

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1170 of 2012

Arising Out of PS. Case No.-141 Year-2010 Thana- BUXAR MUFFSIL District- Buxar

1. Amar Kant Pandey
2. Samar Kant Pandey
3. Abhay Kant Pandey

All are sons of late Srikant Pandey, All of resident of Village- Vishwamitra Colony, Buxar, P.S.- Buxar (Industry), District- Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

Govt. Appeal (DB) No. 8 of 2013

Arising Out of PS. Case No.-141 Year-2010 Thana- BUXAR MUFFSIL District- Buxar

The State Of Bihar Through District Magistrate, Buxar.

... .. Appellant/s

Versus

1. Amarkant Pandey, aged about 41 Years
2. Abhaykant Pandey, aged about 32 Years
3. Samarkant Pandey, aged About 37 Years

All sons of Late Srikant Pandey, Resident Of Vishwamitra Colony, District- Buxar.

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 1170 of 2012)

For the Appellant/s : Sri Digvijay Kumar Ojha, Advocate
Sri Kamal Kishore Sinha, Advocate

For the State : Sri Mukeshwar Dayal, A.P.P.

(In Govt. Appeal (DB) No. 8 of 2013)

For the Appellant/s : Sri Mukeshwar Dayal, A.P.P.

For the Respondent/s : Sri Digvijay Kumar Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 31-10-2018

1. Both the Appeals arise out of judgment of conviction and sentence passed by learned Adhoc Additional District & Sessions Judge –cum- F.T.C. 3rd , Buxar in Sessions Trial No. 240



of 2010. Cr. Appeal (D.B.) No. 1170 of 2012 has been preferred by the aforesaid three appellants against the judgment of their conviction and sentence whereas Govt. Appeal (D.B.) No. 8 of 2013 has been preferred by the State for enhancement of sentence. In the Government Appeal a prayer has been made for enhancement of sentence of the three convicts from life imprisonment to death sentence. Cr. Appeal (D.B.) No. 1170 of 2012 was admitted on 04.01.2013 . While admitting lower court record was summoned and prayer for bail of three appellants was rejected and they are still in custody . Govt. Appeal (D.B.) No. 8 of 2013 was admitted on 18.02.2013. While admitting notice was issued to respondent nos. 1 to 3 and it was directed that this Appeal will be heard along with Cr. Appeal (D.B.) No. 1170 of 2012 and as such both the Appeals were heard together and are being disposed of by this common judgment.

2. Three appellants in Cr. Appeal (D.B.) No. 1170 of 2012 who are respondents in Government Appeal (D.B.) No. 8 of 2013 by judgment dated : 29.05.2012 were convicted under Section 302/201/34 of the Indian Penal Code , 1860 (hereinafter referred to as the "I.P.C.") and by order dated- 05.06.2012 under Section 302/34 of the I.P.C. they were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10000 /- each. In



default of payment of fine they were directed to further undergo simple imprisonment for one month. Under Section 201 / 34 of the I.P.C. all the three appellants were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5000/- each. In default of payment of fine they were directed to further undergo simple imprisonment for fifteen days. Both the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by Sri Bhanu Pratap Singh , learned Adhoc Additional District & Sessions Judge- cum -F.T.C. 3rd , Buxar [hereinafter referred to as the “trial judge”] in Sessions Trial No. 240 of 2010 {arising out of Buxar (M) P.S. Case No. 141 of 2010}.

3. Short fact of the case is that on 27.06.2010 at 8.00 in the morning Sub – Inspector of Police Sri Ram Pratap (P.W. 20) of Buxar (M) Police Station recorded fardbyan of Chaukidar 4/5 Sri Gupteshwar Paswan (P.W. 6). The fardbyan was recorded on Jagdishpur - Mahdah pitch road. In the fardbyan the informant disclosed that on the same day i.e. on 27.06.2010 at 7.30 A.M. in the morning on rumor he got information that in village -Jagdishpur on the village road which was going from Jagdishpur to Mahdah on Eastern side ditch a dead body kept in a bag was found . After getting such information the informant with another



