

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.395 of 2013

Arising Out of PS. Case No.-2 Year-2009 Thana- SHAMBHUGANJ District- Banka

-
1. Ram Vilash Yadav, son of Late Chamak Lal Yadav
 2. Bachchu Mandal @ Buchcho, son of Kishori Mandal
- Both Resident Of Village - Chhatrahar, P.S. Shambhuganj,
District – Banka.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Suraj Narayan Prasad Sinha, Sr. Advocate

Sri Ajit Kumar Singh, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 06-09-2018

1. The present Appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against judgment of conviction and sentence passed in Sessions Trial No. 70 of 2010 / Suppl. Trial No. 233 of 2013. Both the appellants by judgment dated: 21.03.2013 were convicted for commission of offence under Sections 302/34 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and by order dated –



23.03.2013 both were sentenced to undergo rigorous imprisonment for life for the offence under Sections 302/34 of the I.P.C. and to pay a fine of Rs. 25,000/- each and in default of payment of fine they were directed to further undergo simple imprisonment for one year. For offence under Section 201 of the I.P.C. both were directed to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 25,000/- each and in default of payment of fine they were directed to further undergo simple imprisonment for one year. Learned trial judge further directed that period of custody shall not be less than twenty (20) years. The judgment of conviction and sentence was passed in Sessions Trial No. 70 of 2010 / Suppl. Trial No. 233 of 2013 (arising out of Shambhuganj P.S. Case No. 02 of 2009, G.R. No. 05 of 2009) by learned Adhoc Additional Sessions Judge – I, Banka (hereinafter referred to as the “trial judge”).

2. Short fact of the case is that on 02.01.2009 at 7.15 A.M. Sub-Inspector of Police Sri R.P. Singh (not examined) of Shambhuganj Police Station recorded fardbyan of Arjun Mandal (P.W. 3) of village - Chhatrahar , Police Station: Shambhuganj, District - Banka. The fardbyan was recorded at the house of the informant. The informant gave fardbyan in presence of his son Ranjeet Mandal (P.W. 2). In the fardbyan he disclosed that on



01.01.2009 in the evening at about 4.00 P.M. his second son -Tipu Mandal @ Anil Mandal , aged about twenty five years was sitting near the door. In the meanwhile, his villagers: Bachchu Mandal [appellant no. 2], Satish Mandal and Ram Vilash Yadav [appellant no. 1] came to the door of the informant and persuaded his son- Tipu Mandal @ Anil Mandal for going to market. After some time informant also with a view to purchase vegetables moved to Tarapur Bazar and on way he saw that the aforesaid persons were taking drink (wine). The informant then asked his son to go to house, however the aforesaid persons asked the informant for moving to market and they would return back. In the market the informant saw Rajendra Mandal (acquitted) and also near him Ratan Mandal - his son (acquitted). After noticing the informant they moved somewhere and informant went to the market. After returning from the market he did not find his second son namely- Tipu Mandal @ Anil Mandal [deceased]. After some time at about 7.00 P.M. he saw Bachchu Mandal [appellant no. 2] returning back however he did not see his son and then enquired about his son, whereupon Bachchu Mandal rudely replied as if he was not aware about his son. The informant thereafter asked his third son - Ranjeet Mandal (P.W. 2) to go and enquire about his son- Tipu. Thereafter, his son Ranjeet Mandal went in search of



his second son and saw Ram Vilash Yadav [appellant no. 1], Satish Mandal and Ravindra Mishra all residents of village – Chhatrahar coming. From them Ranjeet Mandal enquired about Tipu Mandal. They replied that he was coming from behind. Since it was late and his son had not returned the informant went in search of his son and when he along with others reached near Barua river on the Eastern Side they saw one sleeper of his son Tipu Mandal which was on the upper side of bridge on Northern side. This raised suspicion and then the informant searching his son reached near the river and in the river he saw that dead body of his son was lying and in his neck one *gamchcha* was wrapped. The informant claimed that Rajendra Mandal (acquitted), Ratan Mandal (acquitted), Bachchu Mandal [appellant no. 2] , Satish Mandal, Ram Vilash Yadav [appellant no. 1] and Ravindra Mishra, all residents of village- Chhatrahar had killed his son by tying *gamchcha* in his neck and threw the dead body in river- Barua. The informant put his signature on the fardbyan in presence of his son - Ranjeet Mandal [P.W. 2]. On the *basis* of the said fardbyan on the same day i.e. on 02.01.2009 at 9.40 A.M. a formal F.I.R. vide Shambhuganj P.S. Case No. 02 of 2009 was registered under Sections 302/201/34 of the I.P.C. against: (1) Bachchu Mandal (appellant no. 2); (2) Satish Mandal



