

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.27 of 1995

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{Against the Judgment of conviction and sentence order dated 28.02.1995 passed by the learned 2nd Additional Sessions Judge, Purnia, in Sessions Trial No.321 of 1990/Trial No.52 of 1993}.

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Nawal Kishore Chaudhary, son of Natho Chaudhary, resident of village-Parora, P.S. K. Nagar, District-Purnea.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

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Appearance :

For the Appellant : Mr. Manoj Kumar, Advocate (Amicus Curiae).
For the State : Mr. Shivesh 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 : 16-04-2018

This criminal appeal has been preferred against the Judgment of conviction and sentence order dated 28.02.1995 passed by the learned 2nd Additional Sessions Judge, Purnia, in Sessions Trial No.321 of 1990/Trial No.52 of 1993, by which and whereunder he convicted the sole appellant for the offences punishable under Sections 302 and 201 of the Indian Penal Code, whereas the sole appellant was acquitted of the charge framed under Section 364 of the Indian Penal Code. Furthermore, the learned trial court sentenced the sole appellant



to undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code, whereas to undergo rigorous imprisonment for the period of seven years for the offence punishable under Section 201 of the Indian Penal Code. However, both the sentences were ordered to run concurrently.

2. The prosecution case is that on 02.09.1988, P.W.3 Rameshwar Ram gave an application to the Officer Incharge of K. Nagar Police Station, mentioning therein that his brother Kusheshwar Ram (deceased) was working as Chowkidar at the brick-kiln of Dhanraj Mal "Sidhi" and the appellant Nawal Kishore Chaudhary was working as Munshi at the aforesaid brick-kiln. P.W.3 mentioned in the aforesaid application that in the evening of 01.09.1988, his brother Kusheshwar Ram did not return to his home and on 02.09.1988, he got information through the Mukhiya of Ganeshpur Gram Panchayat to this effect that his brother died of drowning and at that time, he was along with the sole appellant.

3. On the basis of the aforesaid application, U.D. Case No.5 dated 02.09.1988 was registered and in course of investigation of the aforesaid U.D. Case, the post-mortem report of the deceased was received. The post-mortem report of the



deceased disclosed that the deceased died due to head injury and the cause of death was not of drowning. Furthermore, in course of investigation of the aforesaid U.D. Case, the wife and the mother of the deceased disclosed that on 01.09.1988, the appellant went to the house of the deceased and took him from his house and, subsequently, on 02.09.1988, the dead body of the deceased was recovered.

4. On the basis of the aforesaid investigation of the aforesaid U.D. Case, K. Nagar P.S. Case No.218 of 1988 for the offences under Sections 302 and 201 of the Indian Penal Code was registered on 12.09.1988 and on the same day, formal F.I.R. was drawn up, which was put before the Chief Judicial Magistrate on 14.09.1988.

5. The Investigation Officer took the charge of investigation and after completion of investigation, charge-sheet was submitted. The cognizance of the offence was taken and case was committed to the court of sessions in usual way.

6. The sole appellant stood charged for the offences punishable under Section 364, 302 and 201 of the Indian Penal Code.

7. In course of trial, the prosecution examined, altogether, 9 witnesses and also proved the inquest report as



well as the post-mortem report of the deceased.

8. The statement of the appellant was recorded under Section 313 of the Code of the Criminal Procedure, in which he admitted the fact of taking of the deceased from his house on 01.09.1988 but denied the fact of committing murder of the deceased as well as taking money from the deceased.

9. The defence also examined two defence witnesses.

10. The learned trial court, having scrutinized the evidences available on the record, convicted and sentenced the appellant on the ground of last seen.

11. Learned Amicus Curiae for the appellant submits that the learned trial court failed to appreciate the evidence in its right perspective and, moreover, except this fact that the appellant took the deceased, one day prior to the recovery of the dead body of the deceased, there was nothing before the learned trial court to convict and sentence the appellant. He further submits that only on the basis of suspicion, the appellant has been convicted and sentenced by the learned trial court.

12. On the other hand, learned Additional Public Prosecutor for the State supported the impugned Judgment of conviction and sentence order, arguing that almost all the witnesses including the wife and mother of the deceased very



clearly stated that the deceased was taken away by the appellant, one day prior to the recovery of his dead body, and, subsequently, the dead body of the deceased was recovered. He further submitted that the post-mortem report of the deceased established this fact that the deceased was murdered as no water or mud was found on the lungs or other parts of the dead body of the deceased and the doctor opined that the deceased did not die of drowning.

13. Having heard the rival contentions of the parties, we went through the evidence.

14. P.W.1 Jhansi Devi is the mother, whereas P.W.2 Hakiya Devi is the wife of the deceased. P.W.1 stated that the deceased was taken from his house by the appellant. She further stated that on the next day, she got information that his son was killed and, after that, her another son and daughter-in-law had gone to see the dead body of the deceased. She further stated that her daughter-in-law disclosed that the deceased had deposited Rs.5000/- with the appellant.