Chaukidar No. 4/4 Ramdhin Yadav (P.W. 14) rushed to the place of occurrence and saw that on the road side in a ditch a dead body in bag was thrown. After opening the bag they could gather that the dead body was of a male person aged about 40 years. The head was chopped from the trunk and face was defaced by sharp cutting weapon. Both hands from shoulder were separated by cutting. Both the legs from thigh were separated by cutting and both the thighs were separated by cutting from the trunk. The body portion below the neck and above the waist i.e. stomach, back and chest was found missing. The informant and nearby other villagers tried their level best to identify but the dead body could not be identified. The informant stated that some unknown accused persons had brutally killed a young person by sharp cutting weapon and after cutting the parts of the body it was tied in a bag. With a view to disappear the evidence it was thrown in the ditch on the road side. The said fardbyan was read over to him and after finding it correct the informant put his signature. On the basis of the said fardbyan on 27.6.2010 at 10.30 A.M. a formal F.I.R vide Buxar (M) P.S. Case No. 141 of 2010 was registered under Sections 302 / 201 of the I.P.C. against unknown accused persons . Immediately thereafter it was noticed by the Investigating Officer that one another bag containing trunk



portion of a dead body was found by Buxar Industrial Police Station. After preparing inquest report Police investigated the case and during investigation involvement of aforesaid three appellants was found true and as such on 05.08.2010 charge sheet was submitted against three appellants under Section 302 /201/ 34 of the I.P.C. On 07.08.2010 the learned Chief Judicial Magistrate, Buxar took cognizance of offences and on same day the case was committed to the court of Sessions and it was numbered as Sessions Trial No. 240 of 2010. On 08.10.2010 charges were jointly framed against all the appellants under Section 302 / 34 and 201 / 34 of the I.P.C. in which they denied the charges and claimed to be tried. All the three appellants are full brothers and sons of Late Srikant Pandey.

4. To prove its case on behalf of the prosecution altogether twenty witnesses were examined. Out of twenty witnesses, P.W. 1/ Buchan Rajbhar who has claimed to be friend of the deceased was examined as if in his presence deceased was cut into pieces. P.W. 2 /Parsuram Yadav, P.W. 4 - Prem Yadav, P.W. 5 - Dadan Chauhan, P.W. 12 - Upendra Kumar Singh and P.W. 17 / Sunil Kumar [cousin of the deceased] were examined as if they had seen P.W. 1 / Buchan Rajbhar with the deceased- Umesh Singh going to the house of appellant no. 1 / Amarkant



Pandey in morning. P.W. 7 - Manoj Kumar Yadav is a witness to the inquest report . P.W. 8 - Lal Babu Yadav is witness to the seizure list in respect of seizure of motorcycle of the appellant no. 1 / Amarkant Pandey. P.W. 9 - Anil Kumar Upadhyaya one of the Chaukidar has identified material exhibit i.e. iron 'dav' [daviya]. P.W. 10 / Ramashray Singh is a witness to the seizure list in respect of seizure of sharp edged 'dav'. Similarly P.W. 11 - Manoj Kumar Singh is witness to the seizure list in respect of seizure of 'dav'. P.W. 14 / Ramdhin Yadav is a witness who was near the bag containing the dead body and he informed the Police through mobile phone. P.W. 15 / Ram Niwas Singh and P.W. 16 - Upendra Prasad, both are witness to the inquest report. P.W. 18 / Suresh Kumar Singh @ Bachcha Singh is the uncle of the deceased and P.W. 19 / Baban Singh is father of the deceased who have deposed primarily on the point that on 25.06.2010 they had assembled along with the deceased in a marriage ceremony and also on the point regarding missing of the deceased. P.W. 3 / Dr. R.B. Srivastav, who was Medical Officer, Sub Divisional Hospital, Buxar on 27.06.2010 at 3.30 P.M. had conducted post-mortem examination on amputated parts of the body of the deceased and proved Post Mortem Report which was marked as Ext. 2 and also he conducted post- mortem on the trunk of the



deceased and this post-mortem report was marked as Ext. 2 / A. P.W. 20 - Ram Pratap was S.H.O.- cum- Investigating Officer. After completion of the prosecution evidence, evidences and circumstances brought on record during the trial were explained to the accused and their statement under Section 313 of the Code of Criminal Procedure, 1973 [hereinafter referred to as the "Cr.P.C."] was recorded in which they claimed to be innocent and appellant no. 1 also claimed to examine defence witness and on behalf of defence one witness namely: Gauri Shankar Tiwari was examined as defence witness. In defence a plea was taken that since the appellant no. 1 / Amarkant Pandey being a local Advocate was doing pairvi in a case which was instituted against one Officer- in-charge of Buxar Industrial Police Station namely: Avdhesh Kumar and Assistant Sub Inspector of Police namely- Taslimuddin Khan of Buxar (Town) Police Station the appellant no. 1- Amarkant Pandey with his two brothers were falsely implicated. It was pleaded on behalf of defence that one Sudhakar Prasad [Advocate] had filed a case in which Amarkant Pandey / appellant no. 1 was doing pairvi on behalf of Sudhakar Prasad. It was also pleaded that appellant no. 2/ Samarkant Pandey was a mentally derailed person.