(absconder), (3) Ram Vilash Yadav (appellant no. 1), (4) Rajendra Mandal (acquitted), (5) Ratan Mandal (acquitted); and (6) Ravindra Mishra (acquitted).

3. During investigation accusation was found true against all the six F.I.R. named accused persons, and as such, on 31.12.2009 charge -sheet was submitted showing one of the accused: Satish Mandal as absconder. After submission of charge-sheet, learned Chief Judicial Magistrate, Banka took cognizance of offences on 04.01.2010 and the case was committed to the court of Sessions on 06.01.2010 and it was numbered as Sessions Trial No. 70 of 2010. On 24.02.2010 jointly charge was framed against five charge -sheeted accused persons.

4. During the trial to establish its case from the prosecution side altogether eight witnesses were examined. Out of eight witnesses; P.W. 1 -Vikash Kumar [younger brother of the deceased], P.W. 2 – Ranjeet Kumar Mandal [elder brother of the deceased], P.W. 3 – Arjun Mandal [father of the deceased and informant of the case], P.W. 6 - Meera Devi [mother of deceased] and P.W. 7 - Asha Devi [wife of deceased] were examined on the point as if the two appellants and one Satish Mandal had come to the door of the informant and they persuaded the deceased to go with them and they also had deposed as if during search they had



noticed accused persons and they found dead body in river Barua. P.W. 8 – Kanchan Sharma an Advocate Clerk has proved fardbyan, endorsement on formal F.I.R. and formal F.I.R., which were marked as Ext. 4, 5 and 6 respectively. P.W. 4 – Dr. R.P. Jaiswal on 02.01.2009 was posted in Sadar Hospital, Banka and he conducted post -mortem examination on the dead body of the deceased. He also proved the post -mortem examination report, which was marked as Ext. 2. P.W. 5 /Sri Ajay Kumar Mishra on 27.06.2009 was Officer- in- charge of Shambhuganj Police Station. He had only arrested one of the accused namely- Rajendra Mandal and he submitted charge -sheet in the case. During trial the Investigating Officer was not examined.

5. After examination of prosecution witnesses on 20.12.2012 statement of accused persons under Section 313 of the Cr.P.C. was recorded. After recording statement under Section 313 of the Cr.P.C., P.W. 3 -Arjun Mandal was examined on recall on 4.2.2013 and thereafter, during his evidence on re-call he proved his signature on the inquest report, which was marked as Ext. 3. After P.W. 3 was discharged on cross -examination on recall, on 16.02.2013 again new circumstances which were brought on record were explained to the accused persons and statement under Section 313 of the Cr.P.C. was again recorded. In statement under



Section 313 of the Cr.P.C. both the appellants claimed to be innocent.

6. Sri S.N.P. Sinha, learned senior counsel, assisted by Sri Ajit Kumar Singh, learned counsel for the appellants after placing entire evidence has argued that it was a case of no evidence even then the learned trial judge has convicted both the appellants. It has been argued that it can be a case of hardly *last seen* with the deceased. He submits that the date of occurrence was 1st January, 2009. By way of referring to the evidences, particularly evidence of P.W. 3 / Arjun Mandal [father of deceased] he submits that it appears that deceased was taking drink along with appellants and others and thereafter, none had seen the actual occurrence. Subsequently, dead body was found in Barua river. At the time of finding dead body it was noticed that one *gamchha* was wrapped in his neck. It has been argued by Sri Sinha, learned senior counsel for the appellants that after noticing *gamchha* in neck at first instance the informant's side thought as if it was a case of throttling and thereafter throwing the dead body in the river for concealing the evidence. Such presumption was belied by medical evidence. He submits that the doctor [P.W. 4] who conducted post-mortem examination on the dead body has categorically stated that all the seven injuries which



