

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.222 of 2012

Arising Out of PS.Case No. -96 Year- 1997 Thana -null District- SAMASTIPUR

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Ram Sakal Rai S/O Baldeo Rai Resident Of Village- Jitwarpur Nizamat, P.S.-
Muffasil (Samastipur), District- Samastipur

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

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

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

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 12-09-2017

This appeal is directed against the Judgment dated 16.01.2012 of conviction as well as order of sentence dated 17.01.2012 passed by the Additional Sessions Judge, F.T.C.-IIInd, Samastipur, in Sessions Trial No.612/98 / 231/11 originating out of Samastipur (M)P.S.Case No.96 of 1997, by which the appellant has been convicted under Section 302 read with Section 34 and 201 (part 1st) of Indian Penal Code and has been sentenced to undergo rigorous



imprisonment for life and also to pay fine of Rs.5000/- and in default of payment of fine has further been directed to undergo rigorous imprisonment for six months for the offence under Section 201 (part 1st) of the Indian Penal Code.

2. Short facts necessary for adjudication stand enumerated as under:

First information report was lodged by one Munna Jha on 17.03.1997 on the basis of which Samastipur (M) P.S. Case No.96 of 1997 was registered under Sections 147, 148, 149, 302, 379 of Indian Penal Code and Section 27 of the Arms Act.

3. As per the first information report the fard-e-beyan of the aforesaid Munna Jha was recorded at about 10 A.M. before the police alleging therein, inter alia, that his father was driver of a private vehicle and he along with his co-villager, Mauli Jha had left his house on 16.03.1997. At about 12 O'clock, in the midnight, aforesaid Mauli Jha came back to his house and informed the informant that his father was forcibly confined by 6 to 7 persons fully armed with pistol and was being assaulted. Somehow, he was able to escape and came back to inform. On such information having been gathered, the informant proceeded for Samastipur along with his co-villager and came to the aforesaid police station where he came to know that the police had an information that a dead body was lying somewhere and a police party



was going for search of that. The moment the appellant as well as the police party reached Jitwarpur Mushahari Tola, they saw that a person was trying to escape from the agricultural field which was towards north of the Railway colony. He was chased by the police party and was apprehended. His hands were blood stained and from the place, from where he was trying to escape, the dead body of his father was found lying amputated. A bloodstained sharp cutting weapon was also found lying beside dead body along with a blood stained sack. According to the informant it was his father who was shot dead and an attempt was being made to cut the dead body in pieces but, in the meantime, the police party reached there and the concerned person was apprehended. The apprehended person disclosed that his name as Ram Sakal Rai. The informant has also stated in his fard-e-beyan that the HMT watch as well as a gold chain with locket of Mahavir Ji which his father was wearing, were also missing from his dead body. On the basis of the aforesaid fard-e-beyan, F.I.R. was registered and police started investigation. Further statement of the informant was also recorded and it appears that the statements of several persons were recorded under Section 161 Cr.P.C who unequivocally stated that at about 7.30 P.M., i.e., evening of 16.03.1997 they heard sound of firing. It further appears from the record that the apprehended person had accepted his guilt before the police and also accepted that



he was involved in this case along with two persons, namely, Ramesh and Bhagirath who had killed his father by firing at him and thereafter they dragged the dead body from the road to the agricultural field which belongs to the accused and he was trying to chop off his dead body in pieces so that the dead body could be kept in a sack and could be thrown into the river Gandak. It appears that after investigation finally charge sheet was submitted against the appellant under Sections 148, 149, 302, 201 of I.P.C. Though the other persons could not be arrested and it appears that investigation had continued against them but nothing is available either on the record or in Judgment as to what had happened to the persons who were allegedly named by the appellant in his confessional statement to have killed the father of the informant with the help of firearm.

