

IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.5 of 2016

Arising Out of PS.Case No. -144 Year- 2013 Thana -MUFFASIL District- AURANGABAD

=====

The State Of Bihar

.... Petitioner

Versus

Bipin Yadav Son of Pran Yadav Resident of village - Pakaha, P.S. Aurangabad
(Muffasil), District - Aurangabad (Bihar)

.... Respondent

With

Criminal Appeal (DB) No. 654 of 2016

=====

Bipin Yadav Son of Pran Yadav Resident of village - Pakaha, P.S. Aurangabad
(Muffasil), District - Aurangabad (Bihar)

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 644 of 2016

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Raj Kumar Rai Son of Ramnath Rai resident of village - P.O. Tara, P.S. Obra,
District – Aurangabad

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

(in reference case)

For the Appellant- State in Ref case) : Mr. A.K.Sinha, APP

Against the Reference

Mr. Neeraj Kumar @ Sanidh, Advocate

(Amicus curiae)

(in Cr. Appeal (DB) No.654/2016)

For the appellant

Mr. Sanjay Kumar, Advocate and

Mr. Permanand Kumar, Advocate

(Amicus curiae)

For the State

: Mr. D K Sinha, Addl. P.P.

(in Cr. Appeal (DB) No.644/2016)

For the appellant

Mr. Kanhaiya Pd Singh, Senior Advocate &

Dr. Lilawati Kumari, Advocate

(Amicus curiae)

For the State

Mr. Neeraj Kumar @ Sanidh, Advocate

Mr. SC Mishra, Addl. PP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 18-04-2017

Death Reference No. 5 of 2016 as well as Cr. Appeal
(DB) Nos. 654 and 644 of 2016 have been heard together and are
being disposed of by common judgment and order.

2. Cr. Appeal (DB) No. 654 of 2016 has been preferred



by Bipin Yadav, whereas Cr. Appeal (DB) No. 644 of 2016 has been preferred by Raj Kumar Rai against judgment, dated 25.4.2016 under sections 302, 201 & 120B IPC, passed by the learned Additional Sessions Judge-VI, Aurangabad in Sessions Trial No. 34 of 2014/134 of 2015, arising out of Muffasil Police station Case No. 144 of 2013. For the offence under section 302 IPC, the sole appellant Bipin Yadav has been sentenced to death, whereas the other appellant Raj Kumar Rai has been convicted to RI for life along with fine of Rs.25,000/- and in default to undergo 1 year RI. For the offence under section 201 IPC, the appellant Raj Kumar Rai has been sentenced to RI for 3 years along with a fine of Rs.5000/- and in default to undergo RI for 3 months. For the offence under section 120B IPC, the appellant Raj Kumar Rai has been sentenced to RI for life along with a fine of Rs.25,000/- and in default of the same to undergo RI for 1 year. However all the sentences in case of Raj Kumar Rai been directed to run concurrently.

3. The informant of the case is a local Chaukidar Krishna Paswan. The prosecution case, as made out in the *fard beyan* of Chaukidar Krishna Paswan of village Kharmani, Police Station Aurangabad recorded by Rajiv Ranjan Kumar, SI (PW 5) of Mufassil (Aurangabad) Police station on 25.6.2013 at 9.20 AM at village Harihar bigha is as follows:-

Informant stated that on 25.6.2013, he was on his duty in his area when he received information that a dead body of a woman



is lying in the east flank of the canal near Naulakha bridge situated at village Harihar bigha. On receipt of information, he reached the site at about 8.15 AM and found dead body of a woman lying in the east flank of the canal near Naulakha bridge. Her neck and mouth were badly cut and blood had spread all over the dead body. The woman was wearing sari and blouse. A good quantity of blood had fallen around the place, where the dead body was lying. The informant stated that it was apparent from the injury available on the person of the deceased that she was done to death by sharp cutting weapon and the dead body was thrown in the flank of the canal to conceal the evidence of crime.

4. On basis of the fard beyan of the informant, Aurangabad Mufassil Police station Case No. 144 of 2013 was registered against unknown under sections 302 and 201 IPC. In course of investigation, one dafadar recognized the dead body of the deceased as Gunja Devi, the wife of Raj Kumar Rai, one of the appellants before us. The police prepared inquest report. The police apprehended one Sanni Kumar, the brother of Raj Kumar Rai, who is said to be driving a red colour Tata Magic Vehicle (herein after referred to as 'the vehicle') and got recorded his confessional statement by Judicial Magistrate, Civil Court, Aurangabad.

5. In his statement under section 164 Cr.P.C., Sanni Kumar narrated the entire incident leading to the murder of his bhabhi. He stated that on 24.6.2013 at 4 PM he had come to Daud Bazar driving his Tata magic car. Around that time, his brother Raj