were found on the person of the deceased were possible due to fall. Near the river there was pillar of bridge and floor was cemented and it appears that deceased in drunken condition might had fallen and received injuries which caused his death. In post-mortem examination report cause of death was not *asphyxia*. Meaning thereby, that first version that deceased was done to death by tying *gamchcha* in his neck was itself falsified by the medical evidence. He has further argued that the prosecution witnesses themselves have categorically deposed that with the appellants there was no animosity. Accordingly, it has been argued that in absence of any animosity, there was no motive for commission of offence by the appellants. In a case of circumstantial evidence, as per learned senior counsel for the appellants, it is mandatorily required on the part of the prosecution to establish entire chain of circumstances, however, in the present case there is no chain, what to talk about establishing the connection of chain. Rather, on the basis of entire evidence, it can hardly be a case that deceased was seen with the appellants and others much before the occurrence. He submits that it is case of prosecution that at 3.00-4.00 in the evening deceased was persuaded by the appellants and one another for going out of the house and after some time the informant while was going to



Tarapur market had seen the appellants having drink and at that very place the deceased was found standing. Besides company of the deceased with the appellants at that very time, at no subsequent time deceased was ever seen with the appellants and as such, it can be said that it was not even a case of *last seen* of the appellants with the deceased

7. Sri Sinha, learned senior counsel has emphatically argued that it is a peculiar case in which the prosecution has come out with a case that on 1st January, 2009 in the evening between 7.00-7.30 they noticed dead body inside the river, fished out the dead body and it was carried to the house of the informant and without any explanation, in the case fardbyan was shown to be recorded on the next morning at 7.15 A.M. on 02.01.2009. It was case of the prosecution that while the dead body was being carried from river to the house, Chaukidar was also present and Mukhiya of the village was also knowing the fact, but fardbyan was shown to be recorded in the next morning. Of -course, during trial some of the witnesses tried to depose as if in the evening of the date of occurrence Police had arrived and recorded statement of some of the witnesses, but in the case in absence of examination of Investigating Officer the appellants were refrained from asking any such question to the Investigating Officer and absence of



Investigating Officer has seriously prejudiced the case of the appellants. It has also been argued that it appears that the prosecution has suppressed the initial version and subsequently since informant [P.W. 3] was having animosity with his own brother, who was arrayed as accused in the present case i.e. Rajendra Mandal, the informant subsequently planted a story as if the appellants along with own brother of the informant namely: Rajendra Mandal and his son had committed the crime and subsequently, a new story was developed by the prosecution. To elaborate his submission, he has referred to the evidence of P.W. 1 - Vikash Kumar, son of the informant and brother of the deceased. In the evidence of P.W. 1 it has come as if after arrival firstly Police met him, recorded his statement and he put his signature on his statement, however this fact has been suppressed by the prosecution and this is the reason that F.I.R. though was shown to be drawn on 02.01.2009 at 9.40A.M. was received in the court of learned Chief Judicial Magistrate on the next date i.e. 03.01.2009 without any plausible explanation of delayed reaching of the F.I.R. In sum and substance, it has been argued that in absence of completion of chain of circumstances as well as non -examination of Investigating Officer in the present case, the learned trial judge



has committed serious error in passing the judgment of conviction and sentence, which requires interference.

8. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the Appeal has argued that there is consistent evidence of P.W. 1, P.W. 2, P.W. 3, P.W. 6 and P.W. 7 on the point that the deceased was persuaded by the two appellants with one another accused for going out. Subsequently, the deceased was also seen by the informant while he was going to Tarapur market, and thereafter, on search dead body was fished out from Barua river. The dead body was having altogether seven injuries, which were noticed by P.W. 4 – Dr. R.P. Jaiswal, who conducted post- mortem examination on the dead body of the deceased. He tried to persuade the court that appellants with a motive to kill the son of the informant persuaded him to go out of his house with them and subsequently, he was done to death and to conceal the dead body, the dead body was thrown in river. According to Sri Mishra, learned A.P.P. learned trial judge has rightly passed the judgment of conviction.

