

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.552 of 2013

Arising Out of PS. Case No.-201 Year-2005 Thana- Amarpur District- Banka

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1. Raghu Tanti, S/o Late Chadi Tanti
2. Bhagu Tanti, S/o Late Chadi Tanti
Both R/o Village- Maglanichak, P.S.- Amarpur, District- Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 697 of 2013

Arising Out of PS. Case No.-201 Year-2005 Thana- Amarpur District- Banka

Jattu Tanti, Son Of Sri Lelhu Tanti, Resident Of Village- Salempur, Police
Station -Amarpur, District- Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 552 of 2013)

For the Appellant/s : Sri Manohar Prasad Singh, Advocate
Sri Shambhu Sharan Singh, Advocate

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

(In Criminal Appeal (DB) No. 697 of 2013)

For the Appellant/s : Sri Manohar Prasad Singh, Advocate
Sri Shambhu Sharan Singh, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 14 -12-2018

1. Two appellants namely: Raghu Tanti & Bhagu Tanti
in Cr. Appeal (D.B.) No. 552 of 2013 and sole appellant namely-
Jattu Tanti in Cr. Appeal (D.B.) No. 697 of 2013 were tried



together, convicted and sentenced by a common judgment passed by learned Adhoc Additional Sessions Judge IV, Banka and as such both the Appeals were taken up together and are being disposed of by this common judgment.

2. By judgment dated: 15.05.2013 Sri N.K. Lall, learned Adhoc Additional Sessions Judge- IV, Banka [hereinafter referred to as the “trial judge”] has convicted all the appellants for commission of offence under Sections 302/34, 201 and 120(B) of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and by order dated: 18.05.2013 all the appellants under Section 302/34 of the I.P.C. were sentenced to undergo imprisonment for life and to pay a fine of Rs. 30,000/- each. Under Section 201 of the I.P.C. they were sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5000 /- each. In case of default in payment of fine they were directed to further undergo simple imprisonment for two years and six months respectively. Under Section 120B of the I.P.C. all the appellants were directed to undergo imprisonment for life and to pay a fine of Rs. 5000/- each. In case of default in payment of fine they were directed to further undergo simple imprisonment for six months. All the sentences were directed to run concurrently. The appellants were tried, convicted and sentenced in Sessions Trial



No. 627 of 2009 and 629 of 2006 [arising out of Amarpur P.S. Case No. 201 of 2005, G.R. Case No. 1356 of 2005].

3. Short fact of the case is that on 10.12.2005 at 8.30 A.M. Sub Inspector of Police Sri J.K. Singh (not examined), Officer –in- charge of Amarpur Police Station recorded fardbyan of Choukidar No. 1/11 – Uchit Paswan of Amarpur Police Station. The fardbyan was recorded in Salempur Bahiyar. The informant disclosed in his fardbyan that on 10.12.2005 he was on his गस्ती duty in मोहाल situated in Salempur and at 7.45 A.M. (morning) he got information that in village: Salempur in the Western Somera Bahiyar one headless dead body was lying. Thereafter he immediately rushed for its verification and sent information to Amarpur Police Station. From the nearby villages he tried to get identification of the dead body but none could identify the same. He stated that some unknown miscreants had killed one unknown person by slashing the head from neck and killed him. The dead body of the deceased was totally naked and head was missing. The informant claimed that some unknown accused persons due to some unknown reason by sharp cutting weapon had killed an unknown person and disappeared the neck of the dead body. His fardbyan was read over to him and after finding it correct he put his signature on the fardbyan. On the basis of the



said fardbyan on 10.12.2005 at about 11.00 A.M. itself a formal F.I.R. vide Amarpur P.S. Case No. 201 of 2005 was registered under Sections 302/201/120(B) of the I.P.C. against unknown accused persons.

4. During investigation firstly involvement of the appellant no. 1 in Cr. Appeal (D.B.) No. 552 of 2013 namely: Raghu Tanti and sole appellant namely Jattu Tanti in Cr. Appeal (D.B.) No. 697 of 2013 came to fore and as such on 09.03.2006 charge-sheet was submitted against them. After submission of charge-sheet on 23.03.2006 learned Chief Judicial Magistrate, Banka took cognizance of the offence. Thereafter, on 26.03.2006 supplementary charge- sheet was submitted against Bhagu Tanti / appellant no. 2 in Cr. Appeal (D.B.) No. 552 of 2013 and one Opi Beldar showing them as absconder. Thereafter, on 27.03.2006 the case of two accused namely: Jattu Tanti and Raghu Tanti was committed to the court of Sessions. On 16.06.2006 case of Bhagu Tanti [appellant no. 2 in Cr. Appeal (D.B.) No. 552 of 2013] was committed to the court of Sessions and finally on 09.11.2006 charges were jointly framed against all the three appellants under Section 302/34, 120(B) and 201 of the I.P.C.

