

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.346 of 1994

Appeal against the Judgment of conviction and sentence order dated 08.07.1994 passed by the learned 2nd Additional Sessions Judge, Samastipur, in Sessions Trial No. 160/118 of 1993.

1. Hira Lal Sahni, son of late Ram Ratan Sahni.
2. Lala Sahni, son of Manraj Sahni.
3. Dinesh Sahni, son of Dinkar Sahni.

All resident of Village Bhadaya, P.S.- Mahiuddin Nagar, District-Samastipur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with

Criminal Appeal (DB) No. 363 of 1994

1. Budhan Mahto, son of Kari Mahto.
2. Kari Mahto, son of Pyare Mahto.
3. Meena Devi, wife of Shankar Mahto.

All residents of Village- Bhadaiya, P.S.- Mohiuddinagar, Distarict-Samastipur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with

Criminal Appeal (DB) No. 417 of 1994

Premlal Mahto, son of Kari Mahto, resident of Village- Bhadaiya, Police Station Mahiuddinanagar, District Samastipur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 346 of 1994)

For the Appellant/s : Miss. Surya Nilambri, Advocate.

For the State : Mr. Dilip Kumar Sinha, A.P.P.

(In Criminal Appeal (DB) No. 363 of 1994)

For the Appellant/s : Mr. Navin Prasad Singh, Advocate.

Mr. Narayan Singh, Advcate.

For the Respondent/s : Mr. PP

(In Criminal Appeal (DB) No. 417 of 1994)

For the Appellant/s : Mr. Navin Pd. Singh, Advocate.

For the State : Mr. S.C. 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 : 29-10-2018

1. All the above stated criminal appeals have arisen out of common Judgment of conviction and sentence order dated 08.07.1994 passed by the learned 2nd Additional Sessions Judge, Samastipur, in Sessions Trial No. 160/118 of 1993. Since all the aforesaid appeals have been heard, together, they are being disposed of by this common Judgment.

2. The appellants in Criminal Appeal (DB) No. 363 of 1994 are in-laws whereas appellant in Criminal Appeal (DB) No. 417 of 1994 is husband of the deceased. The appellants in Criminal Appeal (DB) No. 346 of 1994 are stranger to the family of the husband of the deceased.

3. The appellants in Criminal Appeal (DB) No. 346 of 1994 and Criminal Appeal (DB) No. 417 of 1994 have been convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code and further, appellant in Criminal Appeal (DB) No. 417 of 1994 along with appellants in Criminal Appeal (DB) No. 363 of 1994 have been convicted for the offences punishable under Sections 304B and 498A of the Indian Penal



Code whereas appellants in Criminal Appeal (DB) No. 363 of 1994 have been acquitted of the charge framed under Section 302 of the Indian Penal Code and, similarly, appellant no. 3 in Criminal Appeal (DB) No. 363 of 1994 has been acquitted of the charge framed under Section 201 of the Indian Penal Code. The appellants in Criminal Appeal (DB) No. 346 of 1994 and Criminal Appeal (DB) No. 417 of 1994 have been sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code whereas appellants in Criminal Appeal (DB) No. 363 of 1994 and Criminal Appeal (DB) No. 417 of 1994 have been sentenced to undergo rigorous imprisonment for seven years for the offence punishable under Section 304B of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishable under Section 498A of the Indian Penal Code. Furthermore, the appellants, who have been convicted for the offence punishable under Section 201 of the Indian Penal Code, have been sentenced to undergo rigorous imprisonment for seven years for the above stated offences. However, all the above stated sentences were ordered to run concurrently.

