

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.555 of 2014

Arising Out of PS. Case No.-121 Year-2007 Thana- BAUNSI District- Banka

Bitiya Hembrum W/o Late Dewan Soren, R/o Village-Jangalpura, P.S.
Bounsi, District-Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 647 of 2014

Arising Out of PS. Case No.-121 Year-2007 Thana- BAUNSI District- Banka

Barku Soren son of Late Dewan Soren Resident of village- Jangalpura, Police
Station - Bounsi, District - Banka.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 555 of 2014)

For the Appellant/s : Md. Najmul Hodda, Advocate

For the Respondent/s : Mr. Uma Nath Mishra (App)

(In Criminal Appeal (DB) No. 647 of 2014)

For the Appellant/s : Md. Najmul Hodda, Advocate

For the Respondent/s : Mr. A.K.Sinha (App)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 04-05-2018

As both these criminal appeals have cropped up
from the same judgment and order of conviction and sentence,
hence they are taken up together for consideration and disposed
of by this common judgment.

2. Heard learned counsel for the appellants and



learned APP for the State on these criminal appeals.

3. These appeals have been preferred against the judgment and order of conviction dated 16.06.2014 and order of sentence dated 18.06.2014 passed by Adhoc Additional Sessions Judge-IV, Banka in Sessions Trial No. 991 of 2012 arising out of Bounsi P.S. Case no. 121 of 2007, whereby the learned trial Court convicted the accused Barku Soren, Bitiya Hembrum under Sections 302/34 and 201/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life and also slapped them with a fine of Rs. 10,000/- under Section 302/34 of the Indian Penal Code and further sentenced them to undergo R.I. for two years and slapped them with a fine of Rs. 2,000/- under Section 201/34 of the Indian Penal Code and in default of payment of fine, further sentenced them to undergo R.I. for six months. However, all the sentences were directed to run concurrently.

4. The factual matrix of the case is that Bounsi P.S. Case no. 121 of 2007 was instituted under Section 302/34 of the Indian Penal Code against accused Barku Soren, Talo Soren and mother of Barku Soren, namely, Bitiya Hembrum and other unnamed accused persons of village Jangalpura on the basis of fardbeyan of Malik Murmu S/o Late Churka



Murmu recorded by S.I. Satyendra Sharma of P.S. Bounsi dated 08.08.2007 at around 04:30 PM in the baranda of Barku Soren with the allegation, in succinct that the son of the informant namely, Ramchandra Murmu had brought sister of Barku Soren namely, Talo Soren in his house and kept her as his wife as he was in love with her. He had also given recognition to her as his daughter-in-law and decided to perform marriage of both in the month of December. He had given information of the same to maternal people of his daughter-in-law. In the meantime, on 04.08.2007, Barku Soren arrived at his house and took his sister and his brother-in-law namely, Ramchandra Murmu to his house on 05.08.2007 on the pretext of extending help to him in planting the paddy seedling. On 08.08.2007 at around 10:00 AM, one person of village Jangalpura informed him that his son Ramchandra Murmu has been eliminated. On the said information, he along with some villagers arrived at village Jangalpura and found his son dead on a cot in the baranda of Baraku Soren. His nose was bleeding and frothing and inmates of the house were absconding. On grilling locals, he learnt that Barku Soren in association of his sister Talo Soren and his mother and some other accused persons have strangled his son to



death in the past night. He has claimed that Barku Soren, his sister Talo Soren and his mother along with some other accused persons have strangled his son Ramchandra Murmu to death. The bone of contention is said to be keeping of Talo Soren in his house with intent to perform marriage with her by his son Ramchandra Murmu.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Talo Soren keeping the investigation pending against Barku Soren and Bitiya Hembrum. Subsequently, I.O. submitted supplementary chargesheet against Barku Soren and Bitiya Hembrum.

6. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate finding *prima facie* case against the aforesaid accused persons, took cognizance against them and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of Adhoc Additional Sessions Judge-IV, Banka for trial.

7. Charge against accused Bitiya Hembrum and Barku Soren was framed under Sections 302/34 and 201/34 of the Indian Penal Code. Charge was read over and explained to



them to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether five prosecution witnesses namely, Mahashay Murmu as PW-1, informant Malik Murmu as PW-2, Dr. Ashok Kumar Singh who had conducted autopsy of the cadaver of the deceased as PW-3, Dularchand Hembrum as PW-4, and Md. Ubesh Ali as PW-5. Out of the aforesaid witnesses, PW-5 happens to be formal witness. The prosecution has also filed and proved some documents by way of documentary evidence.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons have neither adduced any ocular nor documentary evidence, in buttress of their case.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the