5. For establishing its case on behalf of the prosecution altogether fourteen witnesses were examined. Out of fourteen



witnesses, P.W. 1 / Luri Tanti (uncle of the deceased), P.W. 2 / Ashish Tanti [brother of the deceased], P.W. 4 / Bipin Tanti {uncle of the deceased } and P.W. 7 / Hari Tanti [father of the deceased] were examined mainly on the point that one day prior to the date of recovery of dead body the deceased was seen along with the accused persons. P.W. 10 - Bhudeo Tanti and P.W. 12 / Laddu Tanti are formal witnesses. P.W. 3 - Permanand Sah [co-villager] and P.W. 6 / Ajit Kumar Sah [co-villager] are witnesses to the seizure list. P.W. 10 and P.W. 13 are formal witnesses. Similarly P.W. 14/ Kailash Pd. Yadav is formal witness and witness to the inquest report. P.W. 3 / Permanand Sah and P.W. 6 / Ajit Kumar Sah are co-villagers and witness to the seizure list. Dr. Md. Mohsin Ansari on 10.12.2005 was posted as Medical Officer, Sadar Hospital, Banka and was examined as P.W. 8 and he conducted post- mortem examination on the dead body of the deceased and P.W. 9 / Kashi Nath Mishra is the Investigating Officer of the case.

6. After completion of prosecution evidence on 19.03.2013 circumstances and evidences brought during the trial were explained to appellants and their statement under Section 313 of the Code of Criminal Procedure, 1973 [hereinafter



referred to as the “Cr.P.C.”] was got recorded in which they denied charges however no defence witnesses were examined.

7. After placing entire evidence Sri Manohar Prasad Singh, learned counsel assisted by Sri Shambhu Sharan Singh, learned counsel for the appellants in both the Appeals has argued that it is not the case of prosecution that anyone had seen the occurrence rather the occurrence was not seen by any of the witnesses. It was a case based on the principle of so- called last seen of the deceased with the appellants. Even the evidence of witnesses regarding last seen of the deceased with the appellants appears to be doubtful. Besides this, it has been argued that if for the time being it is accepted, though denied, that the deceased was lastly seen with the appellants the prosecution has not been able to establish any motive for commission of crime against either of the appellants. It has further been argued that it is not the case of prosecution that immediately after noticing the deceased with the appellants the deceased was done to death, rather the dead body was found in the village on the next day i.e. on 10.12.2005 in the field whereas some of the prosecution witnesses had stated that on 09.12.2005 at about 6.00-6.30 appellant /Raghu Tanti had called the deceased and deceased was seen moving with all the aforesaid three appellants. As per learned counsel for the appellants absence



of any motive or animosity itself breaks the chain of circumstances and as such the learned trial judge without prove of connection of chain of all the circumstances has incorrectly passed the judgment of conviction and sentence. Sri Manohar Prasad Singh, learned counsel for the appellants further submits that there is apparent inconsistency in between oral evidence and medical evidence. He submits that during evidence P.W. 4 / Bipin Tanti [uncle of the deceased] in paragraph 6 has stated that on the right hand of the dead body of the deceased there were marks of scratches and “ गोदना ” was removed however post -mortem examination report shows that scratches were found on left forearm of the deceased. It has been argued that identity of the dead body was itself doubtful. A beheaded dead body was found which was completely naked. The Choukidar who is informant of the case in his fardbyan had stated that he tried to get the dead body identified in different villages but no one could come forward to identify the dead body. According to learned counsel for the appellants it is case of the prosecution that dead body was found in the village of the informant itself and it was hardly 200-400 yards away from the door of the deceased and as such even though the dead body was headless there was no reason for non-identification of the said body till the preparation of inquest report and sending the same



for post -mortem examination. P.W. 3 / Permanand Sah in his evidence has stated that at the time when dead body was found mother of the deceased was present and in her presence Police had carried dead body for its post -mortem examination. In such situation non identification of the dead body by either of the witnesses creates serious doubt on the prosecution case. Accordingly it has been argued that judgment of conviction and sentence is liable to be set aside.