4. P.W.7, Ram Balak Mahto, filed complaint case bearing Complaint Case No. 280 of 1992 (Ext.1) on 09.09.1992 alleging therein that the marriage of his sister, namely, Uma



Kumari Devi, was solemnized with appellant in Criminal Appeal (DB) No. 417 of 1994 two years ago but after marriage, the appellant in Criminal Appeal (DB) No. 417 of 1994 started demanding Hero Honda motorcycle and made several other demands from P.W.7 as well as his father giving threatening to desert his sister, if his demand is not fulfilled. P.W.7, further, claimed in his complaint case that with an object to save marriage life of his sister, his father sold several lands and fulfilled the lust of appellant in Criminal Appeal (DB) No. 417 of 1994. He, further, claimed that on 11.12.1992, after performance of *Duragman*, his sister went to her Sasural but appellant in Criminal Appeal (DB) No. 417 of 1994 again started torturing his sister and started pressurizing her to fetch motorcycle from her parents and brothers. P.W.7, further, claimed that he went to the village of in-laws of his sister and tried to patch up the aforesaid dispute with the help of villagers and also asked the in-laws of his sister to send his sister to her parental home for some period but they refused to send his sister till the fulfillment of demand of motorcycle. He, further, claimed that in the night of 08.07.1992 all the appellants having entered into conspiracy committed the murder of his sister and got buried her dead body near Kakaraha bridge. He, further, claimed that neighbours of appellant in Criminal Appeal (DB) No. 417 of



1994 had heard the crying of his sister in the night of alleged occurrence and had also seen the appellants carrying and burying the dead body of the deceased. P.W.7, further, claimed that his brother, namely, Shiv Balak Mahto got information about the alleged occurrence from P.W.6 Styannarayan Mishra and having got information of the alleged occurrence on 08.07.1992, he gave information to Officer-in-Charge of Mohiuddin Nagar Police Station but Officer-in-Charge of Mohiuddin Nagar Police Station, in collusion of appellant no.-3, in Criminal Appeal (DB) No. 346 of 1994, did not lodge any case. He, further, claimed that the information of the alleged occurrence was given to Superintendent of Police, Samastipur through registered post.

5. The aforesaid complaint case was inquired and the learned Inquiry Court having found prima facie case summoned the appellants to face the trial and committed the Case to the court of Sessions where the above stated case was numbered as Sessions Trial No. 160/118 of 1993.

6. All the appellants were put on trail and, accordingly, appellants in Criminal Appeal (DB) No. 363 of 1994 and Criminal Appeal (DB) No. 417 of 1994 stood charged for the offences punishable under Sections 304B and 498A of the Indian Penal Code whereas all the appellants stood charged for the



offences punishable under Sections 302 and 201 of the Indian Penal Code. The appellants denied the charges and claimed to be tried.

7. In course of trial, prosecution to prove its case, got examined, altogether, nine witnesses and also got exhibited the certain documents including one inland letter as Ext.3 and postal receipt as Ext.4. The statements of appellants were recorded under Section 313 of the Cr.P.C., in which, they reiterated their innocence and claimed their false implication. They also claimed that they shall give their defence in writing.

8. The appellants also got examined two defence witnesses and furthermore, got exhibited certain documents in support of their defence. The trends of cross-examination of prosecution witnesses as well as evidences adduced on behalf of the appellants go to show that the defence of the appellants was that the deceased died due to ailment and P.W.6 and some other prosecution witnesses being inimical to the appellants got implicated them in a false case.

9. Learned trial court having scrutinized the evidences available on the record and having relied upon the oral and documentary evidences adduced on behalf of the prosecution,



convicted and sentenced the appellants passing the impugned Judgment in the manner as stated above.

10. Miss. Surya Nilambri, learned Amicus Curiae appearing in Criminal Appeal (DB) No. 346 of 1994 challenged the impugned Judgment of conviction and sentence order arguing that there was inordinate delay in filing the complaint petition and no cogent explanation of the aforesaid delay was given by the prosecution in course of trial but the learned trial court completely ignored the aforesaid fact. She, further, submitted that the material prosecution witnesses made contradictory statements and as a matter of fact, prosecution could not succeed to prove the required ingredients of Section 304B of the Indian Penal Code and so far as the statement of P.W. 6 is concerned, it is specific case of the defence that P.W.6 had inimical term with the appellants and moreover, his conduct was quite unnatural and, therefore, the aforesaid witness was not trustworthy witness but, even, then the learned trial court having relied upon the testimony of P.W.6 convicted and sentenced the appellants. She, further, submitted that there was other infirmities in the prosecution case but the learned trial court ignored the aforesaid infirmities.

