

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.185 of 1995

(Against the Judgment of conviction and order of sentence dated 30.06.1995 passed by the learned Additional Sessions Judge-III, Saharsa in Sessions Trial No. 96 of 1993)

1. Tribeni Sah, son of Jagat Sah,
2. Daya Ram Sah, son of Niti Sah @ Nirti Sah,
3. Nawal Sah, son of Niti Sah @ Nirti Sah,
4. Bhutani Sah, son of Tribeni Sah,
5. Anmol Sah, son of Tribeni Sah,
6. Bishwanath Sah, Tribeni Sah, All are resident of Lakshminia, P.S. Sour Bazar, District- Saharsa.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Shashi Dhar Jha, Advocate.
For the State : Mr. Shivesh Chandra Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 27-04-2018

This Criminal Appeal (DB) has been preferred against the Judgment of conviction and sentenced order dated 30.06.1995 passed by learned 3rd Addl. Sessions Judge, Saharsa in Sessions Trial No. 96 of 1993 by which and whereunder, he convicted the appellants for the offence punishable under Sections 302/34 and 201 of the Indian Penal Code and, accordingly, sentenced them to undergo Rigorous Imprisonment for life, for the offence punishable under section 302/34 of the



I.P.C. and to undergo Rigorous Imprisonment for 3 years for the offence punishable under Section 201 of the I.P.C.

2. P.W-7, namely, Md. Akbar Ali on 18.09.1992 at about 3.00 P.M., in presence of P.W.3 Abdul Sattar and P.W.1 Tauhid Ali at village Barahi Tolla, Laxminia, gave his Fardbeyan to P.W.8 Gaya Prasad Choudhary, the then Officer-in-Charge of Saur Bazar Police Station to this affect that on the same day at about 8.00 A.M. his son, namely, Md. Salauddin, aged about 11 years had gone towards south side of the village to fix Tatti in the field of *Alluha*, but he did not return till mid day and after that he went to his field, but he did not find his son there and in course of search of his son, while he was passing beside the sugarcane field of Gango Sah, he heard some whispering from the aforesaid field upon which he entered the above stated sugarcane field and when reached in the mid of the aforesaid sugarcane field, he saw the appellants, who were keeping something in the aforesaid field. He asked from them as to what was being dragged by them, but all the aforesaid appellants fled away from there saying that father had seen. He found his son dead in the aforesaid field. He noticed a black sign on the neck of his son and the blood was oozing out from the mouth and eyes of his son. He came out of the aforesaid



field raising alarm and while he was returning to his home, on way, P.W.1 Taubid Ali, P.W.2 Md. Taslim, P.W.4 Md. Alauddin and P.W.6 Asgar Ali met him and he disclosed the above stated incident to them. The aforesaid persons disclosed before him that they had also seen the appellants fleeing from there. P.W.7 Md. Akbar Ali claimed that two and half years ago, the aforesaid appellants had assaulted him as well as his family members for which he had lodged case against them, which was pending at the time of recording the aforesaid fardbeyan and due to aforesaid enmity, the appellants committed the murder of his son, namely, Salauddin.

3. On the basis of aforesaid Fardbeyan, Saur Bazar P.S. Case No. 179 of 1992, under Sections 302 and 201/34 of the I.P.C. was registered and on the same day i.e. on 18.09.1992, the formal F.I.R. was drawn up against the appellants. The F.I.R. was put up before learned Chief Judicial Magistrate, Saharsa on 19.09.1992.

4. P.W.8 took the charge of the investigation and after completion of the investigation submitted Chargesheet against the appellants for the offence punishable under Section 302 and 201/34 of the Indian Penal Code. The cognizance of the offence was taken and the case was committed to the Court of session in



usual way. Accordingly, the appellants were put on trial before the learned trial Court.

5. The appellants stood charged for the offence punishable under Section 302/34 and 201 of I.P.C. to which they denied and claimed to be tried.

6. In course of trial, prosecution examined, all together, 8 witnesses and also proved certain documents, as documentary evidence. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story.

7. The appellants also got examined six defence witnesses in support of their evidence and also got exhibited some documents.

8. The learned trial Court having scrutinized the evidences available on the record, convicted and sentenced the appellants in the manner, as we have already stated above.

