

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.328 of 1994

Against the judgment of conviction and order of sentence dated 06.05.1994 passed in Sessions Trial No.127 of 1986 / 24 of 1987 by 1st Additional Sessions Judge, Darbhanga.

1. Ram Lakhan Sadai, son of Chhorman Sadai

2. Basudeo Sadai, son of Bhola Sadai

3. Ram Briksh Sadai, son of Janak Sadai

All residents of Village Kothara, P.S. Hayaghat, District-Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s :

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-12-2017

Challenging their conviction ordered by the learned 1st Additional Sessions Judge, Darbhanga in Sessions Trial No.127 of 1986 vide judgment dated 06.05.1994 and convicting them to life imprisonment for offence under Sections 302/34 of the Indian Penal Code, this appeal has been filed by the appellants.

It is the case of the prosecution that on 07.08.1985 at 11 A.M. Buchi Paswan, P.W.5, Chowkidar of Bethuli Village, came to Baheri Police Station and informed the Officer Incharge of the said Police Station that dead body of a male aged about 50 years wearing a Dhoti and Kurta has been found in a Jhanjharbag in



Village Hasidih. On the intimation, the FIR was registered and investigation conducted.

Dr. Ashok Kumar Yadav, P.W.15, conducted the postmortem at 2 A.M. and found two injuries on the right eyebrow and the right cheek, both simple in nature, and three other injuries on the left side of the neck, all grievous in nature, caused by a sharp cutting pointed weapon. The doctor opined that these injuries on the neck were the cause of the death and the death was caused within 38 to 40 hours of conducting postmortem. Ext.-2 was the postmortem report. Based on the same, investigation was conducted by P.W.14, Investigating Officer, Sakaldeep Rai, and in the investigation it came on record that the deceased was Gopal Mandal of Village Kothara in District- Darbhanga. He had left his house in the morning on 06.08.1985 along with the appellants and thereafter, he did not come and on 08.08.1985, his dead body was found.

After the investigation was concluded and the charge-sheet was filed and the prosecution examined 15 witnesses which included Dr. Ashok Kumar Yadav, P.W.15, the Investigating Officer, Sakaldeep Rai, P.W.14, and the Choukidar Buchi Paswan, P.W.5. Other witnesses, namely P.W.7 Basant Kumar Mandal and P.W.8 Mahabir Mandal were tendered. P.W.1 Bishundeo Mandal,



P.W.2 Ram Nath Mandal, P.W.3 Maksudan Mandal and P.W.8 Mahabir Mandal are the main witnesses and from a consolidated reading of their statements, it is seen that on 06.08.1985 at about 8 -9 A.M., Gopal Mandal was seen going with the accused persons and all were going to Baheri. From the statement of the witnesses that have come on record, it is clear that except for the fact that on 06.08.1985, the witnesses saw the deceased in the company of the accused persons, there is no other evidence available on record to implicate the accused with the commission of the offence.

As far as motive for commission of the offence is concerned, the prosecution, based on the evidence of P.W.4 Ram Narayan Mandal and P.W.10 Lakshmi Mandal, the children of the deceased, is that their father had given loan to the accused persons. He was insisting upon returning of the loan and that could be the reason for commission of the offence. These are the only circumstantial evidence based on which the conviction has been recorded.

Learned counsel for the appellants took us through the statement of all the witnesses, the circumstances, as are narrated hereinabove, and the law laid down by the Hon'ble Supreme Court in the case of **Raja alias Rajinder v. State of Haryana, (2015) 11 SCC 43**, and again in the case of **Kirti Pal & Ors. v. State of West Bengal & Ors., (2015) 11 SCC 178**, and argued that the



circumstantial evidence in the present case is not sufficient enough to record the conviction. All the links required for completing the chain of circumstances to bring home the guilt of the appellants are not available and, therefore, the conviction based on such weak circumstantial evidence is unsustainable.

That apart, placing reliance on the decisions of Hon'ble the Supreme Court in the case of **Sukhjit Singh v State of Punjab** [(2014) 10 SCC 270]; **Ranvir Yadav v. State of Bihar** [(2009) 6 SCC 595]; **Tara Singh v State** [AIR 1951 SC 441]; **Hate Singh Bhagat Singh v. State of Madhya Bharat** [AIR 1953 SC 468] and **Ajay Singh v. State of Maharashtra** [(2007) 12 SCC 341], the learned counsel for the appellants took us through the statement of the accused persons under Section 313 of the Code of Criminal Procedure and argued that only one question has been put to each of the accused and that is nothing but repeating the charges levelled against the accused persons and as it does not meet the compliance of requirement of Section 313 Cr.P.C. in view of the aforesaid decisions of the Hon'ble Supreme Court, the entire trial stands vitiated and the conviction is unsustainable.

