

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.73 of 1995

Against judgment and order dated 22nd April, 1995 passed by learned 1st
Additional Sessions Judge, Gaya in Sessions Trial No. 571 of 1990/40 of 1992.

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Ram Pravesh Nonia, son of Jag Mohan Nonia, resident of Village – Mahmadpur,
Police Station Khizersarai, District Gaya

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rai Saurabh Nath
Mrs. Manjari Nath
Mr. Alok Anand

For the Respondent/s : Mrs. S B Verma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-04-2018

Challenging his conviction recorded by the 1st Additional
Sessions Judge, Gaya in Sessions Trial No. 571 of 1990/40 of 1992
on 22nd April, 1995 the appellant herein has filed this appeal. The
appellant herein Ram Pravesh Nonia was prosecuted along with 4
other persons, namely, Bal Govind Nonia, Jag Mohan Nonia, Jethan
Nonia and Surendra Nonia for the offence under Section 302/201 of
the Indian Penal Code. Except the present appellant, all the other
four co-accused persons have been acquitted. The appellant having
been convicted for offence under Section 302 IPC and sentenced to
undergo rigorous imprisonment for life so also under Section 201 IPC



and sentenced to undergo five years rigorous imprisonment has filed this appeal.

Facts in brief which are necessary may be taken note of. It is the case of the prosecution that PW 1 Anil Paswan made a statement to the police authorities at 10 P.M. on 06.11.1989 that in the morning two hours before making the statement he was informed by some passers-by that a bleeding dead body was lying on the western side of the road. On going to the spot he found a dead body with cut mark on the left eye and black spot on the neck. It seemed that after killing the person concerned the dead body has been thrown there. On information being received and after recording the statement Ext. 2, a formal F.I.R. was lodged vide Ext. 3 for offence under Section 302 IPC against unknown persons. The investigation process was set into motion, the inquest report Ext. 4 was made, seizure memo was recorded after seizing blood-stained soil and some other materials from the spot. Post mortem of the dead body was done vide Ext.6, photographs of the body were taken vide Ext. 7 and various steps for investigation were undertaken.

During the course of investigation it transpired that the body recovered was that of one Aklu, husband of PW 5 Akali Devi and son-in-law of Rajia Devi PW 4 and an acquaint of PW 7 Sohrai Nonia. It also transpired during the course of investigation that on a



Sunday evening, i.e. two days before the dead body was found, the appellant Ram Pravesh Nonia along with one of the co-accused Surendra Nonia had come to the *sasural* of the deceased Aklu, requested him to accompany them for having toddy elsewhere. Aklu the deceased agreed and left with them for having toddy. All three went to a grocery shop owned by PW 6 Mahabir Sao, purchased cigarettes and other items and went towards the northern part of the village, when PW 2 Krishna Paswan saw them. It is said that in the night Aklu did not return. PW 7 Sohrai Nonia went out to search him and while so going nearing the house of the appellant Ram Pravesh Nonia, this witness PW 7 Sohrai Nonia heard him uttering the words to his family members, i.e. “give me meal, we have come after committing a murder”. It is said that in the next morning the body was recovered and on information on the police the family members identified the body. Based on these circumstantial evidence the conviction has been ordered. As indicated hereinabove, during the trial in question five accused persons were prosecuted. Four of them have been acquitted of the charges levelled and it is only the present appellant who has been convicted based on the circumstantial evidence.

Having heard learned counsel for the parties and on a perusal of the record it is seen that in all the prosecution had



examined 11 witnesses. They are PW 1 Anil Paswan, PW 2 Kirshna Paswan, PW 3 Basanti Devi, PW 4 Rajia Devi, PW 5 Akli Devi, PW 6 Mahabir Sao, PW 7 Sohrai Noniya, PW 8 Dasai Chouhan, PW 9 Bindeshwari Singh, PW 10 Mithilesh Kumar Sinha and PW 11 Yugal Prasad. Injuries sustained by the deceased have been proved from the medical report and the statement of PW 10 Dr. Mithilesh Kumar Sinha. However, there is no eye-witness to the entire occurrence and the entire conviction is recorded on the basis of circumstantial evidence. The same circumstantial evidence that has come on record as is available against all the accused persons put to trial which included co-accused Surendra Nonia, Bal Govind Nonia, Jitham Nonia and Jag Mohan Nonia. They were all seen together with the deceased person. They had come to the *sasural* of Aklu and taken him on the Sunday evening but holding and finding a chain of circumstances not to be complete all of them have been acquitted. However, in the case of the present appellant Ram Pravesh Nonia the only circumstance which has been taken note of and he has been singled out for conviction based on the so-called statement of PW 7 Sohrai Nonia who said that near the house of the appellant Ram Pravesh Nonia he heard him uttering the words that “give me meal, I have committed a murder”. It is based on the solitary ocular statement of PW 7 that the appellant is convicted.