9. Besides hearing learned counsel for the parties, we have examined entire evidences available on record and after going through the same *prima facie* we are of the opinion that prosecution has not been able to establish its case beyond all



reasonable doubt, however, before proceeding it would be necessary to firstly examine the evidence of P.W. 3 – Arjun Mandal / informant of the case and father of the deceased. In his evidence, he proved his signature on the fardbyan, which was marked as Ext. 1/1. He (P.W. 3) in his evidence stated that the date and time of occurrence was 1st January , 2009 at 3.00 P.M. He was present in his house. Both the appellants and one Satish Mandal came and called his son -Tipu @ Anil Mandal (deceased) from outside for going to market. He stated that his son firstly did not want to go to market. The informant also prohibited him not to go, but on insistence of accused persons his son went. After some time, the informant, while was going to Tarapur market on way in -Mohanganj, saw that: Ram Vilash Yadav (appellant no. 1), Bachchu Mandal (appellant no. 2), Satish Mandal, Ravindra Mishra (acquitted), Ratan Mandal (acquitted) and Rajendra Mandal (acquitted) were taking wine while sitting , whereas his son was standing there. He asked his son to go to his house. Thereafter, the informant went to market and returned back after purchasing vegetables. After some time he along with his family asked his sons Ranjeet (P.W. 2) and Vikash (P.W. 1) to go and search for Tipu (deceased). His both sons went in search of their brother. The informant also followed them. On way, he met



Bachchu Mandal (appellant no. 2) and on enquiry he replied that his son was coming from behind. Then he proceeded to Barua river and near bridge over Barua river he saw one sleeper of his son. In the meanwhile, his two sons also arrived and they started searching Tipu @ Anil Mandal and went downward the bridge, then they noticed another piece of sleeper and also saw that dead body of his son Tipu was lying in the side of pillar of the bridge. On the neck of the dead body one *gamchcha* was wrapped. With the help of villagers he took out dead body from the river and brought it to village. Police came and recorded his statement on which he put his signature. His son Ranjeet Kumar (P.W. 2) also signed the same. This witness proved his signature on the fardbyan, which was marked as Ext. 1/1. He further clarified that Daroga Ji had also recorded statement of Ranjeet. In paragraph – 5 of his evidence, P.W. 3 stated that Rajendra Mandal [another accused] was his own brother and Ratan Mandal (one another F.I.R. named accused) was his nephew. He also accepted that with Rajendra Mandal dispute was going on. It was land dispute. In the same paragraph he accepted that save and except Rajendra and Ratan, there was no animosity with any of the other accused persons, but he claimed that others were their associates. In the same paragraph he further stated that Police arrived on 2nd January,



, 2009. He clarified that on 1st January, 2009 he had not disclosed anything to the Police. In the same paragraph he stated that Police was informed by Mukhiya Ji namely -Manoj Kumar Singh (not examined). Firstly, dead body was put on the road outside the house and subsequently, it was kept inside court yard. He further stated that before arrival of Police and while carrying the dead body he met Mukhiya Ji. He stated that number of villagers had arrived there. Amongst them, he could name- Pramod Mandal [not examined], Bal Kishun Thakur [not examined], Sigeswar Yadav [not examined] and Mukhiya Ji [not examined]. In paragraph- 7 of his evidence he stated that from his village, Mohanganj was at a distance of about 2 K.M. and after start of Mohanganj market there were 3-4 shops. After 2-4 shops accused persons were taking wine. The shop was of one Murti Pasi [not examined]. He stated that near those accused persons besides the shop of Pasi there were other shops also. He further stated in paragraph- 8 that dead body was found at the place where there was water. Near the pillar of the bridge dead body was found. The floor was cemented. In paragraph – 11 of his cross- examination P.W. 3 stated that after death of Tipu marriage of his wife was solemnized with his younger son, namely- Vikash (P.W. 1). In the same paragraph he stated that in the night of the occurrence itself Daroga Ji had