Learned counsel for the prosecution vehemently opposed the aforesaid and took us through the statements of witnesses, particularly the evidence of P.W.1 Bishundeo Mandal, P.W.2 Ram



Nath Mandal, P.W.3 Maksudan Mandal, P.W.4 Ram Narayan Mandal, son of the deceased, P.W.10 Lakshmi Mandal, son of the deceased, to say that the deceased was last seen before his death on 6th of August, 1985 along with the accused persons and as the accused had motive to do away the deceased, the circumstances are sufficient enough to record the conviction.

We have heard learned counsel for the parties and we have considered the submissions at length. The principle governing conviction on the basis of circumstantial evidence has been laid down in detail by the Hon'ble Supreme Court in the case of **Raja alias Rajinder** (supra) in para 10 of the aforesaid judgment. The principle has been crystallized in the following manner:-

“10. As the factual matrix would show, the case of the prosecution entirely hinges on circumstantial evidence. When a case rests on circumstantial evidence, the Court has to be satisfied that:

“ (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and



(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

[See Padala Veera Reddy v. State of A.P. : 1989 Supp (2) SCC 706]

Thereafter, in para 11 to 13, the principles laid by the Hon’ble Supreme Court in the case of **Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259, Ujjagar Singh v. State of Punjab, (2007) 13 SCC 90, and State of H. P. v. Gian Chand, (2001) 6 SCC 71**, have been considered and it is clear from the aforesaid that the circumstances from which the conclusion of guilt of the accused is to be drawn should fully prove that they are conclusive in nature, the circumstances should be definite and should be pointing towards the guilt of the accused.

If the evidence in the present case is analyzed in the backdrop of the aforesaid legal principle, we find that the only evidence available against the appellants are that they were seen in the company of the deceased about two days’ back from the day when the dead body of the deceased was found, i.e. on 06.08.1985, and all the witnesses say that there was no suspicious



circumstances in which they were seen. The deceased was willingly and on his own will going along with the accused persons. Except for these circumstances of last seen together, there is no iota of evidence, recovery or seizure in any manner whatsoever or any incriminating material or circumstances to link the appellants with the commission of the offence. Neither weapon used in committing the offence or any blood stained cloth or other material to link the appellants with the commission of the offence are available on record. That being so, we are of the considered view that circumstantial evidence available on record is very weak, in nature, and it does not complete the link and chain of the circumstances necessary to implicate the appellants with the commission of the offence.

That apart, we find another serious legal lacunae in the matter. The Hon'ble Supreme Court in the case of **Sukhjot Singh (Supra)** relying upon earlier decisions of the Hon'ble Supreme Court in the case of **Ranvir Yadav (supra)**, **Tara Singh (supra)** and **Hate Singh Bhagat Singh (supra)** and **Ajay Singh (supra)** has laid down the principles governing recording of statement of the accused under Section 313 of the Code of Criminal Procedure. From the aforesaid principle, it is clear that the statement of an accused to be recorded under Section 313 Cr. P.C. is not an empty



formality. The law mandates that the accused should be given a reasonable opportunity to explain all the circumstances existing against him. Each and every circumstance, incriminating material collected against the appellants in the trial should be put to him and the accused should be given an opportunity to explain the circumstances. Non-compliance of the aforesaid procedure vitiates the entire trial.

If the procedure followed for compliance of the requirement under Section 313 Cr.P.C. in the present case is analyzed, it would be seen that the requirement has not at all been complied with. Except for putting one small question to each of the accused which is nothing but repeating the charges framed against them and asking them that the allegations against you are that between 06.08.1985 to 07.08.1985, you committed the murder of the deceased. Neither any incriminating circumstances or the material available against the appellants are put to them and nor they are given an opportunity to explain the same. That being the manner in which the statutory requirement of Section 313 Cr. P. C. is complied with, it is a case where grave and serious breach, as held by the Supreme Court in the aforesaid cases, is caused to the appellants and on this count alone, the entire trial stands vitiated.



Taking note of all the circumstances, we have no option but to allow this appeal, hold the conviction to be non-est in the eye of law and quash it. The appellants are acquitted of the charges levelled against them and they are discharged from the liabilities of their bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
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