11. Learned counsel appearing in the remaining criminal appeals seconded the above stated submissions arguing



that the brother and father of the complainant were not examined by the prosecution in course of trial and none examination of aforesaid prosecution witnesses was fatal to the prosecution case, as father of deceased was competent person to say about the claim of demand of motorcycle. He, further, submitted that so far as the inland letter(Ext.3) is concerned, the same is forged letter but the learned trial court relied upon the inland letter and came to wrong conclusion.

12. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order arguing that, almost, all the material witnesses have supported the prosecution case and the prosecution has given sufficient explanation of delay in lodging the case, as P.W.7 claimed that prior to filing of the complaint petition, his brother, namely, Shiv Balak Mahto, had informed the Officer-in-Charge of Mohiuddinagar Police Station on 18.07.1992 but the aforesaid Officer-in-Charge of Mohiuddinagar Police Station did not register any case and, thereafter, a petition was sent to the Superintendent of Police, Samastipur, on 13.07.1992 and the copy of the aforesaid petition as well as postal receipt have been brought on record by the prosecution. Learned Additional Public Prosecutor, further, submitted that prosecution succeeded to prove all the ingredients



of Section 304B of the Indian Penal Code and moreover, P.W.6 and some other prosecution witnesses claimed to have seen the appellants committing the alleged crime and, therefore, there is no need to interfere into the impugned Judgment of conviction and sentence order.

13. As we have already stated that, altogether, nine prosecution witnesses were examined in course of trial and out of them, P.W.4 Jagernath Choudhary, P.W.5 Upendra Choudhary and P.W.6 Satyanarayan Mishra claimed themselves to be an eye witness of the alleged occurrence whereas P.W.7 Ram Balak Mahto is complainant and has admitted in his statement that after alleged occurrence, P.W.6 Satyanarayan Mishra had given information about the alleged occurrence to his brother, Shiv Balak Mahto and, subsequently, he got information of the aforesaid occurrence.

14. P.Ws. 1 and 2, namely, Raj Kumar Singh and Triloki Prasad Singh are formal witnesses. So far as P.W.3 Amresh Kumar Choudhary is concerned, he claimed that while he was at his field, he had seen the appellants in Criminal Appeal (DB) No. 417 of 1994 and Criminal Appeal (DB) No. 363 of 1994 as well as four to five unknown persons, who were burying the dead body near the Kakraha Bridge. P.W.3, further, claimed that the aforesaid



dead body was of daughter-in-law of appellant no. 2 in Criminal Appeal (DB) No. 363 of 1994. This witness, further, claimed that subsequently, he learnt that the daughter-in-law of appellant no.2 in Criminal Appeal (DB) No. 363 of 1994, namely, Kari Mahto was done to death due to non-fulfillment of demand of motorcycle in dowry and, subsequently, her dead body was buried.

15. P.W.8 and P.W.9, namely, Gaya Prasad Rai and Ramchandra Paswan, respectively, are formal witnesses. P.W.8 has proved the signature of Shiv Balak Mahto on original complaint and also claimed that original complaint petition was typed by R.S. Choudhary in his presence. So far as P.W. 9 is concerned, this witness claimed to have identified the writings and signature of deceased Uma Kumari on inland letter, which has been marked as Ext.3.

16. It is obvious that P.W.4, P.W.5 and P.W.6 are most important witnesses of the prosecution and similarly, P.W.3 is also an important witness to some extent.

17. First of all, we would like to deal with the evidence of P.W.6, because P.W.7 has claimed that just after the alleged occurrence P.W.6 gave information to Shiv Balak Mahto, brother of P.W.7 and after that Shiv Balak Mahto went to Mohiuddinagar Police Station and gave written report to Officer-