arrived and his wife had already given complaint regarding the accused persons to Daroga Ji. The complaint of his wife was written by Daroga Ji. He has denied the suggestion that his son was a drunkard and after taking drink he fell down and instantaneously died. On examination of the evidence of P.W. 3 it appears that while dead body was being carried from the river to the house of the informant number of other witnesses had also seen and Mukhiya was informed, however there is no explanation as to why on the same day fardbyan was not got recorded and it was shown to be recorded in the next morning at 7.15 P.M. i.e. on 02.01.2009, whereas alleged occurrence had taken place on 01.01.2009.

10. P.W. 1 is the younger son of the informant and younger brother of the deceased, who solemnized marriage with the wife of the deceased after his death. In his evidence P.W. 1 stated that both the appellants with Satish Mandal at 3.00 P.M. on the date of occurrence had come to his house and called his brother Anil @ Tipu, who did not return even after evening. Then firstly he tried to contact him on mobile, however, it was switched off. Thereafter, he started search. On way, he met Kanchan (not examined) who told that he had seen his brother with Ravindra Mishra (acquitted), Rajendra Mandal (acquitted), Bachchu Mandal



(appellant no. 2), Satish Mandal (absconder), Ram Vilash (appellant no. 1) and Ratan Mandal (acquitted) while they were coming from Tarapur. When he reached near Barua river he saw Ravindra Mishra , Rajendra Mandal, Ram Vilash, Satish Mandal and Ratan Mandal and enquired from them about his brother but they said that they were not aware. Over the bridge of Barua river he found one sleeper, then he went downward near the river and saw the dead body of his brother lying in water. Over the neck of dead body one *gamchha* was tied. Thereafter, he gave a telephonic call to his residence and called his **brother and father**. After their arrival dead body was taken out. Then Police arrived and it was sent for post- mortem examination. At this juncture, it is necessary to mention that evidence of P.W. 3 /informant is otherwise. As per evidence of P.W. 3 it appears that he along with his son- Ranjeet Mandal had firstly found the dead body, whereas in the evidence of P.W. 1 it has come that P.W. 1 had firstly seen the dead body and then telephonically called his father i.e. P.W. 3 and his brother / P.W. 2. In paragraph -3 he stated that he had married with Asha Devi (P.W. 7) / wife of the deceased. In paragraph- 4 of his evidence he stated that for the first time on 02.01.2009 in the morning at about 7.00 Police met him, recorded his statement and on the said statement his signature was obtained.



He denied the suggestion that he was having love affair with his *bhabhi* since earlier and hatching conspiracy he eliminated his brother (deceased).

11. P.W. 2 - Ranjeet Kumar Mandal [son of informant – P.W. 3 and brother of deceased] in the 1st part has stated similar to P.W. 3 that accused /appellants with one another had come to the door and called his brother. In paragraph- 2 of his evidence he stated that from water dead body was taken out. Chaukidar also arrived. Then he gave telephone call to his house, then villagers also arrived there. Then dead body was carried to village. He stated that Police recorded fardbyan of his father, on which he also put signature and his signature was marked as Ext. 1. In paragraph -5 of his cross -examination he accepted that prior to the date of occurrence dispute had taken place with Raju Mandal [i.e. Rajendra Mandal]. In the same paragraph he stated that except Raju Mandal there was no animosity with either of the accused persons. He further stated that his deceased brother was residing outside and he was doing work in Delhi. However, at the time of occurrence he had come to his village. Again, in paragraph- 7 he reiterated that there was no complaint against other accused persons save and except accused Raju. In paragraph – 8 he stated that Tarapur Police Station, from the place from where dead body



was found, was about 1 K.M. away. His village Chaukidar had also arrived. However, no information was given to Police Station. In paragraph - 9 he stated that from the place of occurrence the dead body was carried to his village doctor Bechan Baba (not examined) where Chaukidar was also there. The story of bringing dead body from place of occurrence to doctor - Bechan Baba was for the first time introduced by this witness, otherwise none of the witnesses have whispered that the dead body was carried to doctor. He further deposed that Shambhuganj Police was informed by Mukhiya Ji through phone, however, in the case neither Mukhiya was examined nor Chaukidar was produced as witness.

