

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.49 of 1994
(Against the judgment of conviction and order of sentence dated 31.01.1994
passed by Shri Ekbal Raza, Sessions Judge, Gopalganj in S.T. No. 105 of 1992)

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1. Satyadhari Mishra, son of Bhagrasan Mishra.
2. Mishra @ Saraswati Devi, wife of Satyadhari Mishra, both resident of village-
Hem Bardaha, Police Station- Kuchaikote, District-Gopalganj.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Navin Kumar, Amicus Curiae

For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 17-10-2017

In the instant criminal appeal both the appellants have challenged the judgment of conviction and order of sentence dated 31.01.1994 passed by the Sessions Judge, Gopalganj in Sessions Trial No. 105 of 1994 whereby the Sessions Judge has convicted the appellants for an offence under sections 302 and 201 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life under section 302 of the Indian Penal Code. However, no separate sentence was passed in connection with offence under section 201 of the Indian Penal Code.

1. The prosecution case, in brief, is that on Wednesday (19.02.1992) while the informant's father Munshi Mahto was in his house, at dusk, Satyadhari Mishra came and told her father that his



wife Mishrain has called her father, Munshi Mahto ate breads and vegetables and left with Satyadhari Mishra for his house. When her father did not return. Today (/22/2/92) a rumour spread that a dead body is floating in the well of Bachan Singh of village Badua. The informant went there and identified the dead body to be of her father. The further prosecution case is that Satyadhari Mishra and his wife used to visit her father. Besides there was some disputes for land also. The prosecution case further is that due to this they killed her father in conspiracy and threw him in the well. The fard-beyan of the informant Sharda Devi daughter of the deceased of village Mithua was recorded by the Sub-Inspector of Kuchaikote Police Station upon which this case has been instituted.

2. On the basis of fard-beyan, formal FIR was registered. The police after investigation submitted charge-sheet against the appellants and the case was committed to the court of sessions. The court framed charge for the offence under sections 302 and 201 of the Indian Penal Code, appellants pleaded not guilty and therefore, they have been put on trial.

3. On behalf of the prosecution 14 witnesses have been examined.

P.W.1 Shanti Devi is the daughter-in-law of the deceased. P.W.2 Bhikhari Singh is a witness of inquest. P.W.4 Lilawati Devi is the grand-daughter of deceased. P.W.6 is the



daughter of the deceased and informant of the case. P.W. 5 is the Medical Officer. P.W.13 is the I.O. of the case. PW.9 Ram Naresh Singh who allegedly seen the accused Sarsawati Devi sitting at 'Braham Asthan' at some distance from where the dead body of the deceased was found. P.Ws. 8 and 10 are the tenders witnesses. P.W. 11 Bachan Singh has been declared a hostile witness. P.W. 7 is the witnesses who stated that the dead body of the deceased taken out from the well. P.W.10 Chandeshwar Baitha has proved the certified copy of the deed of the exhibits.

4. In the instant case there is no eye-witness to the occurrence. The entire case of prosecution is based on circumstantial evidence. The trial court on the basis of circumstantial evidence held out that although there is no eye-witness but circumstantial evidence is sufficient to lead that only the accused persons have committed the murder of the deceased because the deceased was last seen with Satyadhari Mishra.

5. Mr. Navin Kumar, learned counsel who was appointed as Amicus Curiae vide order dated 12.10.2017 to assist the court has submitted that the trial court has committed gross error in convicting the appellants. He submitted that the entire case of prosecution is based on suspicion and suspicion howsoever strong the same cannot be taken as proof. Referring to the prosecution case he submitted that the fard-beyan was lodged by the P.W.6 on 23.02.1992 wherein these



two appellants were named due to suspicion. Tenor of the fard-beyan would indicate that the appellant no.1 visited her residence and asked her father (deceased) that his wife has called him thereupon her father asked her to serve meal and after taking meal, her father told her that Mishrain has called him for important work and therefore, he is going there and thereafter her father left the house alongwith Satyadhari Mishra appellant no.1 and thereafter he did not return and today she heard 'hulla' that dead body of her father is recovered from the well of village Badua. She suggested that the appellant Satyadhari Mishra and his wife used to visit her father regularly and there was some dispute in connection with land, she apprehended the hand of the appellants in the murder of her father and concealing the same by throwing dead body in the well.