5. Learned counsel for the appellants in Cr. Appeal (D.B.) No. 1170 of 2012 after referring entire evidences has argued that it was a case of out and out false implication since appellant no. 1 / Amarkant Pandey being an Advocate was doing pairvi in a case which was lodged against local Police Officers . He submits that entire prosecution case is totally based on the evidence of P.W. 1 / Buchan Rajbhar who is not reliable witness. According to learned counsel for the appellants if the evidence of P.W. 1 is considered as not believable or credible there is no other plausible evidence on record to connect the appellants in a case in which none had seen the occurrence. Learned counsel for the appellants has argued that after finding parts of dead body kept in two bags found at two different places a case was instituted against unknown but since appellant no. 1 being an Advocate was doing parivi in a case instituted against local Police Officers, the local Police with a view to wreak vengeance has plotted a case as if the deceased with P.W. 1 was seen going inside the house of appellants in the morning on the date of occurrence . Some of the witnesses were introduced as if they had seen the deceased with P.W. 1 going to the house of the appellants and on the next morning dead body of deceased was found. On the basis of the fact that some of the witnesses had claimed to have seen the



deceased going with P.W. 1 to the house of appellant no. 1 a case has been made out as if appellants had killed the deceased and amputated his parts from the trunk and threw them in two bags with a view to disappear entire evidence, otherwise there is no plausible evidence to connect the appellants in the present case. According to learned counsel for the appellants the prosecution has not been able to establish its case beyond all reasonable doubt and as such the appellants are either entitled to clean acquittal or otherwise they are entitled to be given benefit of doubt.

6. Sri Mukeshwar Dayal, learned Additional Public Prosecutor opposing the Criminal Appeal has argued that the learned trial judge on the basis of specific evidence has passed the judgment of conviction however he submits that considering the seriousness of accusation the learned trial judge instead of imposing death penalty has taken lenient view and sentenced the appellants to undergo imprisonment for life. Sri Dayal, learned A.P.P. has argued that this is the reason that State has preferred the Govt. Appeal for enhancement of sentence. Learned Additional Public Prosecutor by way of referring to the evidence of P.W. 1 submits that P.W. 1 is very much specific on the point that in the morning on 26.06.2010 while he was at his residence Umesh Kumar (deceased) arrived on a motorcycle and requested



him to accompany him to the house of the appellant no. 1/ Amarkant Pandey since he wanted to consume heroin. Thereafter P.W. 1 along with the deceased on a motorcycle went to the house of the appellant no. 1 where on payment of Rs. 100/- they got two *pudia* of heroin. They consumed the same in the campus of appellant no. 1/ Amarkant Pandey. Thereafter the deceased in the campus laid on a cot and slept with snoring. He also slept and after 1 – 2 hours he awoke and he tried to awake the deceased but he failed. P.W. 1 even sprinkled water on his face but all efforts went in vain. Thereafter he returned back informing appellant no. 1/ Amarkant Pandey that he will be coming back in the evening. In the evening when he again came to the house of the appellant no. 1 -Amarkant Pandey he saw that brother of Amarkant Pandey was sitting on a chair. He enquired from him about Amarkant Pandey, in the meanwhile two appellants namely appellant no. 1 / Amarkant Pandey and appellant no. 3 /Abhaykant Pandey came out from the inner side of the house wearing only कच्छा [under garment]. P.W. 1 saw blood mark on their कच्छा and body. Then on enquiry he was informed by appellant no. 1 /Amarkant Pandey that since after consuming heroin Umesh [deceased] did not regained his consciousness he had cut him into pieces. P.W. 1 thereafter went inside the room and saw that