8. Sri Ajay Mishra, learned Additional Public Prosecutor opposing aforesaid both the Appeals has argued that it is specific case of the prosecution that on 09.12.2005 in presence of P.W. 7 / Hari Tanti { father of the deceased } appellant- Jattu Tanti had called son of P.W. 7 namely Guddu and thereafter deceased was seen moving with all the three appellants towards सिमर पोखर side of the village near which area dead body was found on the next day at 7.45 A.M. by Choukidar - P.W. 5 / Uchit Paswan. At that very time headless dead body was found and the same was naked. After few days skull was also noticed in the sugarcane field of one Tiwari Ji. According to Sri Mishra, P.W. 4 – Bipin Tanti has also deposed that on 09.12.2005 in the evening he had seen deceased with all the appellants while they were moving. During evidence it has come that deceased with all the appellants and some other



accused were seen while they were taking toddy near Pokhar of the village and on the next day dead body of deceased was found and as such according to him, it was a case of last seen and prosecution has been able to establish the case. Sri Mishra has argued that in evidence it has come that on the next day father of the deceased had asked his relatives to go and inquire from the appellants and visit the houses of the accused but none of the accused persons were found in their houses. This indicates that in well planned manner appellants persuaded the deceased to follow them and they slashed his head and threw headless dead boy at the place of occurrence. The dead body was identified by mother and other witnesses considering the fact that on the thigh of the deceased there was cut mark which was itself sufficient to identify the dead body.

9. Besides hearing learned counsel for the parties, we have thoroughly examined entire record and after going through the same *prima facie* we are satisfied that prosecution has not been able to establish its case beyond all reasonable doubts against the appellants. The case has been initiated on the basis of fardbyan of Uchit Paswan (P.W. 5) who was village Choukidar. While he was on duty he got information at 7.45 A.M. that in village-Salempur in the Western side of Somera Bahiyar one headless



dead body was thrown. He tried to get the information regarding the identity of the dead body in nearby villages but he could not gather any information. Some unknown accused persons had slashed the head from neck of an unknown person and after killing had threw the dead body. The dead body was found completely naked and it was headless. This fact was stated in his fardbyan and he identified his signature on the fardbyan, which was marked as Ext. 3. In his evidence he stated that occurrence had taken place in the year 2005. While he returned from village after गस्ती then he heard rumor that near सिमर पोखर a dead body was lying. He went there and saw a headless naked dead body which was lying by the side of सिमर पोखर . It was about 7-8 A.M. [morning]. He went to Amarpur Police Station and gave information and thereafter Bara Babu came to the place of occurrence and he recorded his fardbyan. This witness proved his signature on the fardbyan, which was marked as Ext. 3. Paper in respect of dead body was prepared and dead body was handed over for post- mortem examination. The dead body was firstly carried to Amarpur Police Station from where it was sent to Banka for post-mortem examination. In Banka, Hari Tanti / P.W. 7 (father of the deceased) said that dead body was of his son and he asked to hand over dead body to him after post -mortem



examination. In cross-examination P.W. 5 stated that he had stated before the Police that since dead body was headless same was not identified. The dead body was headless and on the body there was no other injury.

10. P.W. 1 /Luri Tanti, one of the uncle of the deceased, in his evidence has stated that from his house Jattu Tanti had called Guddu Tanti and carried him. While Guddu came out from the house he saw that Raghu Tanti [appellant no. 1 in Cr. Appeal (D.B.) No. 552 of 2013] also accompanied them. For the whole night Guddu Tanti, his nephew, did not return. In morning while he returned back after attending call of nature his brother – Hari Tanti [P.W. 7] told that Guddu Tanti (deceased) had not returned, go and search him. In search when this witness went to the house of Jattu his mother told that Jattu was not present in his house and he had gone to Masaurhi. Thereafter this witness went to कासपुर and चोरवै village and in both the places Guddu was not found. When he returned back to his house then he got information that Choukidar had found one dead body near सिमर पोखर which was the place to the Western side of his house. This witness stated that dead body was identified by mother of Guddu Tanti. It may be mentioned that mother of Guddu Tanti has not been examined by the prosecution. He further stated that dead body was identified by



mother of Guddu Tantnti, namely: Meena Devi. In paragraph 4 of his evidence he further stated that Guddu (deceased) was in talking terms with the wife of Raghu Tanti and once after seeing the same Raghu Tanti had become very irritated and this was the reason for tension. In paragraph 6 of his of his cross examination this witness has stated that both were friends and they were close associates.

