

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.186 of 1994**

Sessions trial no. 163/1992 arising Out of Sikarhatta P.S. case no. 13/1988
District- BHOJPUR

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1. Sidhnath Singh son of Late Sheopujan Singh
 2. Radheshyam Singh son of Late Sakhichand Singh
 3. Shribhagwan Singh son of late Raghunandan Singh
 4. Srinath Singh @ Bhim Singh son of late Sheopujan Singh
 5. Rajkishore Singh son of late Sheopujan Singh

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.Jeetendra Narayan, Amicus curiae

For the Respondent/s : Mr. Shiwesh Chandra Mishra

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 09-01-2018

1. No one appears on behalf of the appellants on repeated call. Learned Addl. Public Prosecutor Sri Shiwesh Chandra Mishra is present. Mr. Jeetendra Narayan is appointed as amicus curiae so that he could place the case of appellants and give assistance to this court.

2. This criminal appeal has been preferred against the judgment of conviction and sentence order dated 5.3.1994 passed by the Addl. Sessions Judge II, Ara in Sessions trial no. 163/1992 by which and whereunder he convicted all the appellants for the offences punishable under sections 302/34,



364 and 201 of the Indian Penal Code and sentenced all the five appellants to undergo rigorous imprisonment for life for the offence punishable under section 302/34 of the Indian Penal Code, to undergo rigorous imprisonment for seven years for the offence punishable under section 364 of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishable under section 201 of the IPC. All the sentences were ordered to run concurrently.

3. PW1, Jugal Singh, gave his fardbeyan to Officer Incharge of Piro police station (PW 14) on 7.5.1988 at 10.30 a.m. at DSP office in presence of Jai Narayan Singh, Dharichani Devi (PW 10), Mukti Singh (PW 8) to this effect that 35 to 40 days ago at the time of sun rising, he was cleaning his sahan, in the meantime, appellants- Sidhnath Singh, Raj Kishore Singh, Srinath Singh @ Bhima, Radhey Shyam Singh and Sri Bhagwan Singh came there and asked about deceased Ram Das Baba. The informant disclosed that he was inside the house and after that he went towards his field to throw the garbage. The informant, while returning to his village from his field, met Ram Das Singh along with the above stated appellants at a government hand pipe situated towards western side of the village, The deceased Ram Das



Singh was wearing white Khadi ganji, Kurta and he was also wearing Dhoti and had a Kambal with him. He asked Ram Das Singh as to where he was going upon which Ram Das Singh disclosed that he was going to Piro along with five appellants. The informant returned to his home but till late evening when deceased Ram Das Singh did not return to his home, informant, Jugal Singh asked whereabouts of Ram Das Singh from appellant Sidhnath Singh. He further stated that when the above stated query was made, Jamuna Singh, Nagina Singh, Mukti Singh were also present there. Appellant Sidhnath Singh disclosed that deceased Ram Das Singh had gone to the house of his daughter Dharichani Devi (PW 10) of village Basgatiya P.S. Bikramganj District Rohtas. Informant, having satisfied with the aforesaid answer, went to his home because the deceased Ram Das Singh used to go to the house of his daughter. However, prior to four to five days of institution of the case, informant went to plough the field of the deceased Ram Das Singh but all the appellants, being armed with lathi, came there and stopped him from ploughing the field. The informant raised objection but they became furious and disclosed that they had purchased the aforesaid land. The informant returned from



there and went to village Basgatiya to make enquiry regarding the above stated disclosure and when he reached village Basgatiya and met Dharichani Devi and her husband Jai Narayan Singh and asked about Ram Das Singh, the above stated Dharichani Devi and Jai Narayan Singh disclosed that deceased Ram Das Singh had not come to their home. The informant returned from there and again, met appellant Sidhnath Singh and again asked the whereabouts of the deceased but all the appellants threatened him. The informant made hectic search of his brother but could not succeed to trace him out and after that he lodged the present case. The informant claimed that his brother was killed by the appellants after got executing sale deeds of his land in their favour.

4. On the basis of fardbeyan of the informant, Sikarhatta P.S. case no. 13/1988 was registered and on 7.5.1988, formal FIR (exhibit 8) was prepared against appellants. The formal FIR as well as fardbeyan were sent to the concerned Magistrate on the same day but the same was put up before the Chief Judicial Magistrate, Ara on 9.5.1988.