there were two bags in which some of the parts were kept and some of the parts of the deceased were lying in the room. P.W. 1 further deposed that he was asked by the appellant no. 1 / Amarkant Pandey to help him in disposing of the dead body. Thereafter P.W. 1 by saying that he was going to lock his rickshaw which was standing outside, went outside and he fled away. Sri Mukeshwar Dayal states that the evidence of P.W. 1 is very much specific and there is no reason to raise any doubt on his evidence. Besides this he has argued that in the morning of 26.06.2010 number of witnesses such as P.W. 2, P.W. 4 , P.W. 5, P.W. 12 and P.W. 17 had seen P.W. 1/ Buchan Rajbhar on the motorcycle of the deceased and they had gone to the house of appellant no. 1 / Amarkant Pandey. Besides this it has been argued that during investigation on disclosure made by the appellant no. 1/ Amarkant Pandey the weapon i.e. 'dav' used in the occurrence was recovered. According to Sri Dayal in view of aforesaid evidence there is no reason to raise any doubt on the prosecution case rather the prosecution has established its case beyond all reasonable doubt and as such according to Sri Dayal there is no reason to interfere with the judgment of conviction rather this court may allow the Government Appeal which has been preferred for



enhancement of sentence from life imprisonment to imposing death sentence to all the appellants.

7. Besides hearing learned counsel for the parties we have minutely examined entire evidence on record. Before proceeding further it would be necessary to firstly examine the evidence of the father of the deceased who was examined as P.W. 19. P.W. 19 / Baban Singh [father of the deceased] in his evidence has stated that on 25.06.2010 he had gone to participate in the marriage of daughter of his brother- in- law in Turchakiya [Buxar] . In the said marriage his son -Umesh Kumar [deceased] had also gone with him where his younger brother - Suresh Kumar Singh [P.W. 18] , Sunil Kumar / P.W. 17 [his sister's son] and his brother –in-law/ Rameshwar Singh [not examined] were also present . The marriage ceremony was concluded by 12.30 in the night itself and on 26.06.2010 at 4 ½ Hours (morning) he called his son -Umesh [deceased] and asked him to go to the village of his Mama carrying his mother. At that very time his younger brother -Suresh Kumar (P.W. 18) was also present. P.W. 19 with his brother – Suresh Kumar proceeded to Railway Station since he was to go to Patna and he returned back to Patna. His brother (P.W. 18) near Nai Bazar got down. After coming to Patna he gave mobile call on the mobile of his son -Umesh but same was



switched off. Then he telephoned his brother – Suresh Kumar (P.W. 18) then he too informed that he also wanted to talk with Umesh Kumar but his mobile was switched off. Then he asked his brother to enquire about his son. This witness was informed by his brother – Suresh Kumar that lastly at 5.00 in the morning of 26.06.2010 he had a telephonic talk with him. He further informed that for going to his maternal uncle's village he had taken motorcycle of Rameshwar Singh and he left at 5.00 in the morning. In paragraph -3 of his evidence P.W. 19 further stated that on 27.06.2010 he got an information that the motorcycle on which his son- Umesh (deceased) had gone was found by Police Officer of Dumrao Police Station in unclaimed condition near one Bhathi (wine shop). Police official after taking out the owner book from the dicky informed Murar Police Station then Chaukidar of Murar Police Station informed his brother –in-law who went to Police Station and after showing papers taken back the motorcycle on the same day. On 30.06.2010 he came to Buxar and from paper news he came to know that Buxar Industrial Police Station had found an unclaimed and unidentified dead body. Then he with his brother -Suresh (P.W. 18) and Bhagina / Sunil (P.W. 17) went to Police Station where he got information regarding lodging of the said F.I.R. He was also shown the



photograph of the said unclaimed dead body and then came to know that it was the photograph of his son -Umesh Kumar Singh. He denied the suggestion that in his statement he had stated that accused persons were innocent and due to political pressure accused persons were falsely implicated. On examination of the evidence of P.W. 19 it appears that till the news of recovery of unclaimed dead body was not published in the newspaper this witness was unaware that his son was killed. It is also difficult to conceive as to when this witness had got information that the motorcycle which deceased was driving was found unclaimed near the wine shop, why he did not take immediate steps for searching of his son, instead, on 30.06.2010 he came to Buxar from Patna and then after seeing the photograph in Police Station he came to know that the deceased was his own son.