11. P.W. 2 / Ashish Tanti is the brother of the deceased. In his evidence he stated that on the date of occurrence in the evening at 6.00 Jattu had come to his house. At that very time his brother Guddu Tanti [deceased] was sitting there. He called Guddu Tanti and they went to सिमर पोखर . Along with them Raghu Tanti was also there. In the morning he heard rumor that there was a dead body near सिमर पोखर . Firstly he went to the house of relatives and when he returned back then Chaukidar informed the Officer- In- Charge of the Police Station who came to the village and carried the dead body as unclaimed body and it was carried to Amarpur Police Station. When he went to Amarpur Police Station he got information that the dead body was sent for post-mortem examination to Banka. In paragraph 5 of his evidence this witness has stated that wife of Raghu [appellant] earlier had said that while three boys were talking, Guddu had arrived. Wife of Raghu



Tanti had demanded money and then wife of Raghu Tanti stated that “ साल भर में खटिया उठवा देंगे ”. This witness further stated that Raghu, Jattu, Bhagu [all appellants] and O.P. Beldar, all four had killed Guddu. He was contradicted to his statement that he had not stated in his evidence before the Police that Guddu Tanti was called by accused and carried to सिमर पोखर . He was also contradicted on his statement that wife of Raghu Tanti had demanded money from his brother (deceased) and she had given threatening. In paragraph 11 of his cross -examination this witness stated that Jattu (appellant) and Guddu (deceased) both were friends. Both were taking meal together. They were close associates and in the same manner on the said day also Guddu had gone.

12. P.W. 3 / Permanand Sah is a co-villager. In his evidence he stated that he had put his signature on the seizure list which was prepared regarding seizure of blood soaked soil and his signature was marked as Ext. 1. He also put his signature on the fardbyan which was marked as Ext. 2. This signature, Ext. 2 was put by him on the fardbyan of P.W. 7/ Hari Tanti. It is pertinent to mention here that the case has been initiated on the basis of fardbyan of P.W. 5 / Uchit Paswan who was Choukidar of the village and in the fardbyan neither the dead body was identified



nor any one were named as accused. After commencement of investigation belatedly fardbyan of P.W. 7 was recorded over which P.W. 7 had put his LTI. This statement was hit by Section 162 of the Cr.P.C. P.W. 3 – Permanand Sah further stated that he was told by Bipin Tanti / P.W. 4 (uncle of the deceased) that in the evening of 09.12.2005 Jattu Tanti had called his nephew Guddu Tanti and thereafter he did not return. This witness further stated that he was informed by Bipin / P.W. 4 that one month back he had seen Guddu Tanti [deceased] while talking with wife of Raghu Tanti (appellant) and threatening was given by the wife of Raghu Tanti and thereafter this occurrence had taken place. In paragraph 4 of his evidence he stated that Police had recorded his statement on 10.12.2005 in the house of Guddu Tanti at about 2.00 P.M. This witness had put his signature on two papers which were prepared at the same time. Over the said two papers besides this witness, P.W. 6 /Ajit Kumar Sah had also put his signature. He too had put signature on the said date in the house of Guddu Tanti (deceased). Firstly he put his signature and thereafter Ajit Sah [P.W. 6] had signed. After his signature Hari Tanti [P.W. 7] had put his thumb impression. On the said paper statement of Hari Tanti was recorded which was written by Darogaji. This witness reiterated that Bipin Tanti / P.W. 4 on 10.12.2005 in the house of



the deceased had told about the occurrence. In paragraph 7 of his cross -examination he stated that he had not seen Guddu (deceased) talking with the wife of Raghu Tanti [appellant] and before him no threatening was given by the wife of Raghu Tanti. This witness in paragraph 9 of cross-examination further stated that firstly he had seen the dead body at 7.00 in the morning where mother of Guddu (deceased) had also gone. The dead body was without any clothes, however, on the right hand of the deceased there were scratches. In paragraph 10 of cross examination he stated that from 7.00 A.M. till the dead body was carried for post mortem examination he remained present. When Police was carrying dead body mother of Guddu (deceased) was also present there. It is a peculiar case that after the post mortem examination was conducted the dead body could be identified by the family members of the deceased however the mother whose son had not returned for the whole night and unclaimed dead body was lying in her presence, she could not identify the dead body of her son. No any explanation has been given by the prosecution for non -examination of the mother of the deceased as witness in the present case.

