

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.605 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

(Against the judgment of conviction dated 9th May, 2014 and
order of sentence dated 12th May, 2014 passed in Sessions Case
No. 330/09/46/13 by learned Adhoc A.D.J.-III, Gaya)

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Varun Kumar @ Banti @ Barun Singh @ Banti Singh @ Gora Son of Anil
Singh Resident of Village/Mohalla - Rana Nagar, P.S. - Mufassil, Distt. -
Gaya. Appellant

Versus

The State of Bihar Respondent

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with

Criminal Appeal (DB) No. 420 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Sakaldeo Singh, son of late Shivcharan Singh, resident of village Shivpuri
Colony, P.O.- Mufassil, District- Gaya. Appellant

Versus

The State Of Bihar Respondent

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with

Criminal Appeal (DB) No. 446 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Pawan Singh @ Jai Prakash Singh @ Jai Prakash S/o Sakaldeo Singh
Resident of Mohalla Sheopuri Colony, Police Station Muffasil, District Gaya.

... .. Appellant

Versus

The State of Bihar Respondent

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with

Criminal Appeal (DB) No. 462 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Anil Singh son of Jagdish Singh R/o Mohalla - Rana Nagar, Manpur, P.S.
Mufasil, Distt. - Gaya Appellant

Versus

The State of Bihar Respondent

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with

Criminal Appeal (DB) No. 560 of 2014

Arising Out of PS. Case No.-175 Year-2008 Thana- GAYA MUFFSIL District- Gaya

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Guddu Singh, son of Tunu Singh, R/o- village- Janakpur, P.S.- Mufassil Gaya,
District- Gaya. ... Appellant

Versus

The State Of Bihar ... Respondent

Appearance :

(In Criminal Appeal (DB) No. 605 of 2014)

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate
Mr. Tej Narayan Singh

For the Respondent/s : Mr. S.N. Prasad, APP

For the Informant : Mr. Pushkar Narain Shahi, Sr. Advocate
(in all cases) Mr. Manish Kumar No. 2.

(In Criminal Appeal (DB) No. 420 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Nilesh Kumar

For the Respondent/s : Mr. BIPIN KUMAR (APP)

(In Criminal Appeal (DB) No. 446 of 2014)

For the Appellant/s : Mr. Ajay Kumar Thakur
Mr. Anil Kumar Singh

For the Respondent/s : Mr. A.SHARMA (APP)

(In Criminal Appeal (DB) No. 462 of 2014)

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate
Mr. Rajani Kant Singh

For the Respondent/s : Mr. BIPIN KUMAR (APP)

(In Criminal Appeal (DB) No. 560 of 2014)

For the Appellant/s : Mr. Surendra Singh, Sr. Advocate
Mr. Rajani Kant Singh, Mr. Lal Babu Singh

For the Respondent/s : Mr. D.K. SINHA (APP)

**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL**

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C .A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 13 -12-2017

The learned Trial Court convicted Pawan Singh (A/1), Varun Kumar @ Banti @ Gora (A/2), Guddu Singh (A/3), under Sections 302/34, 201, 120B and 364 of the Indian Penal Code whereas Sakaldeo Singh (A/4) and Anil Singh (A/5) were held guilty only under Section 201 of the Indian Penal Code. The conviction was recorded in Sessions Case No. 330/09/46/13.

2. A dead body was found deserted near Gere pahari in the



morning of 15.09.2008. The Station House Officer of Mufassil Police Station (P.W.11), on getting information records a *sanha* (Ext.14) and proceeds to the place where the informant (P.W.6), P.W.2 and several others were present. The dead body of the nephew of the informant was seized lying near a ditch. P.W.11 recorded the fardbeyan of P.W.6 at 8 a.m. in which it was alleged that his nephew (deceased) was having a flourishing business of stone crushing. In the afternoon of 14.09.2008, he had gone to Bodh Gaya along with his close friends and returned at about 6.15 p.m. when A/1, A/2 and A/3 were present at his house waiting for him. The deceased talked to them for some time and thereafter left the house with them. P.W.2 is the staff (*Munsi*) of the deceased. He was present there. When the victim did not return till late in the night, P.W.2 grew suspicious and intimated the informant. Thereafter both of them made hectic search. Calls were made to the deceased and A-2. The following morning they learnt about a dead body thrown in Gere pahari area where they rushed and upon arrival of the I.O. recorded the fardbeyan (Ext.8). The I.O. conducted the death inquest proceeding (Ext.10) in presence of the witnesses, took the photographs of the dead body, made seizure of the incriminating articles found at the place of occurrence such as blood stained soil, the blood soaked gunny bag, broken piece of *tabiz* having blood



