material is that a mat purportedly blood stained was recovered from his house. Once again the prosecution has not connected it to the instant case.

18. Hence, in the facts and circumstances of the case, these Appeals are allowed. The Judgment of conviction and Order of sentence passed against the Appellants, above named, are set aside. They are acquitted of the charges. The Appellant Md. Mirtuza {in Criminal Appeal (DB) No.911 of 2009} is in custody, therefore, he is directed to be released forthwith, if not wanted in any other case. So far as the rest Appellants of the other appeals are concerned, they are on bail. Therefore, they are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava.

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