

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.127 of 1995

Arising out of judgment and order dated 27.04.1995 / 01.05.1995 passed by Smt. Vidyut Prabha Singh, the 2nd Additional Sessions Judge, Katihar in Sessiona Trial No. 53 of 1989.

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1. Dhashi Mian, son of Sukruddin Mian @ Paddu Mian,
 2. Md. Khalil,
 3. Jalil, (Sl. No. 2 & 3, both sons of late Ismail Mian),
 4. Rahim Mian,
 5. Idris Mian, (Sl. No. 4 & 5, both sons of late naffo Mian @ Najil Mian),
 6. Sudin Mian,
 7. Majo Mian, (Sl. No. 6 & 7, both sons of late Badri Mian),
 8. Salim Mina, son of Late Ganauri Mian,
 9. Shamo Mian, son of Late Issa Mian,
- All of Village Pratap Ganj, P.S. Barari, Distt. Katihar.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Ranvir Singh, Amicus Curiae.

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-04-2018

This Criminal Appeal has been preferred for setting aside the judgment dated 27.04.1995 passed by learned 2nd Additional Sessions Judge, Katihar (hereinafter referred to as ‘the trial court’) in Sessions Trial No. 53 of 1989.

2. The learned trial court having examined the evidences



adduced on behalf of the prosecution convicted the appellants for the murder of Upendra Pandey, it was found that the murder was committed by all the accused persons – appellants in furtherance of their common intention and they had kept the dead body concealed after chopping off the head and the two fore-arms so that the dead body would not be identified even if it is found in the river bank, therefore, all the nine accused persons were held guilty U/S 302/34 and 201/34 of the Indian Penal Code. They have been sentenced to undergo rigorous imprisonment for life for offences U/S 302/34 IPC. They have been also directed to pay Rs. 2000/- each to the wife of the deceased through the informant or, in default of fine, to undergo three months' rigorous imprisonment. No separate sentence has been passed U/S 201 IPC.

3. The prosecution case, as culled out from the records of the learned trial court, is stated as under:-

The informant in the present case is one Sanjay Kumar Pandey (PW 28). In his written report (Ext. 2) giving rise to registration of a formal F.I.R. being Barari P.S. Case No. 135/88 dated 29.09.1988 U/S 302/201 IPC, the informant alleged that while he was returning from Katihar after attending date on 27.09.1988, at about 6 P.M., near Jhaparganj Sanghli Tola, there were some persons of Mahnadih also with him. It is alleged that there had been some



exchange of bicycles by the co-villager Sunil Pandey as said Sunil Pandey left his bicycle there and moved on taking some body else's bicycle. It is further alleged that due to this Hera-Pheri the informant and Sunil both were taken to Busgarha by some Muslims (Begali). It is stated that at about 11.30 P.M. in night Sri Upendra Pandey, who happened to be the uncle of the informant, reached there, the informant asked him whether he had come alone then his uncle told him that the co-villagers (1) Ram Nath Pandey, (2) Ram Bilas Rai and (3) Sri Ram Pandey had also come. They asked the Bengali people to leave the informant and Sunil, on which the Bengali people told that they will release the informant and Sunil only in the morning after a Panchayati will be held. It is further alleged that at about 12 P.M. in the night Upendra Pandey, the uncle of this informant, proceeded from Village Busgarha, in the morning the father of the informant (PW 24) and one Madhav Rai (PW 9) came there and told the informant that while returning from Village Busgarha Upendra Pandey (deceased) had been assaulted by some 10-12 persons near Ramakhal the three other persons who were accompanying him had run away to Village Pratapganj and had informed the matter in the village but Upendra Pandey had not returned. The persons who had assaulted Upendra Pandey were identified to be the persons who were facing trial. The witnesses had identified 9 accused persons named in



the written report who were lashed with Lathi and Bhala and had been seen assaulting Upendra Pandey. It was alleged that the occurrence had taken place near Ramakhal Baisaghat.

3. In course of investigation police recovered the dead body which was identified as that of the deceased Upendra Pandey, a post-mortem was conducted on the dead body. The dead body was headless and both hands were chopped off from forearms. Investigation revealed complicity of all the 9 accused persons in the alleged crime, a charge sheet was accordingly submitted against them, cognizance was taken and the case was committed to the Court of Sessions being exclusively triable by it. The accused persons denied the charges levelled against them. They have, however, not entered any defence.