13. P.W. 4 – Bipin Tanti is the uncle of the deceased. In his evidence he stated that on the date of occurrence in the evening



at 6.00 Jattu Tanti [appellant] after calling Guddu Tanti had carried him. Behind them Raghu Tanti and Bhagu Tanti both were going. From the house they went towards सिमर पोखर side. For the whole night Guddu Tanti did not return. In morning his brother Hari Tanti / P.W. 7 asked Bhutki Tanti to go to the house of Raghu, Bhagu, Jattu and inquire about his son (deceased). He was also told to go to the house of O.P. Beldar. When he went to the house of Raghu Tanti he was not present there and there was lock in his house. When he went to the house of Bhagu Tanti there also none were present and lock was hanging there. The house of Jattu Tanti was also locked. When he went to the house of O.P. Beldar there was also lock. When he returned he heard rumor that one headless body was lying near सिमर पोखर . While he reached there Police had already lifted the dead body. Thereafter he returned back to the house and informed his brother Hari Tanti / P.W. 7. At Banka mortuary they identified the dead body as son of Hari Tanti / P.W. 7 namely- Guddu Tanti [deceased]. The dead body was thereafter cremated. In paragraph 5 of his evidence he stated that after cremation when he returned back to the house thereafter Darogaji came and recorded statement. In paragraph 6 of his examination- in- chief he further stated that on the right hand of GudduTanti (deceased) there was sign of गोदना where



skin was scratched. He could identify the dead body from the cut mark on his thigh which had occurred while his nephew had fell down from palm tree. In paragraph 11 of his cross -examination he stated that Guddu was the friend of Jattu Tanti and both were close associates and moving together. The friendship among them was since long.

14. P.W. 6 is Ajit Kumar Sah who is a witness to the seizure list. He proved his signature on the seizure list which was marked as Ext. 4. At this juncture it may be indicated that P.W. 3 / Permanand Sah in his evidence in clear term has stated that he and Ajit Kumar Sah - P.W. 6 both had put signature on the seizure list in the house of Guddu Tanti (deceased). Meaning thereby that in their presence the so-called blood soaked soil was not seized. This witness deposed that on 9th December 2005 at 5.30 P.M. Jattu Tanti had called Guddu Tanti and they had proceeded towards सिमर पोखर बहियार . On the next day in morning at 8.00 A.M. father of Guddu (deceased) namely: Hari Tanti [P.W. 7] had told that while he had gone to extract potato he had seen Bhagu Tanti, Raghu Tanti, O.P. Beldar and Guddu (deceased) near bonfire. It was near the toddy shop of Jhaggu. In the next morning when Hari Tanti - P.W. 7 went to search for Guddu to the house of Jattu he did not find him. In paragraph 6 of his cross- examination this



witness stated that seizure list was prepared at the place of occurrence however P.W. 3 had stated that seizure list was prepared in the house of Guddu Tanti (deceased). This witness further in paragraph 6 of his cross examination stated that the place of occurrence was about 200 yards away from the house of Hari Tanti / P.W. 7 (father of the deceased), however, in paragraph 10 of the cross examination he stated that whatever he had deposed has deposed which he heard meaning thereby that he had not seen anything and he was a hearsay witness.