15. P.W.2 Hakiya Devi stated almost similar statement but admitted that the appellant had not come to take her husband in her presence, rather her husband disclosed that the appellant had come to take him from his house. She admitted that she had



not gone at the place of occurrence, rather her brother-in-law had gone to the place of the occurrence and, after that, the dead body was brought to the village. She stated that her husband had deposited ornaments and cash with the appellant with an object to purchase some land and, subsequently, whenever, her husband demanded his money back from the appellant, the appellant refused to return the aforesaid amount and ornaments.

16. P.W.3 Rameshwar Ram is informant and full brother of the deceased. This witness stated that he came to know from the members of his family that the appellant took away the deceased from his house and in the next morning, he got information from one Mathuri Paswan to this effect that his brother died due to drowning and, after that, he went to the police station for giving information and his statement was recorded at the police station.

17. P.W.4 Bhola Ram is also the brother of the deceased and stated that on the alleged date of the occurrence, the appellant had come to his home and took the deceased. He further stated that, so far as the fact of depositing cash and ornaments with the appellant by the deceased is concerned, the same was disclosed by his sister-in-law.

18. Almost, similar statement has been made by P.W.5



Jatadhari Ram, who happens to be the cousin brother of the deceased.

19. P.W.6 Dr. Kamal Kishore Das is doctor, who conducted the post-mortem examination on the corpus of the deceased. This witness stated that no external injury was found on the person of the deceased but, on dissection, brain was found lacerated and a big haematoma was present on frontal lobe and on parietal area. He also found that the lungs was congested but no water or mud was found inside the lungs. This witness opined that the cause of death of the deceased was due to head injury and the deceased did not die due to drowning.

20. P.W.7 Jagat Lal Ram also stated that on the alleged date of the occurrence, the appellant had gone to the house of the deceased and took him. After that, the deceased did not return to his home and in the next morning, one person informed him that the deceased Kusheshwar Ram died at Daheriya Basti. This witness further stated that he reached to the place where the dead body of the deceased was lying. He stated that several persons had assembled there and he saw the blood coming from the nose of the dead body of the deceased and he also noticed some minor injuries on the person of the deceased. This witness happens to be witness on the inquest



report.

21. P.W.8 Dhathuri Ram is tender witness and there is nothing in his deposition and so far as P.W.9 Shambhu Nath Choudhary is concerned, he happens to be the formal witness. He proved the formal F.I.R. as Ext.4, written report, which had been given to the Officer Incharge, as Ext.5, inquest report as Ext.6, case diary as Ext.7 as well as Ext.7/1. This witness fairly stated that he had no personal knowledge in respect of the present case.

22. The defence also examined two defence witnesses and both the aforesaid defence witnesses stated that the deceased died of drowning but as we have already noted that P.W.6 very clearly stated that the deceased died of head injury and, therefore, the testimony of the defence witnesses appears to be doubtful. However, it is settled principle of law that the prosecution has to stand on its own leg and prosecution cannot take benefit of weakness of the defence case and, therefore, it was upon the prosecution to prove its case beyond all shadows of reasonable doubt.

23. As we have already stated that some prosecution witnesses stated that on the alleged date of the occurrence, the deceased left his home in the company of the appellant and,



after that, the dead body of the deceased was recovered and except the aforesaid circumstance, there appears to be nothing against the appellant. So far as the deposit of money and ornaments with the appellant by the deceased is concerned, the aforesaid story came into picture, for the first time, when after post-mortem examination, this fact came to light that the deceased died of head injury and, moreover, except the wife of the deceased, none of the witnesses claimed that the money and ornaments had been given to the appellant in their presence. Furthermore, we find that the appellant fairly admitted in his statement, recorded under Section 313 of the Code of Criminal Procedure, that the deceased had left his home in his company but he denied the story of committing the murder of the deceased. Therefore, it is an admitted position that on 01.09.1988, the deceased left his home in the company of the appellant and except the aforesaid fact as well as this aspect of the matter that the deceased died of head injury, the prosecution failed to prove any other circumstance, which could point out finger towards the appellant and, therefore, in our view, the chain of circumstance pointing the guilt towards the appellant is incomplete and appellant deserves to get the benefit of doubt.

24. On the basis of the aforesaid discussions, this



criminal appeal is allowed and the impugned Judgment of conviction and sentence order are, hereby, set aside and, accordingly, the appellant is acquitted of the charges giving the benefit of doubt to him. The appellant is on bail. He is discharged from the liabilities of his bail bonds.

25. Let the copy of the first page and last page of this Judgment be handed over to the learned Amicus Curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
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