in-Charge, Mohiuddinagar Police Station about the alleged occurrence but admittedly, no case was registered in Mohiuddinagar Police Station in respect of alleged occurrence. P.W.6 claims that on the alleged date of occurrence, he had gone to the house of in-laws of deceased Uma Kumari and met with deceased Uma Kumari, who started telling her regarding torture meted out to her by her husband and other in-laws but appellant no. 3 in Criminal Appeal (DB) No. 363 of 1994 called the other appellants and thereafter, the appellant in Criminal Appeal (DB) No. 417 of 1994 ordered to kill the deceased and thereafter, appellant no. 1 in Criminal Appeal (DB) No. 346 of 1994 overthrew the deceased on the ground. This witness claimed that he tried to intervene into the matter and the deceased, too, raised alarm. This witnesses, further, claimed that he also started crying and in the meantime, Upendra, Jagernath, Ram Nihora Choudhary and Batahu Mahto came there. This witness, further, claimed that appellant no. 1 in Criminal Appeal (DB) No. 363 of 1994 caught hold the hands of deceased, appellant no. 2 in Criminal Appeal (DB) No. 346 of 1994 caught hold the legs of the deceased whereas appellant in Criminal Appeal (DB) No. 417 of 1994 put poison into the mouth of the deceased. This witness, further, claimed that he tried to prevent the appellant in Criminal Appeal



(DB) No. 417 of 1994 from putting poison into the mouth of the deceased but appellant no. 3 in Criminal Appeal (DB) No. 346 of 1994 pushed him, as a result of which, he felled down there. He, further, claimed that the deceased started crying, then he left the aforesaid place and came to the house of his relative. This witness, further, claimed that after one and half hour of the aforesaid occurrence, appellants, Kari Mahto, Budhan, Premlal Mahto, Dinesh Sahni, Hira Lal and Lala Sahni took the dead body of deceased towards Chour. This witness, further, claimed that he gave information to brother of deceased. This witness also claimed that the marriage of the deceased had taken place two years ago. On being cross-examined by the defence, this witness admitted at para 7 that the father of the deceased was alive. He, further, submitted that he had visited the in-laws house of deceased twice and for the first time, he visited the in-laws house of the deceased when Panchayati was conveyed. This witness, further, admitted that 6 to 7 persons had gone along with him to attend Panchayati at the village of in-laws of deceased. Furthermore, this witness at para 9 of his cross-examination stated that on second time, he visited the house of in-laws of deceased on the request of brother of the deceased, who asked P.W.6 to go to the house of in-laws, as he had received information through the letter of deceased, that



even, after Panchayati the in-laws of deceased had not changed their behaviours towards the deceased. This witness, further claimed that his Sasural is in the village of the appellants and the house of his in-laws is at the distance of 10 Laggas from the house of appellant in Criminal Appeal (DB) No. 417 of 1994. This witness admitted that one Kapal Choudahry is his brother-in-law. This witness denied the suggestion of defence that the house of his in-laws was about one and half Kilometer from the house of appellant in Criminal Appeal (DB) No. 417 of 1994. This witness, further, admitted that he remained at the place of occurrence for 15 to 20 minutes and in the meantime, 6 to 7 persons came there having heard his alarm. This witness, further, admitted that he tried to save the life of deceased but due to push given by appellant Dinesh Sahni, he could not succeed in his attempt. This witness admitted at para 12 of his cross-examination that he did not give any information in respect of the alleged occurrence to Choukidar, Dafadar or local Police Station. He also admitted that he gave information in respect of the alleged occurrence to the wife of brother of the deceased on next day at about 12 noon to 1 P.M. and after two days of the occurrence, the brother of deceased came to meet him and then he narrated the entire story to him. This witness, further, claimed that he had not gone to Police Station



along with brother of the deceased. This witness denied this fact that he was accused in murder case of one Issher Sahni. This witness also denied the suggestion of defence that deceased Uma Kumari had died of her natural death and on instigation of his relatives, he got filed false case against the appellants by taking P.W.7 in his collusion. This witness admitted that he had made statement in this case before the court at the engaging stage but failed to remember, as to whether, he had claimed in his previous statement about the disclosure made by deceased, Uma Kumari, before him as well as the manner, in which, the occurrence took place. This witness, further, claimed that he had seen the appellants carrying the dead body from the distance of 2 to 3 Laggas and at that time, the son of his brother-in-law was also along with him but neither he nor the family members of his in-laws raised any alarm. This witness, further, stated that he straight way went to the house of his in-laws from the house of appellants in Criminal Appeal (DB) No. 363 of 1994 but he did not disclose the above stated occurrence before any person except the son of his brother-in-law. This witness, further, admitted that he had not given information before the police or any higher police officials about the alleged occurrence.