convicts have preferred the present Criminal Appeals.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellants that there is no eye witness of the occurrence. Virtually, it is a case of circumstantial evidence. Barring keeping the sister of Barku Soren, namely, Talo Soren at his house by the deceased Ramchandra Murmu, taking the deceased and Talo Soren by Barku Soren at his house on the pretext of extending help to him in planting the paddy seedling on 05.08.2007 and recovery of dead body of the deceased in the baranda of Barku Soren on 08.08.2007, there is no other circumstance indicating the complicity of the appellants in the occurrence. In the case of circumstantial evidence, all the chain of circumstances must be tightly linked and substantiated to give only hypothesis of the guilt of the accused in the occurrence, but barring the aforesaid circumstance, there is no other circumstance like any animosity of the appellants with the deceased, motive behind the occurrence, presence of deceased in the house of



appellants altogether for three days i.e. from the date of his arrival till his death in the said house, finding of any incriminating article at the place of occurrence etc. Thus, the chain of circumstances are not tightly linked to give only hypothesis regarding guilt of the appellants in the occurrence. It is further submitted that I.O. of the case has not been examined by the prosecution. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing trustworthy, consistent and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that though it is a case of circumstantial evidence as there is no eye witness of the occurrence, but the circumstances such as keeping Talo Soren, sister of Barku Soren in his house without marriage by the deceased, taking the deceased and Talo Soren by Barku Soren at his house on 05.08.2007 and finding of dead body of the deceased in the baranda of Barku Soren on 08.08.2007, eloquently indicate the complicity of the appellants in the



occurrence and the chain of circumstances are tightly linked to give only hypothesis of the guilt of the appellants in the occurrence and medical evidence also goes to corroborate the prosecution case and after correctly appreciating the facts and material on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

15. From perusal of record, it appears that to substantiate its case, the prosecution has examined altogether three material witnesses of the case namely, PW-1 (Mahashay Murmu), informant PW-2 (Malik Murmu) and PW-4 (Dularchand Hembrum). From perusal of testimony of PW-1, it appears that the said witness has only stated about taking the deceased to his house located in village Jangalpura by Barku Soren along with his sister Talo Soren to extend help to him in planting the paddy seedling, getting information about death of the deceased (Ramchandra Murmu) by some person of village Jangalpura on 08.08.2007, rushing to the village Jangalpura on the said information and finding the dead body of Ramchandra Murmu in the baranda house of Barku Soren bearing ligature mark on his neck and his nose bleeding. But,



in paragraph 6 of his cross-examination, he has stated that he had not seen the occurrence of murder or assaulting the deceased by anyone. In paragraph 5 of his examination-in-chief, he has also vented his ignorance about cause of murder. In paragraph 7 of his cross-examination, he has further stated that the deceased had no animosity with the accused persons. Said witness has not disclosed the name and identity of source of information about murder of the deceased and none has come forward in corroboration of divulgence of the aforesaid occurrence to him. Thus, for want of corroboration, the aforesaid testimony of the said witness even as a hearsay evidence is not admissible in evidence. While PW-4 (Dularchand Hembrum) has stated in his examination-in-chief that at the time of occurrence, he was in his in-laws house. The deceased (Ramchandra Murmu) had gone to in-laws house four days preceding to the occurrence for planting the paddy seedling. While he was taking meal at 08:00 AM, two boys of village Jangalpura arrived there and divulged that Ramchandra Murmu has been eliminated. Listening the same, Malik Murmu and his wife started screaming, then he, Narayan, Mahashay, Malik, wife of Malik Murmu and others rushed to village Jangalpura and found dead body of



Ramchandra Murmu bearing ligature mark on his neck, abrasion on his left hand and nose and mouth bleeding. He has further stated in his examination-in-chief that Talo Soren, Barku Soren and Bitiya Hembrum had jointly committed murder of Ramchandra Murmu. But, in paragraph 5 of his examination-in-chief itself, he has failed to disclose the cause of occurrence. In paragraph 7 of his cross-examination, he has denied to have witnessed the occurrence of assaulting the deceased and has also denied to have seen Ramchandra Murmu with anyone preceding to the occurrence. In paragraph 9 of his cross-examination, he has simply suspected about commission of murder of Ramchandra Murmu by the accused persons. He had also not seen taking the deceased Ramchandra Murmu by Barku Soren at his house. He has also candidly denied to have witnessed the deceased Ramchandra Murmu with anyone preceding to the occurrence. Said witness in paragraph 7 of his cross-examination has stated that he had not interacted with the villagers of Barku Soren. As he had not interacted with the villagers of the accused persons, then the important question arises, as to how he learnt the commission of murder of Ramchandra Murmu by the accused persons. He has not given the name and identity of the person from whom



he learnt the aforesaid occurrence. None has come forward to corroborate the factum of divulgence of the aforesaid occurrence to him. Thus for want of corroboration the aforesaid evidence of PW-4 is not admissible in evidence even as hearsay evidence. Thus, from perusal of testimony of PW-1 and PW-4, it appears that both PW-1 and PW-4 do not happen to be eye witnesses of the occurrence and they have vented their ignorance about cause of occurrence.