5. PW 16, namely, Siyaram Singh, the then Officer-in-charge of Sikarhatta Police Station took charge of the



investigation. He recorded the statements of the prosecution witnesses under section 161 of the Cr.P.C, inspected the place of the occurrence. In course of investigation, he came to know that on 23.5.1988 one Bihiya P.S. case no. 37/1988 had been instituted for the offences punishable under sections 302 and 201 of the Indian Penal Code and obtained original record of Bihiya P.S. case no. 37/1988 from the officer incharge of Bihiya Police station. He proved original record of Bihiya P.S. case no. 37/1988 as exhibit 9. He also got material exhibits of Bihiya P.S. case no. 37/1988 but before completion of investigation, he was transferred and accordingly, he handed over charge of investigation to SI Ramanuj Singh (PW 13) who subsequently, after completion of investigation, submitted charge sheet against all the appellants for the offences punishable under sections 302, 364 and 201 of the Indian Penal Code.

6. It is pertinent to note here that before institution of Sikarhatta P.S. case no. 13/1988, on 5.4.1988 one unknown dead body was recovered near bridge of Beswa Badhar and inquest report of the above stated unknown dead body was prepared in presence of PWs 2 and 7. Signatures of PWs 2 and 7 on the inquest report have been proved as exhibit 2 and



2/1 respectively. Photograph of the aforesaid dead body as well as articles recovered with the above stated unknown dead body were shown to PW1 Jugal Singh. PW 10, PW 11 and Jai Narayan Singh who identified photograph and articles and claimed that the aforesaid photograph and articles were of the deceased Ram Das Singh. The aforesaid identification was made in presence of PW15, namely, Sheo Shankar Tiwary, who was posted as B.D.O, Bihiya at the relevant time. The cognizance of the offences was taken and the case was committed to the court of sessions in usual way and accordingly, all five appellants were put on trial.

7. Appellants stood charged for the offences punishable under sections 365, 364, 302/34 and 201 of the Indian Penal Code. Appellants denied the charges and claimed to be tried.

8. In course of trial, prosecution examined PW 1, informant, Jugal Singh, who proved photograph of the deceased Ram Das Singh which has been marked as material exhibit I with objection, PW2, Dinanath Singh who claimed that on 5.4.1988 an unknown dead body was recovered near bridge of Beswa Badhar in presence of PW 7 and inquest report of dead body was prepared. PW3, Jhapsi Yadav is also



on the recovery of unknown dead body and stated that on the day of the recovery of unknown dead body, he was working as chaukidar and one Ram Ekbal Yadav and Naresh Yadav informed him that one dead body was lying in Beswa Badhar and having got the aforesaid information, he went there and found a dead body lying there. He, further, stated that the aforesaid dead body was covered with a Kambal. He noticed that there were injuries on the neck of the aforesaid dead body. He could not identify the dead body and after that he gave information to the local police regarding the above stated dead body. He stated that after some days, he came to know that the aforesaid dead body was of Ram Das Singh of village Chakiya. PW 4, namely, Badri Ojha has been tendered. PW 5, Ram Ekbal Yadav is on the point of recovery of unknown dead body and stated that he had informed PW3 regarding the above stated dead body. PW 6 is also a witness of recovery of dead body and this witness informed the chaukidar about the aforesaid dead body. As stated earlier, PW7 is a witness on inquest report of unknown dead body. PW8, Mukti Singh claimed that more than four years ago while he was washing his hand at government hand pipe, he saw the appellants and the deceased going out of the village.



He also claimed that PW1 asked the deceased Ram Das Singh as to where he was going upon which deceased Ram Das Singh replied that he was going to Piro along with the appellants and would return till late evening. He also noticed that the deceased was wearing Ganji and Dhoti and had also Gamcha and Kambal on his shoulder. This witness also stated that when the deceased did not return till late evening, PW1 and he went to the house of the appellant Sidhnath Singh and enquired about whereabouts of the deceased upon which appellant Sidhnath Singh disclosed that the deceased had gone to village Basgatiya to meet PW10 but later on, it came to light that the deceased had never gone to village Basgatiya and then PW1 lodged the case in his presence. This witness proved signature on the fardbeyan. PW 9 is doctor who did post mortem examination on the dead body of unknown person on 5.4.1988. PW 10, Dharichani Devi, stated that her uncle Jugal Singh (PW 1) had come to her home more than four years ago in search of her father deceased Ram Das Singh upon which she told that her father had not come to her home since last seven to eight months and after that PW1 disclosed that appellants had stopped him from ploughing the land of the deceased on the ground that they had purchased