6. Mr. Navin Kumar submitted that prosecution has introduced new story in the trial as to the motive behind murder of the deceased. Referring to the prosecution case and the examination of the accused under section 313 of the Cr.P.C. he submitted that during trial, the prosecution has focused on the illicit relationship of the deceased with appellant no.2 and that is why specific query was put during trial under section 313 Cr.P.C. about illicit relationship of the deceased with appellant no.2 the specific question under section 313 Cr.P.C. posed to the appellant no.2 i.e. whether she has illicit relation with Munshi Mahto, the appellant no.2 specifically denied. Thus, the



counsel on behalf of the appellants submitted that this story was build up as an after thought when prosecution realized that allegation of land dispute as the motive behind killing of the deceased cannot be sustained in view of the fact that at the time of alleged occurrence there was no land dispute and the relationship was cordial.

7. Mr. Navin Kumar submitted that the entire story of last seen is totally misconceived and misplaced. He submitted that there is no eye-witness to depose that the deceased was last seen with appellants before killing and concealing the dead body. Referring to the post-mortem report, he submitted that in the instant case, the doctor has opined that the cause of death is 'asphyxia' due to drowning which indicates that the deceased was alive when he fell down in the well or he was thrown in the well. The other injury found on the deceased does not indicate that the deceased was murdered and thereafter the dead body was thrown in the well. He submitted that nature of injury found on the person of the deceased render the prosecution case doubtful. The appellants are residents of Hem Bardaha whereas dead body was found in the well of Bachan Singh of village Badua not in the same village and not in the well of the house of the appellants. He submitted that in a case where prosecution has not been able to explain firstly that who has seen the appellants throwing the deceased in the well or even assuming that the deceased was injured who has thrown the deceased in the well of Bachan Singh



in a different village. He submitted that dead body was recovered from the well of village Badua and in such situation the prosecution was required to explain how the dead body of the deceased was recovered from the well of Bachan Singh of village Badua after nearly three days of the death/murder of the deceased.

8. Mr. Navin Kumar has submitted that there are only three witnesses on the point that Satyadhari Mishra asked the deceased that Mishra has called him and on the point that deceased has accompanied Satyadhari Mishra. All the three witnesses are the interested witnesses and the members of the family of the deceased. He submitted that during trial a suggestion was made to the witnesses. P.W. 6 the informant of the case who admitted in para-8 that her father used to take liquor occasionally on the suggestion that deceased might have fallen in the well due to influence of liquor. Counsel for the appellants submitted that in a situation like the present case where it is admitted by the informant that the deceased used to take liquor, the chance of death of the deceased due to falling in the well and dying due to drowning cannot be ruled out particularly when cause of death as per opinion of the doctor is asphyxia due to drowning.

9. Mr. Navin Kumar next submitted that in the instant case, the witnesses have admitted during their examination in the trial that deceased used to move outside of the house in the night but he used to return back in the same night. The witnesses have admitted



during their examination that on the date of incident the deceased accompanied the appellant no.1 but he did not return back for three days and neither the informant nor the other members of the family reported the matter of missing of the deceased to the police nor they enquired about the deceased from the appellant with whom the deceased allegedly accompanied on the call of the appellant no.2 nor they discussed the fact of missing of deceased for three days with any person. This conduct of the informant creates serious doubt about the prosecution case and as such conduct is not natural but artificial. He then submitted that in the instant case when father-in-law of informant has not returned for three days as evident from the evidence of P.Ws. 1, 4 and 6 the deceased was missing from 19.2.1992 but informant side has not even whispered to anyone not even to the police as to the missing of the deceased.

10. Counsel for the appellants submits that there is no incriminating or circumstance which could connect the appellant that they have committed murder of the deceased.

11. Mr. Navin Kumar further submitted that finding of the trial court is perverse. He commented that seeing the appellant no.2 at Braham Astahn on the date of recovery of the dead body at some distance from the well by no stretch of imagination can connect the appellants in commission of crime and throwing the dead body in the well. He sum up his submission that doctor opinion is very



specific that death is due to drowning and as such there is no case of killing the person and concealing the dead body in the well. The prosecution has failed to explain where the deceased was killed and how the dead body was thrown in the well of Bachan Singh of village Badua. The ante-mortem injuries are simple which cannot be taken as the cause of death, therefore, the finding of the trial court is perverse that the appellants committed the murder and threw the dead body in the well.

12. He submitted that in the instant case there is no conclusive circumstantial evidence with chain of events to establish that the appellant alone would have committed murder and chain of event ruled out the other hypothesis the death of the deceased. In fact in the instant case when it is admitted that deceased used to take liquor regularly there is possibility of deceased falling in the well and dying to drowning is one of the plausible hypothesis. He submitted that on the point of last seen there is no witness either of the village Mithua or village of the appellant Hem Bardaha or village Badua where the dead body of the deceased was found that they have seen the deceased with the accused appellants when the case which was based on suspicion and nothing of land dispute has been denied by the P.W.6 who admitted that the dispute was compromised long before the occurrence and they were in good term and therefore there is no motive to kill the deceased as suspected by the informant. The



prosecution has not been able to establish the illicit relationship of the deceased with Sarswati Devi which caused the murder, the judgment rendered by the trial court is not based on circumstantial evidence but it is only based on suspicion and conviction based on suspicion is unsustainable.