4. The prosecution examined altogether 20 witnesses in support of its case. There were at least three persons, who had witnessed the occurrence. The eye-witnesses, namely, Ram Nath Pandey (PW 10), Sri Ram Pandey (PW 11) and Ram Bilash Rai (PW 12) have stated that they had gone to Village Busgarha accompanying the deceased for rescuing his nephew who had been detained by the Badhiya Mohammedans due to matters relating to cycle theft. These witnesses have narrated the time of occurrence, the place of occurrence and the manner of occurrence. According to the witnesses,



Upendra was going ahead and when he reached near Ramakhal where these accused persons were present from before, they started assaulting Upendra with lathi. It has further been stated in evidence that due to assault by lathi Upendra fell down and was dragged towards Kosi river with continuous assault. The witnesses identified Samu Miyan, Salim Miyan, Idris Miyan, Rahim Miyan, Ghashu Miyan, Sudi Miyan, Maju Miyan, Jalo Miya and Palo Miyan, altogether 9 accused persons in number. The witnesses could not identify the other 2 or 3 persons. According to the eye witnesses, the accused persons pressed the neck of the deceased and Samu Miyan chopped off his head by Katta.

5. PW 10 has stated that they ran away, through Malkanghat reached their village and raised alarm whereupon the villagers started searching out the deceased. In the morning they found his underwear. The dead body was, however, found on Thursday in the river. The two forearms and the neck of the dead body could not be found but these witness has specifically stated that he had identified the dead body by eczema mark appearing near the left leg and scar mark of old injury over the left side of the chest. In course of cross-examination, he has stood the test by asserting that there were eczema on the fingers of the leg and the old scar mark was about four fingers long. The trial court found that on the point of



recovery of the dead body also he had been consistent and had asserted that it was found in the Dhaar where there was deep water and current of the river. The learned trial court found in Paragraphs 7 & 8 of his cross-examination that he has again corroborated the fact asserted in the examination-in-chief and has specifically asserted that as soon as occurrence started and Upendra was dragged towards the river and killed, he and others ran away. Similarly PW 11 has also stated the time of occurrence, the place of occurrence and the manner of occurrence of the incident. In the cross-examination the attention of this witness was drawn to his previous statements made before police and he has answered them in affirmative.

6. The learned trial court also found that PW 29 the Investigating Officer has not been asked whether this witness (PW 11) had made this statement before him and so this part of the evidence of PW 11 has been found consistent and reliable. He has asserted that he had seen the accused persons assaulting the deceased from a distance of 10-12 cubit feet and then had retreated from there due to fear of the accused persons.

7. PW 12 Ram Bilash Rai has also corroborated the evidence of the other two eye witnesses and his statement that on 27.09.1988 when he came to know from the family members of Upendra then he had gone to Busgarha for getting Sunil and Sanjay,



he also started going for Busgarha and met Shyam Nath Pandey at Baisaghat. They waited there because it was late night and at about 12 hours in the night Upendra came there and informed that the boys would be released in the morning. Thereafter, they started for their village and reached near Ramakhal where 10-12 persons started assaulting Upendra with lathi. He named all the 9 accused persons and identified them in the dock and also claimed identification of the others represented U/S 317 Cr.P.C. In paragraph 5 of his cross-examination, attention of this witness was drawn to the statement regarding injury of abdomen and recovery of underwear and also of witnessing chopping off the head by Samu but the attention of the Investigating Officer has not been drawn towards his statement in the case diary and so the learned trial court believed that he had made all these statements before the police and there is no reason to disbelieve this witness on these points. This witness has further stated that he had described the whole occurrence before the Investigating Officer.

8. The learned trial court rejected the argument of the defence that since the witnesses were admittedly agnates of the deceased therefore their testimony be disbelieved because, according to the learned trial court, that cannot be a sole ground for disbelieving them rather it supports the view that close relations cannot accept to allow the real culprits to be let loose after causing such a crime



against their near and dear. The learned trial court found that no reason has been shown as to why those accused persons and not those Badhiya Muslims, who had detained the two boys in connection with cycle theft, were not implicated in this case if they were innocent persons. There are other prosecution witnesses, namely, Prashant Kumar Pandey (PW 8) and Madhav Rai (PW 9) who supported the prosecution case.