12. P.W. 6 - Meera Devi [mother of the deceased] and P.W. 7 - Asha Devi [wife of deceased] have also deposed like other inmates of the family that appellants had come to the door of the informant and persuaded the deceased to go to the market. Those two witnesses subsequently have deposed as if they were also with other witnesses while search of deceased was going on, however, in the evidence of none of those witnesses i.e. P.W. 1, P.W. 2 and P.W. 3 it has been whispered that any female family inmates were accompanying them while searching the son of the



informant (deceased). Accordingly, it would be difficult to place any reliance on those witnesses.

13. P.W. 4 – Dr. R.P. Jaiswal on 02.01.2009 was posted in Sadar Hospital, Banka and he on the same day conducted post-mortem examination on the dead body of the deceased and noticed the following ante -mortem injuries :-

- “1. Lacerated wound near left eye of approx. 1/4” x 1/4” x 1/4”
 2. Lacerated wound on nose of approx 1/4” x 1/8” x 1/8”
 3. Lacerated wound on right leg of approx 1” x 1/2” x skin thick
 4. Lacerated wound on left side of neck of approx 1/2” x 1/4”
 5. Swelling over right side of forehead and head of approx 2½” x 1” x 1” caused by hard blunt substance.
 6. Fracture of right side of frontal bone of approx 3/4” in length (anterio posterior) caused by hard blunt substance
 7. Intra cranial haematoma in the region of frontal and parietal part of volume approx 40 ml pushing the brain substance towards left-traumatic caused by hard and blunt substance.
- Time since death- within 24 hours.
Cause of death -injury no. 7 caused by hard and blunt substance.”

He also proved the post -mortem examination report, which was marked as Ext. 2. In his cross-examination in paragraph -3 he stated that all the injuries were simple in nature. In paragraph -3 of his cross -examination he states that all the injuries may be caused by fall. As per his evidence, injury no. 7 was sufficient for cause of death. However, he stated that injury no. 7 may be caused by falling or assault. On examination of the



evidence of the doctor as well as post -mortem examination report it would be difficult to come to a definite conclusion that deceased died due to only assault since doctor himself has stated that such injury was possible even due to fall, whereas it was argued by learned senior counsel for the appellants that it was a case in which after consuming wine the deceased had fallen from the bridge and since floor on which he fell down was cemented he received such injuries and thereafter the dead body slipped inside the river.

14. P.W. 5 – Ajay Kumar Mishra on 27.06.2009 was Officer-in-charge of Shambhuganj Police Station. However, he had not done any investigation save and except arresting one accused and with the approval of the Senior Officials submitted final charge- sheet. Accordingly, there is no reason for discussing his evidence in detail.

15. Similarly, P.W. 8 [Kanchan Sharma] who was an Advocate's Clerk has come forward as if he was conversant with the writing and signature of the Police Official who made endorsement on the F.I.R. and also formal F.I.R., but, in any event, without any objection those documents i.e. fardbyan, endorsement on formal F.I.R. and formal F.I.R. were marked as Ext. 4, Ext. 5 and Ext. 6 respectively.



