

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.442 of 1994

1. Tiwari Sharma @ Ramesh Sharma, S/o Krishnadeo Singh
2. Baijnath Sharma, S/o Late Parshuram Sharma
3. Upendra Missir, S/o Girish Missir
4. Bishundeo Sharma, S/o Late Jang Bahadur Singh
5. Sidheshwar Singh, S/o Jageshwar Sharma
6. Ramashish Sharma, S/o Late Jagarnath Sharma
7. Ram Pravesh Sharma, S/o Late Jagarnath Sharma
8. Ram Ekbal Sharma, S/o Late Jagarnath Sharma, All are R/o village- Pali,
P.S. Konch, District- Gaya.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae

For the State : Mr. Satya Narain Prasad, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 05-03-2018

This criminal appeal has been filed against judgment of conviction and sentence order dated 08.09.1994, passed in Sessions Trial No. 149 of 1991/203 of 1987, by Additional Sessions Judge-X, Gaya, by which and whereunder he convicted all the appellants for offences punishable under Sections, 120B, 364/34 and 302/34 of the IPC and accordingly, sentenced them to undergo R.I. for life for the offences punishable under Sections 302/34 and 120B of the IPC and further sentenced them



to undergo R.I. for 7 years for the offence punishable under Section 364/34 of the IPC. However, all these sentences were ordered to run concurrently.

2. P.W.7 Rabindranath Prasad gave his fard-beyan to P.W. 12, Mansoor Alam, the then Officer In-charge of Konch police station, on 17.04.1984 to this effect that on 13.04.1984 at about 8.00 pm, his son, namely, Sanjay Kumar@ Bablu left his grocery shop to go to his home for taking meal and after closing the shop when he went to his house, he did not find his son at home and, on inquiry, he learnt that his son had not come to his home. Thereafter, he made hectic search to trace out his son, but all went in vain. He further stated that on 17.04.1984 at about 6.00 pm, he learnt that a dead body was floating in a well of one Deo Saran Babu, thereafter, he along with his villagers went there and saw the dead body of his son. He further claimed that one day prior to the alleged occurrence, one Manager Rai (P.W.3), Upendra Missir and Bishundeo Sharma, had come to his shop and warned him to get control of his son, as the character of his son was bad and, thereafter, he had warned his son. He doubted that his son might have been killed by the above stated persons.



3. On the basis of above stated fard-beyan of P.W.7, Konch P.S. Case No. 43 of 1984 for the offence punishable under Sections 302,401 of the IPC was registered against unknown.

4. P.W. 12 Mansoor Alam, the then Officer In-charge of Konch police station, took charge of investigation, and in course of investigation, he visited the place of occurrence, recovered the dead body of deceased, prepared inquest report, sent the dead body for post-mortem, recorded the statements of prosecution witnesses, but before submission of charge-sheet, he handed over charge of investigation to P.W.9 Sarjug Pandit, who, in his turn, submitted charge-sheet against the appellants. However, the cognizance of the occurrence was taken and the case was committed to the Court of Sessions, in usual way.

5. The appellants stood charged for the offences punishable under Sections 364/34,302/34 and 120B of the IPC, but the appellants denied the charges.

6. In course of trial, altogether, 12 prosecution witnesses were examined and the prosecution got exhibited some 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 and claimed themselves to be innocent. The



defence also examined one witness and got exhibited signature of one Surendra Sinha as exhibit-A.

7. Learned Trial Court, having relied upon the testimonies of prosecution witnesses as well as documents adduced on behalf of the prosecution, convicted the appellants in the manner as we have already stated.

8. Learned Amicus Curiae, Shri Arun Kumar Tripathi, assailed the impugned judgment of conviction and sentence order arguing that the learned Trial Court failed to take note of this fact that prosecution could not succeed to prove the complete chain of circumstantial evidence and only on the basis of surmises and conjectures, the learned Trial Court convicted the appellants.

9. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that prosecution witnesses very clearly stated that prior to alleged occurrence, the appellant no. 1, namely, Tiwari Sharma@ Ramesh Sharma was seen at the shop of P.W.7 talking with the deceased and giving proposal to him to accompany him to visit a dance and, similarly, some prosecution witnesses claimed that they had seen the appellants going with the deceased prior to the alleged occurrence and apart from this, one witness claimed that he had seen and heard that the appellants were



making plan to eliminate the deceased and apart from this, P.W. 4 claimed that prior to alleged occurrence, appellant Baijnath Sharma had given materials to him for preparation of rope and having prepared the rope, he handed over the same to Baijnath Sharma and the aforesaid rope was found on the person of the deceased and, therefore, the prosecution, successfully, proved the complete chain of circumstances to show that it were the appellants, who committed the murder of deceased.

10. Having heard the rival contentions of both the parties, we went through the record, admittedly, the prosecution case, based upon circumstantial evidence and the prosecution has brought following circumstances in evidence :-

1. On 13.04.1984, at about 8.00 pm appellant no. 1 had gone to the shop of informant and invited the deceased to visit dance.