4. Charges were framed against the appellant under Sections 379, 201, 302 read with Section 34 of the I.P.C. to which he pleaded not guilty and, thus, he was put on trial. Altogether six witnesses were examined by the prosecution. No defence witness has been examined. P.W. 1 Madan Lal has proved exhibit 1 which is death inquest report. P.W. 2 Pramod Kumar Singh is formal witness and has proved exhibit 2. P.W. 3 is Doctor, who has conducted autopsy of the dead body, has proved the post mortem report which is exhibit 3. P.W. 4 Bhim Balak Jha is uncle of informant Munna Jha



who has become hostile. P.W. 5 Tribhuwan Prasad is again a formal witness whereas P.W. 6 is informant himself. Two court witnesses were examined, namely, Kamal Choudhary and Munna Rai. The trial court, after appreciation of the evidence available on record, has come to the conclusion that the appellant is guilty beyond all reasonable doubt. So far Section 201 of I.P.C. is concerned it has been stated by the informant in his deposition that he had seen the appellant cutting the dead body of his father. The trial court has also found him guilty under Section 302 having participated in murder of the father of the first informant. It has been found by the trial court that all circumstances have been able to prove this case indicating the guilt of the accused as all circumstances taken together, cumulatively complete the chain to show that the instant crime was committed by the accused along with the help of his associates and other persons.

5. It has been submitted on behalf of the appellant that the impugned judgment and the investigation by the police suffered from several fatal lacunae. First lacunae is that it does not seem probable that the accused would drag the dead body to his own agricultural field and stay there whole night and in the morning he started to cut the dead body for the purpose of making it disappear from the scene. It is further submitted that this case is based on circumstantial evidence and the chain is not at all complete. There is nothing to



suggest that, in fact, appellant was himself trying to chop off the dead body for the purpose of concealing it or making it concealed from the place of occurrence.

6. Learned counsel has submitted that there is much variation and subsequent improvement in the version of the persons while recording statement before the police vis-à-vis their deposition in the trial court. It is also urged that all other material witnesses have been declared hostile and there is no evidence save and except that of the informant. Learned counsel further suggests that it is not established at all as to who had actually murdered the deceased and who was trying to chop off the dead body. Learned counsel for the appellant has further submitted that none examination of Investigating Officer has also put a fatal blow on the prosecution case.

7. *Per contra*, learned counsel for the State has fully supported the judgment. It is urged that the guilt is well established on the basis of deposition of Munna Jha who has stated that the appellant was found cutting dead body and, as such, he is guilty of not only Section 201 but also under Section 302 of the Indian Penal Code as he has confessed his guilt not only before the police but also before the informant.

8. Now, for the purpose of adjudication, this Court would have to examine as to whether the appellant can be held to be guilty



under Section 201 of IPC, and, on the basis of the evidence available before the trial court, whether he can further be held guilty under Section 302 as well as 34 of the IPC?

9. The F.I.R. which has been brought on record as Ext. 4 discloses in clear term that one Mauli Jha who had gone alongwith the father of the informant on 16.03.1997 had returned back at about 12 at midnight and informed the informant that 6 to 7 persons fully armed with firearm had surrounded the father of the informant at Samastipur and were keeping him in confinement. Thus, it is clear from the fard-e-beyan that said Mauli Jha could not name or identify those 6 to 7 persons who were involved in such occurrence. Thus, it can be safely be construed from reading of fard-e-beyan that Mauli Jha was not knowing the name of the person who had put the father of the informant in confinement as he could not name them. Prosecution story further goes to show that the informant alongwith co-villager reached the police station where he came to know that a dead body of unknown person was lying at a place. The police party proceeded and he also accompanied the police party. When they reached Jitwarpur Nizamat Tola, he saw a person escaping from agricultural field seeing the police party, who was chased by the police and finally apprehended. His hands were blood stained. When the police reached the agricultural field from where he was trying to



escape, the dead body of his father was recovered with almost amputated left hand from the shoulder. A blood stained sharp cutting weapon and blood stained sack were also found there. The informant thought that the said person was trying to chop of the dead body for the purpose of concealing it somewhere. He also stated that gold chain with locket and watch of his father were missing. Now, if it is compared with the further statement of the informant which has been recorded at paragraph 29 of the case diary about 7:30 evening of 17.05.1997, it would appear that he had supported his fardbeyan but has further disclosed that his father was driver of Ashok Samrat and after death of Ashok Samrat he was driver of his nephew (Bhagina). He further stated that Mauli Jha informed him that 6-7 persons having armed with firearms had surrounded and confined to father of the informant. Mauli Jha somehow was able to escape and came back to the informant. He has also stated that the apprehended person disclosed the name of Sakal Rai and accepted his guilt. He has further stated that the H.M.T. watch and gold were also taken by the murderers. Now, if the aforesaid two statements are compared with his deposition while being examined as P.W.6 during the trial, it would appear that he has further developed the case by stating that said Mauli Jha came back to his house and stated that his father has been killed by Ram Sakal Rai. Now the question arises of the veracity