16. In the case inquest report was not got exhibited nor the Investigating Officer was produced by the prosecution and in absence of Investigating Officer in a case based on circumstantial evidence it would not be safe to approve conviction and sentence. In the case, it is also difficult to comprehend as to once on the date of occurrence i.e. 1st January, 2009 in the evening dead body was found in the bridge why without informing Police it was carried to informant's house. When dead body from the river was carried to the house of the informant, why the Police was not informed and as to why fardbyan on the same day was not recorded. It is not a case that place of occurrence or Police Station was at much distance and it was not possible for Police to immediately arrive at the place of occurrence. In the case witnesses have said that while carrying the dead body from the river such fact was noticed by the village Mukhiya and also Chaukidar, even then, nothing has come on record that immediately after finding dead body the Police was informed. Though in the case formal F.I.R. was shown to be recorded at 9.40 A.M. on 02.01.2009, no reason has been assigned as to under what circumstance the said F.I.R. was received in the court of learned Chief Judicial Magistrate on the next day i.e. on 03.01.2009. The evidence of P.W. 1 i.e. Vikash Kumar suggests that after arrival Police firstly recorded his



statement and obtained his signature. Meaning thereby, that it was not a statement under Section 161 of the Cr.P.C., rather such statement was in the nature of fardbyan, but to the reasons best known to the prosecution such fact has not been brought on record.

17. The evidence of P.W. 1 suggests as if he was the first person who reached the place where dead body was found and from that place he gave a telephonic information to his house and thereafter, his father, who is P.W. 3 and his brother arrived at the place of occurrence. On the contrary, P.W. 3 / informant has deposed as if he along with his son - Ranjeet Kumar Mandal [P.W. 2] had firstly reached at the place of occurrence and located the dead body. All those circumstances certainly shows serious inconsistencies in their evidences. Moreover, if for the time being it is assumed that all the female inmates of the deceased are consistent on the point that deceased was called from his door in the evening of the date of occurrence by the appellants and one another accused person, there is no other circumstance for coming to the conclusion that appellants were the only and only persons who participated in eliminating the son of the informant. In such situation, it can only be considered that deceased had gone with the appellants, but there is no other material to show involvement



of the appellants in the present case. It is settled law that in a case based purely on circumstantial evidence entire chain must be shown to be connected. Meaning thereby, that for committing such crime there must be some motive. In the present case as per evidence of prosecution witnesses there is complete absence of any motive. Witnesses have said that they were having no animosity or ill -will against appellants. Meaning thereby, that for the appellants there was no motive for their involvement in the present case.

18. On examination of evidences it is evident that firstly deceased [Tipu @ Anil Mandal] dead body was found in the river. On neck witnesses noticed that there was one *gamchha* wrapped. Suspicion was raised as if the deceased was done to death by tying neck with the help of *gamchha*, however, this story has been frustrated by P.W. 4 , who conducted post-mortem examination on the dead body of the deceased. It is not a case that death had occurred due to *asphyxia*, rather death had occurred due to injury no. 7 found on the person of the dead body, which as per the doctor [P.W. 4] was also possible in a case of fall. A suggestion was given by learned senior counsel for the appellants that it appears that in drunken condition the deceased had fallen from the bridge and the floor was cemented and as such he



received lacerated injuries as well as injury no. 7 which was the cause of death. On examination of the statement of the appellants recorded under Section 313 of the Cr.P.C. *vis- a -vis* entire evidence, we are of the opinion that even this statutory provision was not complied with in its true sense.

19. After going through the entire evidences it is established that prosecution has miserably failed to establish all the circumstances showing prove of connection of all the chain in the present case which was primarily based on circumstantial evidence. Moreover, absence of Investigating Officer has also seriously prejudiced the case of the appellants. In such a situation, it would not be appropriate to approve the judgment of conviction and sentence. Accordingly, the judgment of conviction and sentence is likely to be set aside. The judgment of conviction dated- 21.03.2013 and sentence dated- 23.03.2013 passed in Sessions Trial No. 70 of 2010 / Suppl. Trial No. 233 of 2013 [arising out of Shambhuganj P.S. Case No. 02 of 2009, G.R. No. 05 of 2009] by Sri Prem Ranjan Mishra, learned Ad-hoc Additional Sessions Judge – I, Banka is hereby set aside and the Appeal is allowed.

20. Since both the appellants are in custody and judgment of conviction and sentence has been set aside, it is



hereby directed to release them forthwith , if not wanted in any other case.

21. The Appeal is allowed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13 -09-2018
Transmission Date	13 -09-2018