8. P.W. 18 – Suresh Kumar Singh @ Bachcha Singh is the brother of P.W. 19 and uncle of the deceased. This witness in his evidence has stated that on 25.06.2010 he met with his nephew- Umesh (deceased) in a marriage ceremony in Turchakiya (Buxar). On 26.06.2010 at 4 ½ Hours in the morning in presence of deceased- Umesh his brother/ Baban Singh (P.W. 19) stated that he wanted to go back to Patna and Umesh was asked to carry his mother subsequently to Patna. Thereafter on



Bolero vehicle he proceeded and on way he got down and his brother - P.W. 19 went to Railway Station. This witness returned to his house. In the morning at 5.00 Umesh gave a telephone call to his wife (wife of P.W. 18) and enquired about his brother (P.W. 19). This witness further stated that on 27.06.2010 Sunil Kumar (P.W. 17) had informed his brother that deceased (Umesh) had demanded for motorcycle. He further stated that on 26.06.2010 at 8.00 Chaukidar had come to the house of Sunil (P.W. 17) and informed that his vehicle was lying in Dumraon Police Station. Thereafter the vehicle was taken back after showing original papers. In paragraph -3 of his evidence this witness stated that on 30.06.2010 after getting information his brother -Baban Singh (P.W. 19) had come and went to Industrial Police Station where Bara Babu had asked him to go and enquire from Muffassil Police Station. This witness with Baban / P.W. 19 and Sunil / P.W. 17 went to Muffassil Police Station whereafter seeing the photograph of the dead body they could identify that it was the dead body of Umesh Kumar Singh. In paragraph- 4 of his cross examination he stated that his nephew (deceased) was earlier a teacher in Saknadih and about one year back he had left teaching work and thereafter started to live in Patna. Since he was addict of intoxicant his father was keeping the deceased with him. In



paragraph -6 of his cross examination he stated that Sunil (P.W. 17) on 27.06.2010 had informed that Umesh (deceased) had demanded motorcycle for going to village- Khakhaniya and the said motorcycle was found as unclaimed near a wine shop in Dumraon which was taken by the Dumraon Police Station. In paragraph 11 of his cross examination he stated that during investigation he had stated before Police that there was no animosity and he had stated before the Police that the occurrence had taken place with a view to लूट पाट. This witness in para -14 of his cross -examination has stated that on 28.06.2010 he had telephonically informed his brother (P.W. 19) that one unclaimed dead body was thrown which news was published in newspaper however he himself had not gone to see the dead body. In paragraph 15 of his cross -examination he denied that Umesh was having any love affair. He further denied the suggestion that the deceased while he was teacher had fallen into love and even thereafter love affair was continuing. In para – 16 of his cross -examination he further denied regarding identification of Suresh and Ramesh Yadav. He further denied that he was knowing Singara Yadav of Jagdishpur. He also denied regarding identification of his daughter -Chanchal. He also stated that he was not aware where Chanchal was married and also stated that he



was not aware that since one day Chanchal and his nephew was missing. In paragraph – 19 of his cross examination he stated that he had heard that Amarkant Pandey / appellant no. 1 was an Advocate. He in paragraph -20 of his cross examination denied the suggestion that his nephew was killed since he was having illicit relation and appellants were falsely implicated.

9. P.W. 17 is Sunil Kumar (cousin brother of the deceased). In his evidence he stated that on 25.06.2010 he had met with the deceased in the marriage of daughter of his Mama in Turchakiya. On 26.06.2010 in the morning he returned back to Nayi Bazar and thereafter he went to a tea stall with Umesh (deceased) for taking tea. After taking tea the deceased told him that he was to go to village - Khakhaniya for bringing his mother and he took the keys of his Hero Honda Splendor Motorcycle bearing Registration No. BR45A4562 and he went. In the evening at 8.00 P.M. Chaukidar of Murar Police Station came to his house and gave information that his vehicle was lying in Dumraon Police Station. Then on 27.06.2010 he went to Police Station and asked as to how his motorcycle was kept in Police Station. Then he was informed by the Police that near Miller Cinema opposite country made liquor shop in Dumraon the vehicle was found as unclaimed. Then Police Officer handed over the vehicle to him



and he returned back . He also enquired from Police regarding Umesh but he did not get any information. On 30.06.2010 his Mama - Baban Singh / P.W. 19 came . He further stated that on 27.06.2010 in news paper he read that a truncated dead body was found. Then he went to Muffassil Police Station where photograph was shown and then they came to know that it was photograph of deceased- Umesh. In paragraph 7 of his cross-examination he stated that he was given information by Dumraon Police Station that his motorcycle was found opposite Miller Cinema.