stains etc. in presence of witnesses. P.W.2 Sukhendra Singh, P.W.3 Randhir Kumar Singh @ Shibu Singh, P.W.4 Mani Bhushan Singh, P.W.9 Sen Babu Manjhi and Viranchi Rajiv Yadav (not examined) were present at the place and recorded their statements. While the I.O. was recording the statements, an information reached him that the dead body was carried and deserted at the place of occurrence on a white colour Maruti Alto Car. On such clue, the I.O. straightway went to the house of Sakaldeo Singh (A/4) situated at Mohalla Shiv Puri and found the white colour Maruti Alto Car parked there having been freshly washed. A/4 and his son A/1 were present at the house. Both of them were apprehended. A/1 made the confessional statement (Ext.13) giving out the story of the conspiracy and the murder of the deceased. On the basis of disclosure made by A/1, the name of A/2 and A/3 transpired and 02 blood soaked T- shirt(s), a cotton half pant (Barmora), two pieces of raxin of grey colour containing blood stain marks were recovered from the bathroom of their house and four pieces of mat and one rubber mat were recovered from the rooftop of the house. All discovered articles were seized under different memos. On the same day, at about 4.55 p.m., the I.O. went to the house of A/2 with A/1. In presence of Amit Kumar (P.W.7) and Randhir Kumar Singh @ Shibu Singh (P.W.3), a search of the house was carried out. A/5



being father of A/2 was only present in the house. In course of search, the I.O. found freshly washed floor of the room at the third floor of the house. On further disclosure made by A/1, the I.O. found blood stain marks on one of the legs of the table kept in the said room. Some blood marks were also found on interior part of the door. The blood found on these articles were scratched and seized. Photographs were taken. The I.O. thereafter went to the bathroom at the upper storey wherefrom one pair of shoes with profuse blood stain marks was also seized. Later, A-1 surrendered and his confessional statement (Ext.14) was recorded on 16.10.2008. Photographs (Exts. 11/8 to 11/27) were taken. P.W.10, who had conducted the post-mortem on 15.09.2008 at 11.45 a.m., furnished the autopsy report. After obtaining order from the learned Chief Judicial Magistrate, the I.O. produced some witnesses before P.Ws. 12 and 13 who recorded their statements under Section 164 Cr.P.C. The blood stains articles collected from the place near the dead body and from the house of A/1 and A/2 were sent for forensic test after obtaining the order of the Court. The F.S.L. report is Ext. 18. The samples matched with the blood collected near the dead body. On the second day, the I.O. attempted to search the weapon used in the crime which could not be recovered. The statement of witnesses were recorded. On conclusion of investigation, the



charge-sheet was laid on 12.12.2008 whereon cognizance was taken and later the case was committed to the Court of Sessions. The case came on the file of the learned Trial Judge where charges were framed on 14.07.2010 and read over and explained to the appellant to which they pleaded not guilty and claimed to be tried. A plea in defence was taken that the own family members had killed the deceased to take over the business and property.

3. During trial, out of 15 charge-sheet witnesses, the prosecution examined 14 P.Ws namely P.W.1 Sunil Kumar Singh, P.W. 2 Sukhendra Singh, P.W.3 Randhir Kumar Singh @ Shibu Singh, P.W.4 Mani Bhushan Singh, P.W. 5 Abhay Pratap Singh, P.W.6 Chandra Bhushan Singh, P.W.7 Ram Amit Kumar @ Sonu, P.W.8 Ram Krishna Singh, P.W.9 Sen Babu Manjhi, P.W.10 Dr. Arvind Kumar, P.W.11 Ashok Kumar, P.W.12 Sri Ashok Kumar Gupta, Judicial Magistrate, 1st Class, P.W.13 Sri J.S. Srivastava, Judicial Magistrate, 1st Class, and P.W. 14 Smt. Sudha Bhardwaj (wife of the deceased). Defence case is total denial of the prosecution version. One witness was examined on behalf of the defence to prove handicap certificate marked as Ext.B.

4. P.W. 1 has stated that on 14.09.2008, he was returning from the house of his son in the night and reached the house of A-2 and saw A-1, A-2 and A-3 alighting from Alto car along with the



