

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.181 of 2017

Arising Out of PS. Case No. 60 Year 2011 Thana -RASULPUR District- SARAN

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Ram Suddin Soni, son of Late Saral Shah, resident of Village and P.O. Rasulpur,
P.S. Rasulpur, District Saran at Chapra (Bihar)

.... Appellant

Versus

1. The State of Bihar
2. Radhey Sharan Tiwari @ Raghav Sharan Tiwari, son of Awadhesh Tiwari
3. Saroj Devi, wife of Paramhansh Mishra
4. Buchun Devi, wife of Late Radhy Shyam Tiwari,
Sl. No. 2 to 4 are resident of village & P.O. Rasulpur, P.S. Rasulpur,
District Saran at Chapra (Bihar).

.... Respondents

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Appearance:

For the Appellant : Mr. Manoj Kumar, Advocate

For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIKASH JAIN)

Date: 24-03-2017

This appeal has been preferred against the judgment of acquittal dated 22.11.2016 passed in Sessions Trial No. 786 of 2011/New 2028 of 2014, arising out of Rasulpur P.S. Case No. 60 of 2011, G.R. No. 2036 of 2011 by the learned Additional District and Sessions Judge-X, Saran at Chapra by which the respondent nos. 2 to 4 have been acquitted.

According to the prosecution case, Bindalal Soni @ Bandal Soni, son of the informant (the appellant herein) was sitting in the shop and at around 11.00 a.m., one Pawan Tiwari



came to the shop and called Bandal Soni to accompany him to Asahani. As Bandal Soni did not return for three hours, the informant called on his mobile phone which was switched off. Later on in the evening at about 8.00 p.m. the informant met Pawan Tiwari and asked about the whereabouts of his son who told him that he had brought Bandal Soni to Asahani and parted company at Macclihatta. Accordingly, Rasulpur P.S. Case No. 60 of 2011 was instituted under Section 365 and 120 (B) of the Indian Penal Code against Pawan Tiwari. Later on in course of investigation, Sections 364, 302 and 201 of the Indian Penal Code were added, whereby, along with Pawan Tiwari, other persons namely Radhey Sharan Tiwari, Buchun Devi and Saroj Devi, respondent nos. 2, 4 and 3 respectively herein, were also implicated and cognizance taken. The trial Court found Pawan Tiwari guilty under Section 302 and 201 of the Indian Penal Code as the prosecution case had been proven beyond reasonable doubt, while holding that the charges under Section 364 and 120(B) of the Indian Penal Code were not proved against Pawan Tiwari in absence of any direct or indirect evidence.

So far as respondent nos. 2, 3 and 4 are concerned, the trial Court was of the view that the prosecution had failed to prove the charge beyond reasonable doubt and accordingly



acquitted them by giving them benefit of doubt. It is against this part of the judgment by which the respondent nos. 2, 3 and 4 have been acquitted, that the present appeal has been filed.

Learned counsel for the appellant submits that the learned trial Court has erred in acquitting the respondent nos. 2, 3 and 4 and has failed to appreciate the evidences on record in their proper perspective. It is submitted that according to the statements of PW-1 Chandan Kumar Soni, PW-5 Samsuddin Soni and PW-8 Satyendra Paswan, the body of the deceased Bandal Soni was recovered from the septic tank in the courtyard of the house of the accused persons which clearly showed that they were directly involved in conspiracy in commission of the crime. It is further submitted that the accused persons had also objected to opening of the septic tank which clearly indicated that they had knowledge regarding the body being in the tank. It is therefore, submitted that the respondent nos. 2, 3 and 4 had conspired in disappearance of the body and were liable to be punished under Section 120(B) of the Indian Penal Code.

Though it transpires from the evidence of PW-1 Chandan Kumar Soni, that Radhey Sharan Tiwari (respondent no. 2) and his wife Buchun Devi (respondent no. 4) were persons of advanced age and that respondent no. 2 was suffering from



paralysis. So far as Saroj Devi (respondent no. 3) is concerned, it has come in the evidence of DW-3 Krishna Prasad, who was the Ward Commissioner of Rasulpur that the said Saroj Devi, respondent no. 3 was the Ward Member and she was also present when the police came. An argument between respondent no. 3 and the police occurred, consequent there upon she was implicated. It has specifically been stated that Pawan Tiwari and the respondent no. 3 are from different families. DW-4 Farida Khatoon has also stated in her evidence that Pawan Tiwari and respondent no. 3 are not related and they reside 5-10 houses apart. It has also been stated that, following some altercation between the police and the respondent no. 3, she had been implicated.

The submission on behalf of the appellant that the body of the deceased Bandal Soni was recovered from the septic tank situated in the house of Pawan Tiwari and that the respondent nos. 2, 3 and 4 had acted in conspiracy as they were having knowledge of the body of the deceased lying the septic tank, is not supported from the materials on record. His further submission that Pawan Tiwari could not have committed murder of Bandal Soni and dragged his body and thrown it into the septic tank alone and as such it were the respondent nos. 2, 3 and 4 who had



conspired and participated in committing the murder and disappearance of the body, is also liable to be rejected. Such submission is merely based on assumption without any material whatsoever, to connect the respondent nos. 2, 3 and 4 as being persons who might have helped Pawan Tiwari in committing the crime. On the contrary, there is the consistent evidence of several witnesses that Pawan Tiwari came to the shop alone and called the deceased to accompany him to Asahani, the respondent nos. 2, 3 and 4 were not the persons who were last seen with the deceased. There is no material to support the appellant's submission that the respondent nos. 2, 3 and 4 acted in conspiracy in commission of the crime. Except the statement of the informant implicating them, no other witness appears to have supported their involvement. Of course PW-1 Chandan Kumar Soni has stated that when the police was about to open the lid of the septic tank, Saroj Devi, respondent no. 3 had tried to dissuade the police from doing so, however, PW-3 Jugul Prasad Soni, PW-5 Samsuddin Soni, and PW-7 Ramrati Devi, being the brother, father and mother respectively of the deceased, have not said anything in this regard. Such statement has also not been corroborated by the Investigating Officer, PW-8 in his statement.

In view of the aforesaid facts, duly discussed by the



learned trial Court, we are of the considered opinion that the view taken by the learned trial Court is a plausible one and does not require any interference by us in appeal.

This appeal is, therefore, not admitted and, accordingly, stand dismissed.

(Dr. Ravi Ranjan, J)

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
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