9. Learned counsel appearing for appellants assailed the impugned Judgment of conviction and sentenced order arguing that the learned Court below convicted and sentenced the appellants only on the basis of surmises and conjectures and failed to take notice to testimony of defence witnesses, who very clearly stated that it were appellants, who had given



information to Chowkidar Md. Rashul (D.W.3) in respect of dead body of deceased and after that D.W.3 gave information to family members of the deceased and, therefore, in the aforesaid circumstances, the entire prosecution story becomes doubtful. He further submitted that according to P.W.7, the appellants were trying to conceal the dead body of deceased in the mid of Sugarcane field and when he raised alarm the remaining witnesses come there, but no blood or mark of violence was found in the aforesaid Sugarcane field and prosecution failed to prove as to where the deceased was killed. He further submitted that although, P.W.8 claimed that he seized *Khanti* and *Dabiya* from the sugarcane field, but admittedly, he did not prepare any seizure-list. He further submitted that no doubt, P.W.7 had filed Protest petition against the investigation of the police, but mere filing of Protest petition does not prove that *Dabiya* and *Khanti* had been recovered from the sugarcane field. He further submitted that the witnesses improved their statements in course of trial, because P.W.7 claimed in his Fardbeyan that while having seen the dead body of the deceased, he was returning to his home, on the way, the remaining witnesses met him, but the witnesses examined on behalf of the prosecution claimed that they along with P.W.7 had seen the appellants in Sugarcane



field. He further submitted that in view of the contradictory statements made by the prosecution witnesses, it can easily be said that prosecution failed to prove its case beyond all reasonable doubt and the appellants were entitled to get the benefit of doubt. He further submitted that in course of trial, it has come in evidence that there was long standing enmity between the parties and the litigation was pending between the parties since long and, therefore, in view of the aforesaid facts, the possibility of false implication of the appellants could not be ruled out, especially, in the circumstance, when none of the person claimed to have seen the actual killing of the deceased.

10. On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentenced order arguing that not only P.W.7 Md. Akbar Ali, but almost all the prosecution witnesses supported the prosecution case. He further submitted that it is well settled principle of law that the enmity cuts in both ways and if due to enmity a person can falsely be implicated, then due to enmity a person can commit the murder also. He further submitted that the prosecution witnesses not only proved the manner of occurrence, but also proved the place of occurrence and, therefore, there is no scope to interfere into the impugned



Judgment of conviction and order of sentence.

11. Having heard the rival contentions of both the parties, we went through the record. P.W.5 Dr. Arun Kumar Singh did the Postmortem examination on the corpus of the deceased. This witness found depressed marks situated on the neck below the thyroid cartilage on both sides on the dead body of the deceased. Therefore, it is obvious that the deceased died due to strangulation. This witness further stated that the time elapsed since death between 12 to 36 hours and the cause of death was Asphyxia caused by injuries found on the person of the deceased. The Postmortem examination of the deceased was done on 19.09.1992 at 11.30 A.M. Therefore from the evidence of P.W.5 Dr. Arun Kumar Singh, it is obvious that the deceased died due to Asphyxia caused by injuries found on his dead body.

12. P.W.1 Tauhid Ali stated that on the alleged date of occurrence, he was at his home and heard the cry of P.W.7 and having heard his cry, he ran towards the place of occurrence. This witness claimed that while he was running towards the place of occurrence, P.W.3, P.W.4 and several other persons were also with him. This witness further stated that when he reached near the place of occurrence, he saw appellants fleeing from there. This witness is resident of village Laxminia and in



the deposition of P.W.8 as well as other witnesses, it has come that the aforesaid sugarcane field was situated at the distance of one and half kilometers from Laxminia village. Furthermore, it is admitted position that P.W.7 raised alarm when he saw the dead body of the deceased. Therefore, it is difficult to believe that P.W.1 Tauhid Ali had seen the appellants fleeing from the sugarcane field, because it is quite clear that he would have taken time to cover one kilometer distance to reach to the place of occurrence.

13. Almost, similar statements have been made by P.W.2, P.W.3 and P.W.6 and both the witnesses stated that at the time of alleged occurrence, they were sitting at there respective doors. The enmity and litigation between the parties is admitted fact and it is also admitted position that P.W.1, P.W.2, P.W.3 and P.W.6 are related with each other, as they belong to same and similar family. Therefore, in our view, the possibility of false implication of the appellants cannot be ruled out and furthermore, we are of the view that the appellants are entitled to get the benefit of doubt.

14. Accordingly, on the basis of the aforesaid discussions, this Criminal Appeal is allowed and the impugned Judgment of conviction and sentenced order dated 30.06.1995,



passed by the Addl. Sessions Judge-III, Saharsa in Sessions Trial No. 96 of 1993 are, hereby, set aside. The appellants are acquitted from the charges giving benefit of doubt to them. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/Rahul

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	27.06.2018
Transmission Date	27.06.2018