13. Mr. Abhimanyu Sharma appearing on behalf of the State in the instant case has stated that conviction is based on circumstantial evidence. He admitted that in the absence of conclusive chain of events which leads to only one conclusion that the appellant alone could have committed murder, conviction is not sustainable.

14. He has not disputed the fact that the motive attributed in the fard-beyan as to land dispute was subsequently given a go by as they admitted compromise of all land disputes and restoration of good relationship much before the occurrence.

15. We have heard the parties and examined the materials on record, the conviction in the instant case is based on circumstantial evidence and the trial court proceeded only on the basis of statement of the three witnesses namely P.W.1, P.W.4 and P.W.6 that they have seen the deceased accompanying the appellant no.1 on 19.2.1992. In addition thereto, except the statement of three witnesses none has claimed to have seen the deceased accompanying appellant no.1. There is no eye-witness on the point of last seen either in the village of the deceased or in the village of the appellants or in the



village where the dead body was found or even in the way in between on the date the deceased allegedly accompanied the appellant no.1. We also noticed that witnesses have admitted that deceased used to move outside house in the night and used to return in the same night. We have also noticed the unnatural and artificial conduct of the informant and members of the family of the informant in neither disclosing to anyone about missing of the deceased for three days or failure to report 'Sanha' of missing of the deceased and the unnatural conduct of not making any enquiry from the appellants as to the whereabouts of the deceased when there is definite case that the deceased accompanied the appellant no.1 on the call of appellant no.2. This creates serious doubt about the credibility of the prosecution case. We have also noticed that in the instant case the doctor has opined that death is due to Asphyxia on account of drowning in the well. The ante-mortem injury found to be simple and thus, the case of the prosecution that deceased was killed by the appellants and dead body was concealed in the well also stands falsified by the medical evidence. The prosecution has not explained as to how deceased fell in the well whether he fell under the influence or liquor or he was thrown in the well by the appellant particularly when the well is not adjacent to the house of the appellant but in a different village Badua near the house of Bachan Singh, we find that hypothesis that deceased died due to falling in the well under the influence of liquor is quite



probable as the informant in her examination in para-8 has admitted that the deceased used to take liquor occasionally.

16. Under the aforesaid circumstances, the submission of learned Amicus Curiae appearing on behalf of the appellants is more appropriate and convincing. The law in the matter of circumstantial evidence is well settled, if there is any possibility or hypothesis as to the manner of occurrence different from the one suggested by the prosecution or possibility of commission of crime by any person other than the accused, then in that situation, the benefit of doubt goes to the accused.

17. The Apex Court has recently restated latest expression in this point in the case reported in 2017 8 SCC 497 which is quoted herein below:-

29. "It is now well established, by a catena of judgments of this court, that circumstantial evidence of the following character needs to be fully established:

(i) Circumstances should be fully proved.

(ii) Circumstances should be conclusive in nature.

(iii) All the facts established should be consistent only with the hypothesis of guilt.

(iv) The circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than the accused (see State of U.P. v. Ravindra Prakash Mittal, Chandrakant Chimanlal Desai v. State of Gujarat). It also needs to be emphasised that what is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the claim connecting the accused



with the crime. Suspicion, however grave, cannot take place of legal proof. In the case of circumstantial evidence, the influence of guilt can be justified only when all the incriminating facts and circumstances are found to be not compatible with the innocence of the accused or the guilt of any other persons.

30. The following test laid down in Pudala Veera Reddy v. State of A.P. also needs to be kept in mind: (SCC pp.710,para 10)

“10. (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.”

31. Sir Alfred Wills in his book Wills' Circumstantial Evidence (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence:

“(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum;



(2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability;

(3) in all cases, whether of direct or circumstantial evidence, the best evidence must be adduced which the nature of the case admits;

(4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt; and

(5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.”

In view of the judgment of the Apex Court and discussion hereinabove, we are of the considered view that the appellants’ conviction is not sustainable as there is no conclusive circumstance which leads to only one conclusion that the appellant alone have committed murder of the deceased.

Accordingly, the appeal is allowed. The judgment of the trial court is set aside. The appellants are discharged from liability of the bail bonds.

(Rajendra Menon, CJ)

Ravi/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
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