

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.179 of 2016

Arising Out of PS.Case No. -134 Year- 2010 Thana -GAURICHAK District- PATNA

=====

Rajendra Prasad Sinha, son of Late Anup Singh, resident of village- Shiv
Nagar, P.S.- Parsa Bazar, District- Patna

.... Appellant

Versus

1. The State of Bihar
2. Pankaj Kumar, son of Kanhaiya Ram, resident of village- Sampatchak,
P.S. Gopalpur, District- Patna
3. Mukesh Kumar Singh, son of Sri Anil Kumar Singh, Sona Gopalpur, P.S.
Gopalpur, District- Patna
4. Manil Kumar, son of Sri Ramjee Singh, resident of village- Sona
Gopalpur, P.S. Gopalpur, District- Patna
5. Mukesh Kumar Singh, son of Sri Amerika Singh, resident of village-
Rampur, P.S. Gaurichak, District- Patna

.... Respondents

=====

Appearance :

For the Appellant : Mr. Vaidehi Raman Singh, Advocate
Mr. Mirtunjay Kumar, Advocate

For the State : Mr. Ajay Mishra (APP)

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
JUDGMENT AND ORDER
ORAL

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

3 14-07-2016 The present appeal has been preferred against the

judgment, dated 16.12.2015, passed in Sessions Trial No. 594

of 2011 by the learned Additional Sessions Judge V, Patna

City, Patna, whereby the learned trial Court has acquitted

respondent Nos. 2 to 5 herein of the charges under Sections

302 and 201 read with Section 34 of the Indian Penal Code by

giving them the benefit of doubt.

2. The appellant herein is the informant, on whose

statement, the present case, bearing Gaurichak P.S. Case No.

134 of 2010, was registered under Sections 302/201/120(B)/34 of the Indian Penal Code against accused persons, namely, Manil Kumar, Mukesh Singh, son of Anil Singh, Mukesh Singh, son of Amrika Singh and Juli Kumari.

3. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) The elder son of the informant was in the land estate business and for the last three months, he, along with accused persons, namely, Minal Kumar, Mukesh Singh of Gopalpur and Mukesh Singh of Rampur, on partnership basis had been conducting his business of sale and purchase of land at Sampatchak. The accused persons had opened an office in the market of Manil Kumar, where the informant's son used to go to for the said business.

(ii) On 26.10.2010, at 1:00 P.M., the informant's son went to Sampatchak in his Maruti Alto Car bearing Registration No. BR-1AL/6234 and, at 7:30 P.M, he informed his wife, Chanchala, on her Mobile No. 7488062569, that he would be returning soon as he was sitting in the office along with Manil Kumar, Mukesh Singh (Rampur) and Mukesh Singh (Gopalpur).

(iii) However, the informant's son did not return



home till 12 o' clock in the night, whereupon the informant made enquiry from Manil Kumar regarding whereabouts of his son, but he was informed that his son, Shivendra, had already left the office at 8:30 P.M. Accordingly, they searched for him, but could not trace him on the said night. In the following morning, in course of search, the informant learnt that a dead body had been recovered near village Chipura by the side of Parsa-Sampatchak Road and when the informant reached there, he found it to be the dead body of his son, Shivendra @ Pappu. The deceased had been killed by slitting his throat.

(iv) The motive behind the murder, as stated by the informant, is the giving of Rs. 6 lacs by the informant's son (deceased) to Manil Kumar, Mukesh Singh (Gopalpur) and Mukesh Singh (Rampur). It is further stated that Juli Kumari, believed to be the girl friend of Manil Kumar, had tried to contact Shivendra @ Pappu on his mobile phone, which was received by his wife, Chanchala, who instructed Juli not to talk to her husband Shivendra @ Pappu in future, whereupon Juli had threatened Chanchala of dire consequences and the said fact was stated by Chanchala to the informant and other members of the family. Thus, the informant alleged that the four accused persons had conspired with each other to kill his

son and also caused the vehicle to disappear.

(v) The said First Information Report formed the basis of the prosecution against the accused persons inasmuch as after investigation, the police submitted *charge sheet* against Manil Kumar, Mukesh Singh (Gopalpur) Mukesh Singh (Rampur), Pankaj Kumar, Sudhir Kumar, Juli Kumari and Ankit Kumar under section 302/201/120(B)/34 of the Indian Penal Code. Investigation against Gaurav Kumar was kept pending.

4. The Additional Chief Judicial Magistrate, Patna City, took cognizance of the offences, under Sections 302, 201, 120B read with Section 34 of the Indian Penal Code, but the case of the accused Juli Kumari and Sudhir Kumar was ordered to be sent to the Juvenile Justice Board.

5. Thereafter, the case of the remaining accused persons was committed to the Court of Session.

6. At the trial, when charges, under Section 302 and 201 read with Section 34 and also under Section 120B of the Indian Penal Code, were framed against the respondent Nos. 2 to 4 and also another accused, namely, Ankit Kumar, they pleaded not guilty thereto.

7. In support of their case, prosecution examined as



many as 8 (eight) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offence, which was alleged to have been committed by them. The defence has also examined two witnesses, namely, Suraj Kumar and Prakash Kumar.