Kumar Rai, was a police constable and posted as a body guard. On 24.6.2013 at about 4 PM, appellant Raj Kumar Rai instructed his brother Sanni Kumar to come to Aurangabad with vehicle. Meanwhile, Raj Kumar Rai gave his phone number to accused Bipin Yadav, Gunjan Kumar and Madan Kumar. Soon thereafter, Sanni Kumar received a call from Bipin yadav, calling him near By pass. When Sanni Kumar reached By pass, Bipin Yadav boarded the vehicle and asked him to drive to his police line residence. On reaching the Police line residence, Bipin Yadav took the key of vehicle and asked Sanni Kumar to call his Bhabhi (the deceased) from inside the house. On seeing Sanni Kumar, she enquired whether he has brought his vehicle, as she had already been informed by her husband that the appellant Raj Kuamr Rai, that Sanni Kumar and Bipin Yadav would come with the vehicle for taking her out. When Sanni Kumar and his Bhabhi came out of the residence, they did not see the vehicle, whereafter he contacted Bipin Yadav who said that he is reaching shortly. After sometime, Bipin Yadav along with two other persons reached his residence with the vehicle along with two more persons named above. Bipin then asked Sanni to drive. But after sometime, on direction of Bipin Yadav, Madan Kumar took the driving seat and Bipin sat in the middle. Thereafter Bipin Yadav asked Sanni's Bhabhi to break her Mangal sutra and when she objected, Bipin started breaking it. Thereafter, he forcibly began to slit the neck of wife of appellant Raj Kumar Rai with his Katari. He gave a number of Katari blows



on face and neck of the deceased. The other two persons in the vehicle namely Madan and Gunjan were telling Bipin to hurry up. They threw the dead body in the flank of the canal. He further stated that on the instruction of appellant Raj Kumar Rai, appellant Bipin Yadav, a contract killer, after hatching a conspiracy along with his two colleagues Madan Kumar and Gunjan Kumar eliminated his wife, as he wanted to get rid of her as he was entangled with another constable Rupa Kumari. Police seized blood from the place of occurrence as well as blood from the vehicle for forensic examination. On conclusion of investigation, police submitted charge sheet against five accused persons, namely, Sanni Kumar, Bipin Yadav, Raj Kumar Rai, Mandan Kumar and Gunjan Kumar under sections 302, 201 and 120B IPC. It appears that case of two accused persons Sani Kumar and Gunjan Kuamr were separated and sent to the Juvenile Justice Board, as they were juvenile, whereas case of accused Madan Kumar was separated as he absconded even on the date of commitment. Ultimately, case of Bipin Yadav and Raj Kumar Rai was committed to the court of Sessions for trial. Learned trial court framed charges under sections 302, 201 and 120B IPC to which the appellants pleaded not guilty and claimed to be tried.

6. The defence of the accused in their statements under section 313 of the Cr. P.C. was complete denial of the occurrence.

. 7. The prosecution examined five witnesses in support of its case. PW 1 Krishna Paswan is a local Chaukidar and



informant of the case. PW 2 is Ramesh Singh. PW 3 Dr. Ram Bhajan Chaudhary conducted the post mortem, whereas PW 4 Baikunth Singh is a formal witness who has proved the fard beyan as well as the FIR. PW 5 Rajiv Ranjan Kumar is the IO of the case.

8. The trial court primarily on the statement of accused Sanni Kumar as well as the post mortem report, convicted the appellants Bipin Yadav and Raj Kumar Rai under sections 302, 201 and 120B of the IPC. Appellant Bipin Yadav has been sentenced to death for having killed the deceased in most barbaric and savage manner, whereas appellant Raj Kumar Rai has been awarded RI for life for hatching the conspiracy.

9. Heard Mr. Krishna Prasad Singh, learned Senior counsel and Mr. Sanjay Kumar, learned counsel for the appellants, Mr. Bipin Yadav, Mr. Raj Kumar Rai and Mr. Neeraj Kumar @ Sanidh as amicus curiae. Also heard Mr. Ashwini Kumar Sinha and Mr. S.C.Mishra, learned Additional Public Prosecutors, for the State.

10. Mr. Krishna Prasad Singh, learned Senior counsel appearing for the appellants has assailed the impugned judgment of conviction and sentence primarily on the ground that there is no evidence on record that the woman (Gunja Devi), who was found killed lying in the flank of a canal, was in fact the wife of appellant/accused Raj Kumar Rai, as no specific question has been put to him in inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the



evidence against him, under section 313 Cr.P.C. He further submits that the appellants have been held guilty on basis of 164 Cr.P.C. statement of Sanni Kumar, which is not admissible in the law, as the learned Magistrate who recorded 164 Cr.P.C. statements of accused persons, have not been examined as a witness. Besides this, there is no eye witness to the occurrence and no one saw the accused persons throwing the dead body in the flank of the canal.

11. On perusal of the materials on record, we find that the incriminating materials, collected on the records of the case, have not properly been put to the accused persons, for the purpose of enabling them personally to explain the circumstances appearing in the evidence against them under section 313 Cr.P.C. Furthermore, we find that the prosecution ought to have examined learned Judicial Magistrate, who recorded 164 Cr.P.C. statement of the accused persons.

12. We find that in order to do justice, it is essential that the court should have put specific questions to the accused Raj Kumar Rai in inquiry or trial that whether the deceased was his wife or not. Furthermore, question ought to have been put to the accused Bipin Yadav, whether the woman, he is alleged to have killed, was wife of Raj Kumar Rai.

13. As we are satisfied that the accusation under section 313 of the Cr.P.C. was not appropriately put to the accused to explain to their case and also that the learned Magistrate who took statement of accused under section 164 Cr.P.C. was not examined,



we remand the matter to the trial court for taking additional evidence on these points, facilitating the trial court to take an independent decision. We accordingly set aside the judgment of conviction and sentence against the appellants. However, in the facts of the case, we are not inclined to release the appellants on bail in the meantime. These appeals along with Death Reference are disposed of with the aforesaid observations and directions.

14. We make it clear that we have not made any opinion on the merits of the case

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

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