Apart from this, there is no iota of evident to link him with the commission of the offence. There is nothing to show that he had any enmity with Aklu the deceased. Aklu went on his free will. When he was accompanied by the other co-accused persons it is held that the chain of circumstances is not complete against them, we fail to understand as to why merely on the basis of the statement of the utterance made by the appellant conviction can be made. It is a case where circumstantial evidence available on record are not sufficient enough to record a conviction. The Supreme Court in the case of *Subhash Chandra vs. State of Rajasthan [(2002) 1 SCC 702]* has explained the theory of conviction on circumstantial evidence and the principles governing proving a guilt beyond reasonable doubt and if we analyze the case in the backdrop of the aforesaid requirement of law we find that the circumstances brought against the appellant are not sufficient enough to hold that the guilt is proved beyond all reasonable doubts. That apart, in the case of *Raja @ Rajinder vs. State of Haryana [(2015) 11 SCC 43]*, *Kiriti Pal vs. State of West Bengal [(2015) 11 SCC 178]* and *Vijay Shankar vs. State of Haryana [(2015) 12 SCC 644]*, the principles for conviction on the basis of circumstantial evidence and the chain of link to be complete, have been laid down by the Supreme Court. In paragraphs 10, 11 and 12 in the case of *Raja @ Rajinder* (supra) it has been crystalized in



the following manner:-

“10. As the factual matrix would show, the case of the prosecution entirely hinges on circumstantial evidence. When a case rests on circumstantial evidence, the Court has to be satisfied that :

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

[See Padala Veera Reddy v. State of A.P. 1989 Supp (2) SCC 706]

11. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259] it has been laid down that :

“4.the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations,



howsoever strong they may be, to take the place of proof.”

12. From the aforesaid it is clear as day that the court is required to evaluate the circumstantial evidence to see that the chain of events has been established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. [see *Ujjagar Singh vs State of Punjab* (2007) 13 SCC 90]”

Similarly, in the case of *State of Himachal Pradesh vs. Raj Kumar [(2018) 2 SCC 69]* the principle has again been crystallized in the following manner:-

“9. Prosecution case is based on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances must be conclusive in nature unerringly pointing towards the guilt of the accused. Moreover all the circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

10. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. In *Trimukh Maroti Kirkan v. State of Maharashtra [(2006) 10 SCC 681]*, it was held as under:-

"12.The normal principle in a case based on circumstantial evidence is that the circumstances from



which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

The same principle was reiterated in State of Rajasthan v. Kashi Ram (2006) 12 SCC 254, Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731, State of Maharashtra v. Suresh (2000) 1 SCC 471 and State of Tamil Nadu v. Rajendran (1999) 8 SCC 679."

If we evaluate the case in hand and the material available against the appellant, we find that the only circumstance appearing against the appellant is that he had accompanied the other co-accused persons and at their request Aklu had gone to have toddy with them and thereafter the only circumstance is the so-called utterance of the appellant heard by PW 7 Sohrai Nonia. In our considered view, they do not form a complete chain or link of circumstances which is sufficient enough to hold the appellant guilty of the charges levelled against him when in the same case other co-accused persons have been acquitted and when the circumstance is held to be not sufficient enough then similar treatment has to be granted to the present appellant also and merely on the ocular evidence of mere utterance



heard by PW 7 in our considered view conviction in the present case for offence under Section 302 IPC is unsustainable.

Accordingly, the appeal is allowed, conviction and sentence passed by the learned 1st Additional Sessions Judge, Gaya in Sessions Trial No. 571 of 1990/40 of 1992 against the appellant are set aside and the appellant is discharged from the liability of his bail bonds.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mr1./-

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