15. P.W. 7 / Hari Tanti is the father of the deceased. In Court on being asked he started crying. Thereafter he deposed that his son was killed by Jattu Tanti, Bhagu Tanti, Raghu Tanti and O.P. Beldar. Jattu Tanti had taken Guddu Tanti on call to सिमर पोखर and thereafter his son did not return. In the night he slept. In the morning he asked his brother to inquire about his son who had gone with Jattu Tanti. In search he went to चौरवै and कासपुर and from there returned at 1.30 P.M. and thereafter he gathered information from others that Police had carried dead body to Police Station. Then he went to Police Station however dead body was not there and he got information that it was sent for post- mortem examination to Banka and in mortuary he saw the dead body. He stated that there was गोदना on left hand of the



deceased which was scratched. On the right thigh there was cut mark and he identified the dead body. One month thereafter in the sugarcane field of Mantu Tiwary head of dead body was found which was of his son. In paragraph 6 of his examination- in- chief he stated that there was no reason for the said occurrence however again he stated that there was dispute due to some business and Bhagu and Jattu had given threatening. In paragraph 8 of his cross examination he stated that earlier Police had recorded his statement twice. While his statement was recorded for the first time he had not identified the dead body. Again after 8-10 days his re-statement was recorded. In the evidence of P.W. 3 - Permanand Sah and P.W. 6 – Ajit Kumar Sah it has come that on the same date after cremation when they came back to the house of this witness- Harti Tanti Police came to his house and recorded his statement. Meaning thereby that in his statement this witness P.W. 7 had not disclosed anything regarding the fact that on 9.12.2005 in the evening accused persons had called deceased or not. Meaning thereby that at much belated stage witnesses had come out with a case as if the deceased was called by accused persons and deceased was lastly seen with the accused persons. In paragraph 11 of his cross examination he stated that while he was searching his son he had seen 4-5 persons consuming toddy.



Amongst them he had seen his son also. In paragraph 13 of his cross-examination he further stated that since his son was with his friends he did not ask his son to come to the house. He reiterated that Jattu Tanti (appellant) was friend of his son- Guddu. Since last one year they were friends. In paragraph 14 of his cross examination he stated that when the deceased was called and had gone, in his house except his wife there were none. The evidence of this witness itself reflects about his credibility and it is evident that his evidence is completely inconsistent and no reliance can be placed on his evidence.

16. P.W. 10 / Bhudeo Tanti is a formal witness and he stated that he has put his thumb impression on the inquest report in respect of headless unidentified dead body. He stated that near the said dead body there were 100 of villagers however none could identify the said dead body as dead body of Guddu Tanti since it was headless.

17. P.W. 13 - Bhola Pd. Mandal is a formal witness who has proved Station Diary No. 304 dated 10.12.2005 and he proved the signature of informant namely- Uchit Paswan which was marked as Ext. 3 and copy of Sanha No. 304 was marked as Ext. 8.



18. P.W. 14 / Kailash Pd. Yadav is another formal witness who proved the inquest report which was marked as Ext. 9. However he stated that the said paper was not prepared in his presence.

19. P.W. 11 – Phul Tiwari and P.W. 12 / Laddu Tanti were declared hostile since they did not state anything regarding recovery of bones or skull from the place of occurrence.

20. P.W. 8 / Md. Mohsin Ansari had conducted post-mortem examination on the dead body of the deceased. This doctor on 10.02.2005 was posted as Medical Officer, Sadar Hospital (Sub- divisional hospital) and on the same day at 3.30 P.M. he conducted post-mortem examination on the headless unidentified dead body and found the following anti -mortem injuries:-

“i. Neck is cut from a sharp edged weapon at the base on six cervical vertebra size about 6” (from back) and five inches (side to side). Oesophagus trachea all are cut.

ii. Penetrating injury of size about 3” deep and 2 ½” x 1”x1/2” on lateral side of left arm.

iii. Lacerated wound of injury about 4”x2”x1/2” and 2 ½”x1”x1/2” on left forearm

Cause of death – Due to profuse bleeding and cut of trachea and oesophagus and the whole neck due to sharp edged weapon

Time since death – within 24 hours.”

He also proved the post -mortem report which was marked as Ext. 5.

21. It is pertinent to notice that in the post- mortem examination on the left forearm of the deceased some lacerated



injuries were found whereas the witnesses in their evidence had stated that scratches on right hand of the deceased/ dead body was found and it was tried to develop that on the right hand side there was गोदना and scratches were made to remove the same to conceal identification of the deceased.