The statement of this witness goes to show that this witness was very close to the family of P.W.7 and according to this witness as well as P.W.7, prior to alleged occurrence, this witness had gone to attend the Panchayati on behalf of P.W.7. Furthermore, this witness claimed that when deceased was killed, he was present there and after occurrence, he gave information to Shiv Balak Mahto, brother of P.W.7 but the conduct of this witness appears to be unnatural, because had he seen the alleged occurrence, he would have certainly given information to Maika people of deceased without any delay or would have taken step to inform the police or any other officials but it is surprising enough that, even, having seen the killing and burying of deceased, he slept at his in-laws house and subsequently, on next day went to his village and thereafter, gave information to the alleged occurrence. This witness did not disclose about the alleged occurrence before any person except before the son of his brother-in-law. The above stated conduct of P.W.6 creates doubt about his trustworthiness and we are of the opinion, that no reliance can safely be placed upon the testimony of P.W.6.

18. P.W.4 Jagernath Choudhary and P.W.5 Upendra Choudahry are co-villagers of appellant in Criminal Appeal (DB) No. 417 of 1994. Both the aforesaid witnesses claimed to have



seen the actual killing of the deceased and stated that the appellants killed the deceased in the manner as stated by P.W.6 but P.W.4 added in his statement that the bottle of poison was given to appellant in Criminal Appeal (DB) No. 417 of 1994 by appellant no. 3 in Criminal Appeal (DB) No. 346 of 1994, though, the aforesaid statement has not been made by P.W.6. This witness claimed that at the time of alleged occurrence, he had gone to the house of Dukhran Mahto, whose house was situated at 10 to 20 Laggas from the house of appellant in Criminal Appeal (DB) No. 417 of 1994 and went to the house of in-laws of deceased having heard the cry of deceased but this witness admitted that the aforesaid Dukhran Mahto had not gone along with him at the house of in-laws of deceased. The aforesaid statement of this witness appears to be quite unnatural. Admittedly, this witness is not neighbour of appellant in Criminal Appeal (DB) No. 417 of 1994 and admittedly, Dukhran Mahto is neighbour of appellant in Criminal Appeal (DB) No. 417 of 1994 and there is nothing in the statement of this witness that Dukhran Mahto had any inimical term with appellant in Criminal Appeal (DB) No. 417 of 1994, therefore, it appears quite unnatural that a neighbour did not take pain to go to the house of appellant in Criminal Appeal (DB) No. 417 of 1994 after having heard cry coming from the house of



appellant in Criminal Appeal (DB) No. 417 of 1994 and a stranger visited the house after having heard the cry. Moreover, P.W.4, further, admitted at para 9 of his cross-examination that when he reached at the house of appellant in Criminal Appeal (DB) No. 417 of 1994, near about 10 persons had already assembled there and the aforesaid persons were neighbours of appellant in Criminal Appeal (DB) No. 417 of 1994. This witness admitted that he had no talk with Uma Kumari and remained at the place of occurrence for near about 10 to 15 minutes. This witness, further, admitted at para 11 of his cross-examination that the house of P.W.6 was at about 5 Kosh East from the place of occurrence. This witness, further, stated that he had given oral information about the occurrence to Mukhiya and Sarpanch of his village but admittedly, neither Surpanch nor concerned Mukhia gave any information to the police about the alleged occurrence and, t herefore, the above stated claim of P.W.4 appears to be doubtful. P.W.4, further, admitted that he had heard about the demand of dowry in his village and P.W.7 had disclosed to him about the fact of demand of dowry. Therefore, it is obvious that this witness is not a competent witness on the factum of demand of dowry. This witness also admitted that he had heard that a Panchayati had been conveyed. The defence specifically suggested to this witness that P.W.7 Ram



Sevak Mahto was servant of P.W.6 but this witness expressed his inability to say about the above stated fact. This witness, further, denied that Bakil Sahni was not the uncle of Hira Lal Sahni and Dinesh Sahni.