2. P.W.2 had seen the appellants going with deceased and after that the deceased went missing.

3. P.W. 3 had heard the appellants talking to eliminate the deceased as deceased used to cut jokes regarding the sister of appellant no. 7.

4. P.W. 4, identified the rope, which was found on the dead body of the deceased and P.W. 4 claimed that it was appellant Baijnath Sharma, who had given materials for preparation of rope



and after preparing the rope, he handed over the said rope to appellant Baijnath Sharma prior to alleged occurrence.

11. Learned Trial Court, having relied upon the above stated circumstances as well as statements made by above stated witnesses, passed the judgment of conviction.

12. P.W. 1 Jageshar Paswan claimed that he had seen the appellant Tiwari Sharma@ Ramesh Sharma talking with deceased on the alleged date of occurrence. This witnesses further stated that appellant Tiwari Sharma asked the deceased to accompany him to watch a dance at Konch. The appellant Tiwari Sharma also disclosed that there was a dinner party at the house of appellant Sidheshwar Singh. This witness at para 27 of the cross-examination, stated that he had met P.W. 7 on the day when the dead body of deceased was taken out from well, but it is surprisingly enough that even after recovery of dead body of deceased from a well, this witness did not disclose the above stated fact to P.W. 7 because P.W. 7 has nowhere, mentioned the above stated fact in his fard-beyan. However, statement of this witness was recorded by the police after more than 20-25 days. Therefore, in our view, it is difficult to place reliance upon the statement of this witness.



13. P.W. 2 Guhandeo Rai claimed that on 13.04.1984 at about 8.00 pm, while he was returning from his shop, he had seen the appellants going with the deceased. This witness further claimed that after four days of the above stated incident, the dead body of deceased was recovered from a well in his presence and the police prepared inquest report in his presence. The above stated statement of P.W. 2 goes to show that he was present when the dead body of deceased was taken out from the well. But, again it is surprisingly enough that this witness too, did not disclose, the above stated fact to P.W. 7, because P.W. 7 did not mention the aforesaid fact in the FIR or in his further statement. The statement of this witness under Section 161 was recorded after 25 days and similarly, his statement under Section 164 of the Cr.P.C. was recorded in the month of November 1984 and, therefore, there was every possibility of tutoring of this witness.

14. P.W. 3 Manager Rai, claimed that while he was going to see his brother Laldeo Rai and reached to his house, he saw the appellants sitting near the house of Bishundeo Sharma and they were criticizing about the character of deceased Sanjay Kumar@Bablu as Bablu, who used to cut jokes of sister of appellant Ramashish Sharma and furthermore, the aforesaid person uttered that they would see the deceased after arrival of appellant



Ram Pravesh Sharma. This witness further stated that on the next day of the aforesaid incident, he went to the shop of P.W. 7 and gave information about the above stated fact. No doubt, P.W. 7 has disclosed in his fard-beyan that he had come to his shop one day prior to the alleged occurrence and had made complaint of the character of the deceased, but P.W. 7 has nowhere, disclosed that the appellants had uttered the above stated fact in presence of P.W.3, because P.W. 3 had not disclosed the name of appellants before P.W.7 prior to the alleged occurrence and it is obvious that he disclosed the name of appellants for the first time after 20-25 days of the alleged occurrence when his statement was recorded by the police. Admittedly, P.W. 7, doubted the role of P.W. 3, in his fard-beyan, but P.W. 3 was not made accused rather he was made a witness. Moreover, it is difficult to rely upon the testimony of P.W. 3.

15. P.W. 4 claimed that appellant Baijnath Sharma had given materials to him for preparation of rope and the aforesaid rope was found on the dead body of deceased. This witness claimed to have identified the above stated rope, but the aforesaid rope was never produced before the Trial Court as material exhibit and moreover, inquest report was produced which has been marked as exhibit-1/2. It goes to show that entry of aforesaid rope had been made



subsequently, in the inquest report which creates doubt about the recovery of rope on the dead body of deceased.

16. Furthermore, we find that the original inquest report was not produced before the Trial Court nor any explanation of non-production of original inquest report was given. Moreover, when the defence challenged the genuineness of above stated entry of the rope in inquest report, it was bounded duty of the prosecution to produce the original inquest report before the Trial Court or give sufficient explanation of non-production of the original inquest report, but prosecution failed to do so and, therefore, a doubt has been created, in respect of the prosecution case, particularly, in the circumstance, when the entire prosecution case hinges upon circumstantial evidence.

17. On the basis of above stated discussions, we find that prosecution failed to prove the complete chain of circumstances to show that it were appellants, who committed the alleged occurrence. It is well settled principle of law that to seek conviction on the basis of circumstantial evidence, prosecution ought to have proved the complete chain of circumstances indicating the guilt of accused person without any inconsistency, but, in the present case, prosecution failed to do so and, therefore,



we are of the opinion, that the appellants are entitled to get benefit of doubt.

18. In view of the above stated discussions, this criminal appeal is allowed and the impugned judgment of conviction and sentence order, are hereby, set aside. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

19. The copy of first page and last page of this judgment be handed over to learned Amicus Curiae for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

khushbu/-

AFR/NAFR	N.A.F.R.
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