

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.199 of 1995**

Sessions trial no. 223/1992 arising Out of Garhpura P.S. case no. 6/1989
District- BEGUSARAI

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1. Bhagirath Das son of Gorelal Das resident of village Kumharsaw Tola Kaura PS Gathpura District Begusarai
 2. Paltu Mahto son of Late Ramautar Mahto resident of village Kumharsaw Tola Kaura PS Gathpura District Begusarai
 3. Shambhu Kumhar alias Shambhu Pandit son of Domi Pandit resident of village Mauji (Hari Singh) PS Bakhri District Begusarai
 4. Chet Narain Das son of Late Sahdeo Das resident of village Mauji (Hari Singh) PS Bakhri District Begusarai
 5. Ram Chandra Dusadh alias Ram Chandra Paswan son of Prabhu Paswan resident of village Mauji (Hari Singh) PS Bakhri District Begusarai

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. Shaheen Begum, A.C.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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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: 30-04-2018

1. Heard Ms. Shaheen Begum, Advocate appearing as amicus curiae for the appellants and Sri Dilip Kumar Sinha for the State and perused the record.

2. This criminal appeal has been preferred against the judgment of conviction and sentence order dated 17.6.1995 and 21.6.1995 respectively passed by the learned Sessions Judge, Begusarai in Sessions trial no. 223/1992 by



which and whereunder he convicted the appellants for the offence punishable under section 302/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life.

3. PW7, namely, Meena Devi gave her fardbeyan to PW10, the then ASI of Garhpura police station, on 28.2.1989 at 12 noon to this effect that on 27.2.1989 at about 4 p.m. appellants came at her home and took her husband towards Garhpura railway station but her husband did not return till late night and thereafter, she along with PW9 went to the house of the appellant- Bhagirath Das and enquired about her husband upon which the appellant- Bhagirath Das informed her that her husband went to Bakhri. In the next morning at about 9 a.m., some children of her village informed that a dead body was lying near **Kaura Goha** and having got the aforesaid information, she along with PW9 and her other co-villagers went there and identified the dead body of her husband. She claimed that the appellants committed murder of her husband.

4. On the basis of the aforesaid fardbeyan of PW7, Garhpura P.S. case no. 06/1989 for the offence under section 302/34 of the Indian Penal Code was registered on 28.2.1989



and on the same day, formal FIR was drawn up against the appellants. PW10 took charge of investigation, he inspected the place of occurrence, recorded the statements of the witnesses and after completion of investigation, he submitted charge sheet for the offence punishable under section 302/34 of the Indian Penal Code. The cognizance of the offence was taken and the case was committed to the court of sessions in usual course. All appellants stood charged for the offence punishable under section 302/34 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.

5. In course of trial, prosecution examined, altogether, ten witnesses and also got proved some documents. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story and claimed their false implication.

6. No evidence was adduced on behalf of the appellants in support of their defence but from perusal of trend of the cross-examination of the prosecution witnesses as well as statements recorded under section 313 of the Code of Criminal Procedure, it appears that the defence of the appellants was total denial of the prosecution story.



7. The learned trial court, after scrutinizing the evidences available on record, convicted the appellants, mainly, on the basis of the testimonies of PW7 and PW9.

8. Ms. Shaheen Begum appearing as amicus curiae for the appellants assailed the impugned judgment of conviction and sentence order arguing that the learned court below convicted and sentenced the appellants only on the basis of conjectures and surmises and, as a matter of fact, the prosecution miserably failed to prove the charge levelled against the appellants. She, further, submitted that entire prosecution case hinges upon circumstantial evidence and the prosecution could not succeed to prove the circumstantial evidences which suggest the guilt of the appellants and only on the basis of suspicion, appellants were convicted. She, further, submitted that suspicion, however may be strong, can not take place of the evidence and, therefore, the impugned judgment of conviction and sentence order can not sustain in the eye of law.

9. On the contrary, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that PW7 and PW9 very clearly stated that one day prior to the alleged



occurrence, appellants came at the house of the deceased and took him along with them and on the next day, dead body of the deceased was recovered. He, further, submitted that PW7 and PW9 also claimed that appellant- Paltu Mahto had taken Rs. 5,000/- as loan from the deceased and when the deceased pressurized him to return the aforesaid money, appellants, having entered into conspiracy, committed murder of the deceased.

10. Having heard the rival contentions of both parties, we went through the record.

11. As we have already stated that the prosecution examined, altogether, ten witnesses, out of them PW1, PW2, PW3, PW4, PW5, PW6 and PW8 are not material witnesses and only PW7 and PW9 claimed that one day prior to recovery of the dead body of the deceased, appellants had come to their house and took away the deceased along with them. Furthermore, PW7 and PW9 also claimed that two years ago appellant- Paltu Mahto had taken loan from the deceased and the deceased was killed by the appellants when the deceased demanded his money from appellant- Paltu Mahto.

12. It would appear from the evidences available on



record that the prosecution brought two circumstances against the appellants. First, one day prior to recovery of dead body of the deceased, appellants had gone to the house of the deceased and took him along with them and second, appellant- Paltu Mahto had taken loan of Rs 5,000/- from the deceased two years ago. However, the factum of taking of Rs. 5,000/- as loan from the deceased by appellant- Paltu Mahto has not been mentioned in the fardbeyan of PW7 and it appears that the aforesaid fact is a subsequent development in course of trial. Furthermore, we find that the above stated circumstances had never been put up before the appellants when their statements under section 313 of the Code of Criminal Procedure were recorded and, therefore, the aforesaid laches on the part of the trial court caused serious prejudice to the appellants. However, even if the above stated two circumstances are taken into consideration, then also, except suspicion, there is nothing against the appellants and, in our view, the impugned judgment of conviction and sentence order can not sustain in the eye of law.

13. On the basis of the aforesaid discussions, this criminal appeal is allowed and the impugned judgment of conviction and sentence order dated 17.6.1995 and 21.6.1995



respectively passed by the learned Sessions Judge, Begusarai in Sessions trial no. 223/1992 are, hereby, set aside. Appellants are acquitted of the charge giving benefit of doubt to them. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

14. Let first and last page of the copy of this judgment be handed over to learned amicus curiae for needful.

(Hemant Kumar Srivastava, J)
(Rajendra Kumar Mishra, J)

Shahid

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	7.5.2018
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