19. Similarly, P.W.5 also admitted that he reached at the house of in-laws of deceased and remained there near about 15 minutes and in the meantime, 3 to 4 nearby people came there and out of them, he identified Dukharan and Sonelal Mahto. This witness also admitted that he had learnt the fact of demand of dowry from P.W.7 and he had no concern with deceased. This witness, further, admitted that no document was prepared in Panchayati. This witness also admitted that when his statement was recorded in course of inquiry, he had disclosed that *Putohu* had given information to him regarding the death of the deceased. This witness, further, stated that he had given information of the alleged occurrence to son of Ex-Choukidar but did not give any information to the concerned Police Station, as the Police Station was far away from the place of occurrence. This witness admitted that he is distantly related with Kapal Choudhary, who happens to be the brother-in-law of P.W.6. This witness, further, admitted that he had heard the cry of only P.W.6. This witness also admitted that he remained at the place of occurrence for near about 15 to 20



minutes and in the meantime, five to six persons also assembled there. This witness further admitted that he was deputed as Punch in Panchayati and Sakaldeo Choudhary, Ram Nandan Choudahry, Babhu Mahto, Satyanarayan Mishra (P.W.6) and Sone lal Mahto were Punches of Panchayat and all the aforesaid Punches were appointed on behalf of P.W.7.

The statements of P.W.4 and P.W.5 go to show that both the aforesaid witnesses are also closed with P.W.7 and they claimed not to have attended the Panchayati on behalf of P.W.7 but also claimed to have seen the actual killing of deceased. However, it is surprising enough that, even, being so closed to P.W.7 both the aforesaid witnesses failed to give any information to any other persons including the informant as well as police officials. Therefore, the aforesaid conduct of P.W. 4 and P.W.5 creates serious doubt about their claim. The appellants have specifically taken defence that the Kapal Choudhary had inimical term with them and the aforesaid Kapal Choudhary managed to P.W.6 and P.W.7 and got lodged this false case.

20. On the basis of aforesaid discussions, the aforesaid so-called eye witnesses do not appear to be trustworthy nor inspires confidence to this Court and, therefore, in our view, no



reliance can safely be placed upon the deposition of P.W.4, P.W.5 and P.W.6.

The prosecution has brought Ext.3, the so-called letter said to be written by deceased to her father prior to alleged occurrence in evidence and in the aforesaid letter, she disclosed that she was subjected to cruelty by her in-laws due to non-fulfillment of demand of motorcycle in dowry.

21. P.W.9 has proved the writing and signature of deceased on the aforesaid letter and P.W.9 claimed that he was teacher and he had given tuition to deceased. This witness has cross-examined at length by the defence and in course of cross-examination, it was suggested by the defence that he was a tractor driver and had never taught the deceased. This witness admitted that he had seen Ext. 3 for the first time in court.

22. P.W.7 Ram Balak Mahto is complainant of the present case. This witness supported his case in his examination-in-chief and stated that he got information about the torturing of deceased as well as demand of motorcycle through letter sent to him by deceased and after that he went to village of in-laws of deceased and tried to pursue them and also gave proposal to take back the deceased but in-laws of deceased refused to send her to the house of P.W.7. This witness, further, claimed that, thereafter,



he went to Orrisa and when got information about the alleged occurrence at Orrisa, he returned to his home and lodged the case. This witness produced the letter (Ext.3) before the court and also postal receipt to show that the petition was given to higher officials of police through registered post. This witness, on being cross-examined by the defence, admitted that he got information about the alleged occurrence from his brother, Shiv Balak Mahto and the aforesaid information was given to him by Shiv Balak Mahto after two months of the alleged occurrence. This witness admitted that Shiv Balak Mahto had not given any information to police in his presence and this witness also admitted that the copy of petition, which was given to Superintendent of Police, has not been filed in this case nor the copy of information given to police has been brought on the record. However, this witness subsequently, stated that copy of both the aforesaid petitions were filed along with the complaint petition. This witness, further, stated that he had met with Superintendent of Police in connection with the present case but did not meet S.D.O and Collector. This witness also admitted that his father was alive. This witness, further, admitted that his family possessed one and half bighas of lands whereas appellant in Criminal Appeal (DB) No. 417 of 1994 had ten bighas of land. He also admitted that he was working as Khalasi and failed to disclose