8. We have heard Mr. Vaidehi Raman Singh, learned counsel for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

9. P.W.3 (Informant) is the father of the deceased, who, in sum and substance, has repeated his version as made out in the first information report. He has deposed that his son had left for his office on the said day at around 1:30 P.M. and, in the evening at round 7:30 P.M., he had talked to his wife that he was with Manil Kumar, Mukesh Singh (Gopalpur) and Mukesh Singh (Rampur), and that he would be returning soon. However, when his son did not return till 12 o' clock in the night, the informant made enquiries from Manil Kumar, who told that Shivendra had left at about 8:30 P.M. The informant, along with others, conducted a search during the night time, but could not trace him out and, the following morning, they



came to know about a dead body lying by the beside the road. When P.W. 3 went there, he found the same to be that of his son and that he had been killed by slitting his throat. P.W. 3 has attributed the cause of the murder to be the loan of Rs. 6 lacs given by his son to the accused persons. Further, P.W. 3 has deposed that the wife of the deceased had also been given threats by accused, Juli Kumari, when Juli Kumari had tried to contact his son on telephone, which was picked up by the daughter-in-law of P.W.3 (i.e. the wife of the deceased). It was deposed by the informant that his daughter-in-law asked Juli Kumari not to talk to her husband, whereupon she was threatened with dire consequences.

10. P.W.2 is widow of the deceased and daughter-in-law of the informant. She (P.W. 2) has deposed that at about 7:30 in the morning, Manil Kumar had called her husband and stated told him to come to Sampatchak office, whereupon her husband went there in his Maruti Car at 1:30 P.M. She (P.W. 2) had spoken to him at 7:00 P.M. and she was informed by her husband that he was sitting with Manil Kumar and would return soon, but at 9:00 P.M., when she contacted him, his phone was found to be not reachable and, thereafter, it was found switched off. She (P.W.2) has deposed that her husband



was in the business of sale and purchase of land with Manil Kumar and that on 08.10.2010, her husband had given Rs. 3 lacs to Manil Kumar. She has further deposed that her husband, along with others, purchased land in Sohgi, but she had not seen the papers for the same as it was kept in the office.

11. P.W. 1 and P.W.4 are brothers of the deceased, who have given more or less similar version to that of P.W. 2 and P.W.3.

12. P.W. 5 is the doctor, who conducted the *post mortem* on the dead body of the deceased and proved *Post Mortem Examination Report* as Exhibit -4.

13. P.W. 6 (Manish Kumar) is the Investigating Officer of the case, who, on receiving information about a dead body lying beside the road, had gone to the place, where the dead body was found, and had taken down the statement of the informant and written the *fardebayan* (Exhibit-5) and registered Gourichak P.S. Case No. 134 of 2010. He had proved Exhibits 5, 6, 7, 8, 9 and 10. He had also seized the mobile phone from the Alto Car. P.W. 6 has further stated that the mobile phone had two SIMS, one bearing SIM No. 8051947374 and the other bearing SIM No. 8804444260. SIM No. 8051947374,



was owned and possessed by Ankit Kumar, but SIM No. 8804444260 belonged to one Punam Devi, which was used by her brother-in-law (*dewar*), accused Sudhir Kumar. He has deposed that he had taken the call details of the phone numbers. He has further deposed that on the date of occurrence, the call details of Manil did not reveal that he had spoken to the deceased or any of his family members. The phone book of the deceased reveals the name of Sudhir, both by the name of Mukesh Singh (Gopalpur), Mukesh Singh (Rampur) and Pankaj. He has further deposed that there were no independent witnesses in the case apart from the family members and the official witnesses.

14. P.W.8 is the PSI of Parwalpur police station. He (P.W.8) has deposed that on the night of 26/27.10.2010, he had seen an Alto Car going in a high speed, but he could not intercept and later on, the car was found standing near an iron pole.

15. The two defence witnesses, produced by accused persons, have failed to make any impact on the prosecution case as they have only gone to say that they were not aware of the fact that the accused were having any business regarding sale and purchase of land with the deceased Shivendra.



16. The learned trial Court, upon consideration of evidence and perusal of the materials available on record, has come to the conclusion that the prosecution has been unable to prove its case beyond the shadow of reasonable doubt in so far as it relates to the respondent Nos. 2 to 4. The prosecution's evidence shows that there was no eye witness to the occurrence and that it could not be safely and conclusively proved that the deceased was in the business of sale and purchase of land along with the respondent Nos. 2 to 4. Further-more, the learned trial Court also came to the conclusion that the prosecution's evidence was doubtful and the chain of circumstances was not complete in order to establish the charges framed against the accused persons. Thus, after sifting the evidence, which had come on record, and other circumstances, which had emerged during the course of trial, the learned trial Court has convicted the accused Ankit, but after due consideration, has proceeded to acquit the private respondents herein by giving them the benefit of doubt.

17. There was, admittedly, no eye-witness to the occurrence. The evidence, which is claimed to be incriminating against the private respondents herein, is that till 7.30 PM, on the night of occurrence, the deceased was present, in the office,

in the company of Manil Kumar, Mukesh Singh (Gopalpur) and Mukesh Singh (Rampur). It has also come on record that, according to the accused, the deceased had left the office, at 8.30 PM. There is nothing to show that the statement of the accused was false. Merely because one of the mobile phones of the accused-respondents was found in the vehicle, which the deceased was using, could not have been made, and has rightly not been made the basis by the learned trial Court to convict the private respondents herein under Section 302 and/or Section 201 read with Section 34 of the Indian Penal Code.

18. We do not find, in the light of what has been discussed above, that the finding of acquittal, reached by the learned trial Court, suffers from any infirmity, legal or factual.

19. In the result and for the foregoing reasons, we are of the considered view that the impugned judgment does not suffer from any such infirmity, which requires interference by this Court in appeal.

20. This appeal is, therefore, not admitted and stands accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

Jagdish/-

U		T	
---	--	---	--

0