22. The Investigating Officer of the case P.W. 9 / Kashi Nath Mishra on 10.12.2005 was posted as Sub Inspector of Police in Amarpur Police Station and from Officer- in- charge of the said Police Station he was entrusted to investigate the case and on the same day at 10.12.2005 he took up investigation of the case. During investigation he recorded statement of Choukidar -Uchit Paswan and with Choukidar he visited the place of occurrence. In paragraph 3 of his evidence he described about the place of occurrence. According to him first place of occurrence was the house of deceased and second place of occurrence he noticed was the place where headless dead body was found. He categorically stated that from the first place of occurrence i.e. house of the deceased second place of occurrence i.e. the place where dead body was found was about 400 yards South West side of सिमर पोखर बहियार . At the place of occurrence he prepared the seizure list regarding blood soaked soil. He proved the seizure list of the said soil which was marked as Ext. 1/1. He also proved



formal F.I.R. which was marked as Ext. 6. In his evidence he stated that the accused persons namely: Jattu and Raghu Tati were apprehended by the villagers and thereafter they were taken into judicial custody. He further deposed that the slashed head was found on 09.02.2006 in the field of one of one Mannu Tiwari however in paragraph 13 of cross-examination he stated regarding recovery of head he did not prepare any seizure list nor it was sent for chemical test. In paragraph 18 of cross examination he stated that in the statement of witness - Luri Tanti he had only stated that he had supported the statement of his elder brother and he did not record his separate statement. Similarly, in paragraph 22 of cross examination he stated that he has not recorded statement of Ashish Tanti / P.W. 2 since he had supported the statement of his father Hari Tanti. Though P.W. 1/ Luri Tanti (uncle of the deceased) and P.W. 2 – Ashish Tanti had not supported the statement nor their statement under Section 161 of the Cr.P.C. was recorded they had come forward to depose as if they had seen that the deceased was called by the appellants and had gone with them.

23. On examination of aforesaid entire evidence it is evident that there are many inconsistencies in the evidence though prosecution has come out with a case that deceased was lastly seen with the appellants. This fact itself appears to be introduced at



much belated stage. P.W. 7 - father of the deceased in his evidence has stated that twice his statement was recorded. In first statement he had not disclosed anything but his second statement was recorded after several days, meaning thereby that at the very first instance prosecution had not come out with a case that deceased was seen with the appellants on 09.12.2005 while appellant /Jattu Tanti had come to his house and called him. It is also peculiar that though as claimed by the prosecution son of P.W.7 had gone with the appellants in the evening of 09.12.2005 and for the whole night he did not return, after hearing rumour regarding recovery of headless body none had tried to visit the place where dead body was lying. It is also case of the prosecution that the place of occurrence where dead body was found was only 400 yards away from the house of the deceased. In evidence it has come that mother of the deceased was present where dead body was lying and in her presence dead body was sent for the post- mortem examination, even then she failed to identify the dead body of her son, of-course it was headless body and naked. The prosecution case if for the time being it is accepted that the deceased was called by the appellants in the evening of 9.12.2005, the prosecution has failed to establish any motive for murder of the deceased. It is settled law that in a case of circumstantial evidence



onus lies on the prosecution to establish the connection of all the chains. In absence of motive or any animosity, only on the ground that deceased was seen with the accused it would not be safe to come to conclusion that in the murder of the deceased it was only the same accused that too in view of peculiar facts and circumstances of the present case the story it appears regarding last seen was also introduced subsequently. Besides this, there is inconsistency in the oral evidence and medical evidence particularly on the point of scratches and गोदना on the hand of the deceased.

24. On examination of the entire evidence there is no difficulty in coming to the conclusion that prosecution has failed to establish its case beyond all reasonable doubt and as such by way of extending benefit of doubt it is necessary to interfere with the judgment of conviction and sentence.

25. Accordingly judgment of conviction dated: 15.05.2013 and sentence dated: 18.05.2013 in Sessions Trial No. 627 of 2009 and 629 of 2006 [arising out of Amarpur P.S. Case No. 201 of 2005 corresponding to G.R. Case No. 1356 of 2005] passed by Sri N.K. Lall, learned Adhoc Addl. Sessions Judge IV, Banka in respect of all the aforesaid appellants is hereby set aside and both the Appeals are allowed.



26. All the appellants are inside jail and since judgment of conviction has been set aside, aforesaid three appellants namely: Raghu Tanti, Bhagu Tanti and Jattu Tanti are directed to be released forthwith, if not required in any other case.

(Rakesh Kumar, J)

Arvind Srivastava, J : I agree.

(Arvind Srivastava, J)

praful/-

AFR/NAFR	AFR
CAV DATE	02-11-2018
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