as to how much lands were sold by his father since last five years. This witness, further, admitted that when he got letter of his sister, he went to meet his sister. This witness, further, admitted that his sister studied up to class -V. This witness, further, stated that his brother had sent a letter to him mentioning this fact that deceased was killed and he receipt the aforesaid letter through hand but the aforesaid letter has not been brought before the court. This witness had admitted at para 21 of his cross-examination that after filing of the complaint case, he had not given any petition before the court for recovery of dead body of deceased. This witness denied that he was servant of Satyanarayan Mishra (P.W.6) and on the instigation of Satyanarayan Mishra (P.W.6) and Kapal Choudhary as well as Ram Bahadur Choudahry, he lodged the present false case.

23. The above stated discussed evidence goes to show that according to prosecution case, the alleged occurrence took place on 05.07.1992 but the complaint case was filed near about after two months of the alleged occurrence. No doubt, P.W.7 claimed in his evidence that his brother, Shiv Balak Mahto had given written report before the Officer-in-Charge of Mohiuddinagar Police Station on 08.07.1992, i.e., after three days of the alleged occurrence but neither the copy of the aforesaid petition has been exhibited in the present case nor aforesaid Shiv



Balak Mahto has been examined in this case to support the aforesaid fact, particularly, in the circumstance when P.W.7 has admitted in his statement that Shiv Balak Mahto had not given petition to Officer-in-Charge of Mohiuddinagar Police Station in his presence. Therefore, the explanation placed by the prosecution in respect of delay of filing of the complaint case does not appear to be plausible and liable to be rejected and in our view, the delay in lodging the aforesaid complaint case creates serious doubt about the claim of the prosecution.

Admittedly, neither Shiv Balak Mahto nor Nanki Mahto, who happens to be brother and father of the deceased, respectively, have been examined in this case, particularly, in the circumstance, when both the persons were alive at the time of recording the evidence and it was Shiv Balak Mahto, who got first information from P.W.6 about the alleged occurrence but the aforesaid Shiv Balak Mahto has not been examined. So far as letter (Ext.3) is concerned, the aforesaid letter was produced by P.W.7 in course of trial and he has, nowhere, disclosed in his deposition as to how he got that letter when the aforesaid letter was addressed to his father, namely, Nanki Mahto and, therefore, non-examination of Nanki Mahto was also fatal to the prosecution



case and the above stated circumstances creates doubt about the genuineness of Ext.3.

24. According to prosecution case, P.Ws. 3, 4, 5 and 6 claimed to have seen the appellants burying the dead body of the deceased near Karhara Bridge and the prosecution brought a petition before the trial court that prior to filing of complaint petition, Shiv Balak Mahto had given a petition to Superintendent of Police, Samastipur, for recovery of dead body of deceased. P.W.7 has admitted in his examination-in-chief that after filing of the complaint petition, no petition for recovery of dead body of deceased was filed before the court. It is surprisingly enough that the above stated witness claimed to have seen the place, where the dead body of deceased was buried and prior to filing of the complaint case, the brother of P.W.7, allegedly, took step for recovery of dead body of deceased by filing petition before the Superintendent of Police, Samastipur but P.W.7 after filing of the case did not take any step to make prayer before the court for issuance of direction to police for recovery of dead body of deceased and, therefore, the aforesaid circumstance also creates doubts about the genuineness of prosecution case.



The material available on record go to show that prosecution miserably failed to prove all the necessary ingredients of Section 304B of the Indian Penal Code.

25. On the basis of the aforesaid discussions, we are of the view that the prosecution failed to prove its case beyond all shadow of reasonable doubt and the appellants are entitled to get benefit of doubt and, therefore, all the above stated criminal appeals are allowed and the impugned Judgment of conviction and sentence order dated 08.07.1994 passed in Sessions Trial No. 160/118 of 1993 are, hereby, set aside. All the appellants are acquitted of the charges. The appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

26. The copy of first and last page of Judgment be handed over to Miss. Surya Nilambri, learned Amicus Curiae, so that she may claim before the competent authority for her remuneration.

(Hemant Kumar Srivastava, J)

Bhardwaj/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.11.2018
Transmission Date	27.11.2018