of such statement. Since there is evident variation in the statements of the informant recorded at various stages, the best person to say as to what information was actually passed by him to the informant was Mauli Jha himself but admittedly he could not be examined by the prosecution. Another person who could have thrown light upon this would have been the Investigating Officer before whom the confessional statement was recorded and who had recorded the fard-e-beyan as well as the further statement of informant and also, who had investigated the matter. However, he has also not been examined.

10. The second issue for consideration would be as to what should have been the natural conduct of a police officer during investigation if he apprehends a person with bloodstained hands and a dead body was found at a place from where he was trying to escape and further bloodstained sharp cutting weapon and a sack were also found. In our considered view, in such a situation, a police officer should have tried to obtain finger print from the weapon and blood sample should have been collected from the spot, weapon and sack that could have been sent for examination by expert. Thereafter, it could have been successfully established as to whether the said apprehended person was trying to escape from the agricultural field, which admittedly belongs to him, seeing the police party and he was involved in the chopping of the dead body specially if his finger prints



are found on the aforesaid seized materials. However, nothing of this sort has been done and it has simply been assumed that he was trying to conceal the dead body and, thus, had participated in the murder also.

11. If, for the time being, the evidence of P.W.6 is not read then there is no material at all connecting the appellant to the crime. Thus, it appears that there are several fatal lacunae. In his deposition as P.W. 6, the informant had tried to twist the previous statement of Mauli Jha which is reflected in the F.I.R. with the sole purpose to fill up lacuna. Thus, in our view, there are several missing links in the circumstantial evidence and participation of appellant is not at all established. In fact, the presence of appellant may be natural as the agriculture field belonged to him. The aforesaid circumstances coupled with the fact that the vital person, namely, Mauli Jha who had informed the informant, as stated above, and the investigating officer were not examined during trial, gives fatal blow to the prosecution case.

12. That apart, another lacuna is that the sharp cutting weapon and bloodstained sack, though were recovered and the seizure list has been exhibited as Ext. 7 but neither sharp cutting weapon has been exhibited nor the blood soaked sack has been exhibited during trial. It is also obvious that there is no material



available on record and it is not at all apparent from the judgment also as to who had actually killed the deceased. A person has allegedly been named by the appellant in his confessional statement before the police but nothing is there to show that the manner of occurrence could finally be established. The weapon of murder could also not been recovered as the deceased admittedly had succumbed to firearm injuries.

13. The trial court has held that it is established that the appellant alongwith his associates had killed the deceased Ram Balak Jha but it is not stated anywhere in the judgment that who had actually fired upon the deceased. Was it Ram Sakal Rai or anybody else? It is not established.

14. Apart from the above, it is highly improbable that a person who will participate in murder of the deceased on the road, would drag his dead body to his own agriculture field and stay there whole night and in the morning he will start chopping of the dead body for the purpose of making it disappear. It has come during course of investigation that all the persons who were examined under Section 161 Cr.P.C. had stated that they heard sound of gun shot at about 7:00 P.M. or 7:30 P.M. on 16.03.1997. The doctor who has done autopsy has opined that the death might have occurred in between 24 hours. So, every thing suggests that the deceased was



killed in the last evening of 16.03.1997 and the appellant was apprehended from his agricultural field at about 10 A.M. on 17.03.1997. Thus, in our considered opinion, the prosecution has miserably failed to establish that the appellant who, in fact, was involved in any manner in the commission of crime and was trying to conceal the dead body as no positive evidence is there and the circumstantial evidence is having so many missing links. Even the place of occurrence could not be established.

15. In the result, this appeal succeeds. Judgment of conviction and order of sentence is set aside. Since the appellant is admittedly in jail, he would be required to be released forthwith, if not wanted in any other case.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

AnilKrSinha/-

AFR/NAFR	AFR
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