the land from the deceased Ram Das Singh. She further stated that she came to know from villagers that the appellants got executed forged sale deeds by impersonating the deceased Ram Das Singh. PW 10 went to house of appellant Sidhnath Singh and asked as to why he was speaking lie that her father had gone to Basgatiya upon which appellant Sidhnath Singh threatened her of dire consequences. Thereafter, she along with others including PW1 came to Piro and met Dy.S.P and after that fardbeyan of PW1 was recorded. She further stated that officer incharge of Sikarhatta Police station showed the photograph, clothes etc. of her father which were identified by her in presence of B.D.O. She identified material exhibit I in court also. PW 11 also stated almost similar things and proved signature on fardbeyan as exhibit 5. He also identified photograph of the deceased (material exhibit I) in court. PW 13 is police officer who submitted charge sheet whereas PW14 is the then officer incharge of Piro police station who had recorded fardbeyan of PW1. PW 15 is the Block Development Officer, Bihiya in whose presence photograph and clothes were identified by the witnesses. This witness proved TI chart as exhibit 6. PW 16 is the investigating officer who had partly investigated the case and in course of



investigation, visited the place of the occurrence and recorded the statements of the witnesses. PW 17 is the constable who produced material exhibits and proved requisition of munsif of Sikarhatta Police station which has been marked as exhibit 10. The prosecution also got exhibited fardbeyan as exhibit 1, signatures of PWs 2 and 7 as exhibits 2 and 2/1, signature on fardbeyan as exhibit 3, post mortem report as exhibit 4, deposition of Jamuna Singh as exhibit 5, signature on fardbeyan as exhibit 6, T.I.P. chart as exhibit 7, endorsement on photo as exhibit 7/1, formal FIR as exhibit 8, paras 1 to 166 of case diary as exhibit 9, requisition as exhibit 10, order of Deputy Collector land reform as exhibit 11, order of Subdivisional officer, Jamshedpur as exhibit 11/1, photo of the deceased as material exhibit I, Ganji as material exhibit 2, Dhoti as material exhibit 3, Markin gamcha as material exhibit 4.

9. Statements of appellants were recorded under section 313 of the Code of Criminal Procedure in which they reiterated their innocence and claimed their false implication.

10. Appellants got examined four defence witnesses and also got exhibited some documents including certified copy of sale deed dated 16.11.1987.



11. Learned court below, after scrutinizing and analyzing the evidences available on record, convicted the appellants and sentenced the appellants in the manner as stated above on the ground of circumstantial evidences which have been discussed by the learned court below at para-13 of the impugned judgment which runs as follows :-

“ (i) Firstly all the five accused persons were last seen with the deceased Ramdas Singh and they took him by saying that they are taking him to village Piro and Ramdas Singh will come back in the evening. (ii) Secondly, in the evening when he did not come back then he did not come back then the informant and witnesses went to accused Sidhnath Singh who stated falsely that Ramdas Singh has gone to visit his daughter at village Basgitia. (iii) Thirdly, when the informant after a month went to plough the land of his brother Ramdas Singh all the accused persons threatened him and said that they have purchased on the land from Ramdas Singh. (iv) Fourthly, when Jugul Singh came back from Basgitia along with Dharichani Devi and came to accused Sidhnath Singh and asked for an explanation as to why he lied them he threatened them and said that they will be sent where Ramdas Singh has been sent. (v) Fifth, the recovery of a unidentified dead body on 5.4.88 by witnesses which date corresponds with the day Ramdas Singh



left the village with the five accused persons. (vi) Sixth, identification of the photograph and cloths of the said unidentified dead body as that of deceased Ramdas Singh and statement of the witnesses that these cloths were worn by Ramdas Singh when he left the village along with the accused persons. (vii) Seventh, the execution of sale deeds ext. B, B/1, B/2 which has got averment that Ramdas Singh wants to settle at village Basgitia, but in fact he never visited Basgitia nor disclosed the fact of his settling down at Basgitia to his brother Jugul Singh or his daughter Dharichani Devi which shows the guilty mind of the accused persons.”

12. Learned counsel appearing as amicus curiae submitted that except suspicion, there was nothing against the appellants and it is well settled principle that suspicion, however, may be strong can not take place of evidence but even then the learned court below convicted and sentenced the appellants. He, further, submitted that witnesses claimed to have seen the deceased in the company of the appellants before recovery of his dead body but even if the aforesaid circumstance assumed to be true, then also, chain of the circumstance was not complete to show the involvement of the appellants in the alleged crime. He, further, submitted that moreover, prosecution witnesses developed their statements



in course of trial and, therefore, it is difficult to place reliance safely on the testimonies of the prosecution witnesses. He, further, submitted that, as a matter of fact, learned court below convicted the appellants on mere surmises and conjectures.

13. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that there was complete chain of circumstance to show the guilt of the appellants. He, further, submitted that witnesses had seen the appellants in the company of the deceased and they claimed that the deceased had left village with the appellants and subsequently, dead body of the deceased, having grievous injuries, was recovered from a lonely place for which Bihiya P.S. case no. 37/1988 was registered and in course of investigation of the present case, informant as well as other witnesses including daughter of the deceased identified dead body as well as belongings of the deceased in presence of the B.D.O. He, further, submitted that it has also come in evidence that prior to alleged occurrence, appellants got executed forged sale deed in respect of land of the deceased and, as a matter of fact, with intent to grab land of the



deceased, appellants committed murder of the deceased and, therefore, there is strong circumstantial evidence to suggest that it were the appellants who committed murder of the deceased.

14. Having heard contentions of both parties, we went through the record. It would appear from perusal of the impugned judgment that learned court below has discussed the circumstances which have emerged out from the evidences available on record. First circumstance, as discussed by the court below, is said to be last seen of the deceased with the appellants and the claim of the witnesses that the deceased was taken away by the appellants saying that they were going to Piro. Second circumstance has been mentioned by the court below to this effect that the deceased did not return to his village till late evening and, therefore, informant and other witnesses went to the house of accused Sidhnath Singh to make enquiry about whereabouts of the deceased and the appellant Sidhnath Singh disclosed that the deceased had gone to village of his daughter at Basgatiya. Third circumstance, as discussed by the court below, is that the informant after few months of missing of the deceased, went to plough the land of the deceased but he was stopped



by the appellants from ploughing land saying that they had purchased all lands from the deceased Ram Das Singh. Learned court below also relied upon the circumstance that when PW1 along with PW10 returned from the village Basgatiya went to meet accused Sidhnath Singh and asked to explanation as to why he had lied upon which appellant Sidhnath Singh threatened saying that they would also be killed as the deceased was killed. The court below also relied upon the recovery of unidentified dead body as well as identification of photograph and cloths of the deceased Ram Das Singh by the witnesses. Furthermore, court below relied on the averments made in the sale deeds (exhibits B, B/1, B/2).

15. Having scrutinized the deposition of prosecution witnesses as well as circumstances as referred by the court below in the impugned judgment, we are of the view that the circumstances as referred by learned court below are not sufficient to complete the chain of circumstance to show the guilt of the appellants because admittedly, sale deeds (exhibits B, B/1, B/2) were executed on 16.11.1987 i.e. much prior to missing of the deceased as well as institution of the present case. Moreover, witnesses only claimed that the



deceased had left his village along with the appellants and the appellants were seen in the company of the deceased in their village and after that none had seen the appellants along with deceased till recovery of his dead body. Moreover, Investigating officer (PW16) admitted at para 3 of his cross-examination that PW 1 had not stated before him that when he asked appellant Sidhnath Singh about whereabouts of the deceased Ram Das Singh, appellant Sidhnath Singh had threatened to kill him and also had not made statement that after two days of institution of the present case, Daroga of Sikarhatta Police station had disclosed that photograph of unknown dead body had been received and also those sale deeds were executed by impersonating deceased Ram Das Singh. PW 16 also disclosed several contractions occurring in the deposition of PW1 and other witnesses. Therefore, it is obvious from the materials available on record that exhibit B series had already been executed prior to death of the deceased Ram Das Singh and moreover, it would appear from materials available on record that after two days of institution of the present case, photograph of the deceased Ram Das Singh was shown to the witnesses whereas dead body of the deceased had already been recovered on 5.4.1988 much prior



to institution the present case. Therefore, in the aforesaid circumstances, we are of the view that the prosecution could not succeed to prove the complete chain of the circumstance which points out finger only towards the appellants and, therefore, we are of the view that the impugned judgment of conviction and sentence order can not sustain in the eye of law and is liable to be set aside.

16. On the basis of the aforesaid discussions, this criminal appeal is allowed and accordingly, the impugned judgment of conviction and sentence order dated 5.3.1994 passed by the Addl. Sessions Judge II, Ara in Sessions trial no. 163/1992 is, hereby, set aside. Appellants are discharged from the charges as well as liability of bail bonds.

17. Let first and last page of the copy of this judgment be handed over to Mr. Jeetendra Narayan for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	NA
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Shahid