9. The evidence of the doctor (PW 20) also proves that the deceased was killed by chopping off his head and forearms. The evidence of PW 13 is relevant to show that after recovery of the corpse a seizure list was prepared and also that he had scribed to the F.I.R. (Ext.2). The learned trial court found that cross-examination of this witness does not reveal any specific material for rejecting his evidence on the point of recovery of under-pant and scribing of the F.I.R. There is yet another witness Shyam Nath Pandey (PW 15), who has stated that he had accompanied the deceased to Village Busgarha but returned from midway and informed PW 10, PW 11 & PW 12 that Upendra had called them. He has also proved recovery of under-pant and has stated that he came to know from Ram Nath, Sri Ram and Ram Bilash Rai about the murder of Upendra Pandey.

10. Though the informant (PW 18) is not an eye witness but he is the person who had been detained by the Badhiya Muslims



of Village Busgarha where Upendra Pandey had gone to get them released.

11. PW 20 the doctor, who had examined injuries, when he conducted post-mortem examination of the dead body brought and identified by Muneshwar Singh, Constable, Harihar Singh, Dafadar, Kedar Nath and PW Ramashraya Pandey. PW 20 has proved Ext.8 and has asserted that on 30.09.1988 he conducted the post-mortem examination on the dead body of Upendra Pandey and found the following injuries:-

- “(i) Rager motis absent in lower limbs, no cloth on the body. Body built average.
- (ii) Neck chopped off at the level of C.5 and head along with the portion of neck was absent.
- (iii) Both the forearms were chopped off at the level just above the elbows.
- (iv) There was an incised wound with sharp cutting margin extending from Xiphisternum to Umbalicus in the mid of abdomen with protruding intestine and stomach partially.
- (v) A sharp cutting wound 4” x 2” on the back of right leg below night knee. All wounds were ante mortem caused by sharp cut weapon.”

12. In the aforementioned circumstances as the learned trial court was satisfied that the prosecution witnesses and the



materials available on the record go to prove the charges against the accused persons without any reasonable doubt, held the accused – appellants guilty of the offences U/S 302/34 and 201/34 IPC.

13. Since no one appeared on behalf of the appellants in the present case, a co-ordinate bench of this court vide its order dated 20.01.2018 appointed Mr. Ranvir Singh, learned Advocate to appear and assist the Court as Amicus Curiae. Mr. Ranvir Singh has assisted this Court in course of argument and has defended the appellants.

14. Learned Amicus Curiae submits that in the present case the place of occurrence and the manner of occurrence are highly doubtful. It is submitted that the identification of the dead body was also not well proved and from the evidences on the record it is apparent that despite the fact that PW 10, PW 11 & PW 12 claimed themselves to be the eye-witnesses of the alleged occurrence, they did not report the occurrence to the Police Station on the same night and the stand of the informant that he was told about the occurrence by his father and one Madhav Rai whereupon he lodged the First Information Report does not inspire confidence and it is highly doubtful.

15. On the other hand, learned A.P.P. representing the State has argued in support of the judgment of the learned trial court. Learned A.P.P. submits that the eye-witnesses of the occurrence are



consistent on the point of time, the place of occurrence and the manner of occurrence. The ocular evidences as disclosed by the eye-witnesses are in consonance with the injuries found on the dead body in course of post-mortem. It is submitted that from the Inquest Report (Ext.6) and the Post-Mortem Report (Ext.8) the manner of occurrence as stated by the prosecution witnesses are proved. It is further submitted that the dead body has been identified by the eye-witnesses and they have stood the test in this regard in course of cross-examination.

16. We have heard learned Amicus Curiae as well as learned A.P.P. for the State.

17. On perusal of the evidences, particularly that of the prosecution witnesses, namely, PW 10, PW 11 & PW 12, we find that they are consistent with respect to the time of occurrence, the place of occurrence and the manner of occurrence. No doubt these eye-witnesses are the agnates of the deceased but only because they are related to the deceased unless some material contradictions could be found in their testimony, there was no reason to accept the plea of the defence that their testimony should be discarded. In this regard the rationale and reasoning offered by the learned trial court is correct and we approve the same. We find that the medical evidences, such as, the post-mortem report and even the inquest of the dead body are



supporting the manner of occurrence as stated by the eye-witnesses.

We do not find any reason to disbelieve the prosecution story and the evidences adduced on behalf of the prosecution. The trial court has rightly come to conclude that the guilt of the accused-appellants U/S 302/34 and 201/34 IPC are proved beyond all reasonable doubts.

18. The Appeal has no merit. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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