16. The only witness left to be examined is the informant Malik Murmu (PW-2). From perusal of testimony of the informant as given in his examination-in-chief, it appears that he has supported the occurrence as stated by him in his fardbeyan by stating that three days preceding to the occurrence, Ramchandra Murmu had gone to village Jangalpura, village of his would be in-laws house. Barku Soren had taken Ramchandra Murmu with him to extend help to him in planting the paddy seedling. Would be wife of Ramchandra Murmu, namely, Talo Soren had also accompanied him. On getting information, he, Dularchand, Mahashay and Narayan rushed to the house of Barku Soren located in village Jangalpura and found dead body of his son lying on the cot in the baranda of the house of Barku Soren



bearing abrasion on his left hand, ligature mark on his neck and his nose bleeding and mouth frothing and the accused persons absconding. Barku Soren, Talo Soren, Bitiya Hembrum and other villagers had eliminated his son. He has further stated that the accused persons had eliminated Ramchandra Murmu as he was in love with Talo Soren though they had not got hitched. But, in paragraph 6 of his cross-examination, he has denied to have seen the occurrence of assaulting his son by any of the accused. Thus, from perusal of testimony of the informant, it appears that he does not happen to be eye witness of the occurrence of committing murder of his son by the accused persons rather he is a hearsay witness of the occurrence. From perusal of testimony of the informant, it appears that he has not stated as to from whom he came to know about elimination of his son by the accused persons. None has come forward from the village Jangalpura in corroboration of the factum of divulgence of aforesaid aspects of the case to the informant. Thus for want of corroboration aforesaid statement of informant regarding elimination of his son by accused persons is not admissible in evidence even as a hearsay evidence.

17. Thus, from perusal of aforesaid evidence of



the prosecution, it appears that there is no eye witness of the occurrence and it is a case of circumstantial evidence. It is settled principal of law that to hold the accused guilty on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogent and firm. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. 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 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.

18. Moreover, from perusal of testimony of the informant as given by him in paragraph 9 of his cross-examination, it appears that he has stated that in the application filed by him through his advocate, he has taken the name of thirteen accused persons in the occurrence. He has rightly given the name of three accused persons in the



occurrence while he has wrongly given the name of thirteen persons in the occurrence before the police. He has given the wrong statement before the police to falsely implicate them. The aforesaid statement of the informant goes to create serious doubt about truthfulness and credentials of the informant and he does not appear to be worth credence and reliable. In paragraph 7 of his cross-examination, the informant has stated that after stepping out of his house and before finding dead body of his son, he had not seen as to where his son had gone. The aforesaid statement of the informant goes to indicate that it is not definite case of the prosecution that the deceased altogether remained in the house of the appellants after departing from his house till his death.

19. Hon'ble Apex Court in *Shard Birdhichand Sarda Vs. State of Maharashtra reported in 1984 (4) SCC 116* has postulated the cardinal principle regarding the appreciation of circumstantial evidence by holding that whenever the case is based on circumstantial evidence, the following features are required to be complied with and proved by cogent evidence:

(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely may be fully established (ii) The facts so established should be



consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) there must be a chain of evidence so complete as not to leave any reasonable ground from the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

20. Hon'ble Apex Court in *Kanhaiya Lal Vs. State of Rajasthan reported in (2014) 4 Supreme Court Cases 715* has been pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more establishing connection between accused and the crime, that points to guilt of accused and none else. Mere non-explanation of being last seen together with deceased person on part of accused, by itself cannot lead to proof of guilt against him. It is further held that where a case rests squarely on circumstantial evidence, reiterated, inference of guilt can be justified only when all incriminating facts and



circumstances are found to be incompatible with innocence of accused or guilt of any other person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

21. From perusal of record, it appears that only incriminating circumstances against the appellants is that the deceased Ramchandra Murmu was in love with sister of Barku Soren, namely, Talo Soren and has kept her in his house without marriage and three days preceding to the occurrence. Barku Soren had taken the deceased along with Talo Soren at his house on the pretext of extending help to him in planting the paddy seedling and thereafter three days later to his taking there, dead body of the deceased (Ramchandra Murmu) was found in the baranda of Barku Soren bearing abrasion on his left hand and ligature mark on the neck and his nose bleeding and mouth frothing. There is no other circumstance such as existence of any animosity between the deceased and the appellants, motive behind the occurrence, finding of any incriminating material at the place of occurrence by the I.O., presence of deceased in the house of Barku Soren altogether for three days preceding to his death. Moreover, there was hiatus of three days between the date of taking the deceased at



his house by Barku Soren and his death. Thus the chain of circumstances, in my considered opinion, is not complete and tightly linked to give hypothesis about guilt of the appellants in the occurrence.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellants are acquitted of the charges levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, these Criminal Appeals are allowed.

(Prakash Chandra Jaiswal, J.)

Dr. Ravi Ranjan, J.-I agree.

(Dr. Ravi Ranjan, J.)

rohit/-

AFR/NAFR	AFR
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