

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.597 of 1994

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Against the Judgment of conviction dated 26.11.1994 and sentence Order dated 28.11.1994 passed in Sessions Trial No.49 of 1989 by the Ist Additional Sessions Judge, Nalanda.

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1. Nagina Kahar, Son of Pati Rai.
2. Bihari Kahar, son of Bhaira Kahar.
3. Lakhan Jamadar, son of Nunu Jamadar, All resident of Village- Pathraura, Police Station- Noorsarai, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : Mr. Rakesh Kumar Sinha, Advocate.

For the State : Mr. Shiwesh Chandra Mishra, A.P.P.

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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: 05-01-2018

Heard learned counsel for the appellants and the learned counsel for the State.

2. The appellants have preferred this appeal against the Judgment of conviction dated 26.11.1994 and sentence order dated 28.11.1994 passed by the Ist Additional Sessions Judge, Nalanda, in Sessions Trial No. 49 of 1989, by which, he convicted the appellants for the offence punishable under Section 302 of the Indian Penal Code read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life for the above offences.



3. P.W. 7, namely, Bal Brind Prasad, gave his Fradbeyan to Sub-Inspector, R. N. Prasad, on 04.07.1978, at about 7.30 P.M. in Adhiyari River of Village Mayar to this effect that his father, namely, Thakur Mahto, had gone to Noorsarai Bazar on 03.07.1978, but he did not return to his house till late night. He got information that in the evening of the same day his father had taken toddy at village Pariwana. But on next day, P.W.3, namely, Churaman Mahto informed him that the dead body of his father was lying in the bank of Adhiyari River. He went there and identified the dead body of his father, Thakur Mahto. He claimed that P.W. 1, namely, Gyan Chand Prasad, informed him that he had seen his father along with appellants and one Parmeshwar Kahar of village Pathrawan and one Sheo Kahar of village Sohdiñ going towards the East of Maize field. The informant doubted that his father might be killed by the aforesaid persons due to enmity.

On the basis of the aforesaid Fradbeyan, Biharsharif (Noorsarai) P.S. Case No. 16(7) of 1978 was registered under Section 302 of the Indian Penal Code against unknown. After investigation, the charge sheet was submitted against the appellants and Sheo Kahar as well as Parmeshwar Jamadar. Sheo Kahar died and accordingly his case was dropped whereas accused Parmeshwar Jamadar was shown as absconder in the charge sheet. Moreover, the case of only three



appellants is before us.

The appellants were charged for the offence punishable under Section 302/34 of the Indian Penal Code and on their denial of the charges, the prosecution adduced evidences and in that course, altogether, 12 prosecution witnesses were examined and some documentary evidence were also exhibited. The statement of appellants were recorded under Section 313 Cr.P.C., in which, they reiterated their innocence.

4. The learned court below having analyzed the evidences available on the record convicted the appellants in the manner as stated above only taking note of circumstantial evidence.

5. Learned counsel for the appellants submits that only evidence came in course of trial that appellants and some others were seen in the company of the deceased on the alleged date of occurrence but that circumstance was not sufficient to come on the conclusion that that it were appellants, who had committed the murder of the deceased but even then the learned court below convicted the appellants only on the basis of conjectures and surmises.

6. On the other hand, the learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order.

7. The perusal of records shows that P.W.1 Gyan Chand



Prasad, P.W.4 Rambrikch Prasad, claimed to have seen the appellants and some others along with the deceased going towards the river side prior to recovery of his dead body. P.W.2 Narayan Mahto claimed that he came to know about the involvement of the appellants in the present crime from others and, therefore, it is obvious that P.W.2, Narayan Mahto, had not seen the appellants in the company of the deceased. P.W.3, Churaman Mahto, claimed that he saw the dead body and identified the dead body of the deceased. P.W.5, Kali Kahar, has been declared hostile and he has stated nothing and similarly, P.W.6, Birani Choudhary, has been tendered by the prosecution and this witness also has stated nothing. Similarly, P.W. 8 Surat Mahto and P.W. 9 Raghunandan Mahto have declared hostile and tendered respectively by the prosecution.

8. P.W. 7, Bal Brind Prasad, is the informant of this case and admittedly, he had not seen the appellants in the company of the deceased rather P.W.1, Gyan Chand Prasad, had disclosed him that he had seen the appellants in the company of the deceased prior to the alleged occurrence. However, this witness admitted in paragraph 4 of the deposition that there was enmity in between his father and appellants. He further admitted that his father was a drunker and used to take toddy and liquor. This witness at paragraph 12 of the his deposition admitted that he had not made statement before the police



to this effect that it was P.W. 1, Gyan Chand Prasad, who disclosed the name of the appellants to him.

9. P.W.10, Chandeshwar Prasad, elder brother of the deceased, has stated that when deceased did not return to his home he sent P.W.7, Bal Brind Prasad, to search the deceased first and after some time, P.W. 7, Bal Brind Prasad, returned and informed that the deceased was taken toddy and he will return in the evening but till night the deceased did not return. Therefore, there is nothing in the deposition of this witness in respect of the appellants.

10. P.W.11, Dr. Chanderdeo Sahai, is the Doctor, who did postmortem of the person of the deceased and he found some injuries on the person of the deceased and disclosed that the death of the deceased was due to asphyxia caused by strangulation. P.W.12, Kapildeo Prasad, is the formal witness and there is nothing in his deposition against the appellants.

11. On careful examination of the evidences available on the record, we find that there is only circumstance against the appellants that they were seen with the deceased prior to recovery of dead body of deceased, but only this circumstance is not sufficient to prove that it were appellants, who had committed the murder of the deceased. Therefore, in our view, the impugned Judgment of conviction and sentence order cannot stand in the eye of law.



Accordingly, this Criminal Appeal is allowed and the impugned Judgment of conviction and sentence order is set aside. The appellants are directed to be set free. Therefore, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
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