10. P.W. 2 /Parsuram Yadav stated that on 26.06.2010 at about 7.00 in the morning when he reached near the house of Amarkant Pandey / appellant no. 1 in Vishwamitra Colony then he saw Umesh (deceased) entering on a motorcycle into the campus of Amarkant Pandey / appellant no. 1. On motorcycle there was one unknown pillion rider . He further stated that he was knowing Umesh (deceased) since last 4-5 years. He was son of Baban Singh of Nayi Bazaar. Subsequently he heard that a dead body kept in a bag was found thrown in Jagdishpur and subsequently it was published in the newspaper that the dead body was of Umesh. He identified the photograph of dead body of deceased and photograph was marked as Ext. 1. His attention was drawn to his



previous statement recorded during investigation and he stated that he had not stated before Daroga Ji that he was knowing name of Buchan Rajbhar and also he had not stated before the Police that he was knowing deceased since last five years however he stated that he was knowing that Amar Pandey / appellant no. 1 was an Advocate which fact he was knowing since last one year . In paragraph- 7 of his cross examination he stated that he had read the news regarding murder of Umesh on 1st or 2nd July, 2010. He further stated that from photograph it was difficult to identify the face however again he stated that he was identified by the face .

11. P.W. 4 / Prem Yadav deposed that on the date of occurrence in the morning at about 6.45 while he was strolling he saw that Umesh Yadav (deceased) was going on a motorcycle. Then he stopped them. He talked with him and on being asked he said that he was going to the house of Amar Pandey/ appellant no. 1. He further stated that on motorcycle Buchan Rajbhar was sitting. Thereafter he returned back to his house.

12. P.W. 5 - Dadan Chauhan is a tea stall owner and he deposed that on the date of occurrence at 6.00 in the morning Umesh Singh (deceased) came on motorcycle and thereafter asked for tea. While he was taking tea Buchan Rajbhar / P.W. 1 arrived there. Thereafter both consumed tea and while consuming



they were talking with each other. Before going he said that he was going to the house of Amar Pandey/ appellant no. 1. Thereafter on motorcycle which was being driven by Umesh and Buchan Rajbhar left the place. In cross -examination in paragraph- 5 he stated that he was knowing Buchan Rajbhar. He further stated that Buchan Rajbhar had not gone to jail in a case of heroin. In paragraph -7 of his cross examination he further stated that Buchan Rajbhar was using to take heroin and he was a rickshaw puller.

13. P.W. 12 / Upendra Kumar Singh in his evidence deposed that on the date of occurrence at 7.00 in the morning while he was moving opposite the house of appellant no. 1 /Amarkant Pandey he saw Umesh Kumar (deceased) and Buchan Rajbhar (P.W. 1) entering inside the house of Amarkant Pandey / appellant no. 1. Both were on motorcycle. In para – 3 of his cross- examination he stated that Buchan Rajbhar was a heroin pedlar. Again he stated that Buchan was using to consume heroin. He further stated that he had never seen Amar Pandey/ appellant no. 1 while consuming or providing heroin.

14. On examination of evidence of P.Ws. 2, 4 and 12 it appears that they have been introduced as chance witness to show as if deceased with P.W. 1 was seen on 26.06.2010 in the morning



at about 7.00 while entering inside the compound of appellant no. 1. While P.W. 5 /Dadan Chauhan a tea stall owner has stated as if both i.e. deceased and P.W. 1 had taken tea on his stall and in his presence they told this witness that they were going to the house of appellant no. 1/ Amarkant Pandey in the morning. So all those witnesses were examined on the point that on 26.06.2010 the deceased along with P.W. 1 were seen entering into the house of appellant no. 1. At this juncture it is necessary to notice that P.W. 1, Buchan Rajbhar in para 18 of his evidence has stated that in reaching the house of the appellants from his house it took ½ Hour i.e. 30 minutes on motorcycle journey. It has come in evidence of P.W. 18 that since last one year the deceased was residing at Patna with his parents. In such situation evidence of those witnesses on the point that in the morning on 26.6.2010 deceased was seen entering the house of appellants appears to be not probable and credible.

15. P.W. 6 / Gupteshwar Paswan is the informant of the case and he has proved his signature on the fardbyan, which was marked as Ext . 3.

16. P.W. 7 / Manoj Kumar Yadav stated that on 27.06.2010 he went to the place of occurrence i.e. near the चाट land of Jagdishpur -Mahda road where dead body was thrown



kept in a bag which was opened in his presence and he saw that dead body was in seven pieces. In his presence inquest report was prepared. He put his signature on the inquest report and in his presence one Dilip Kumar put signature on the inquest report. His signature as well as signature of Dilip Kumar were marked as Ext. 4 and 4/A respectively.

17. P.W. 8 /Lal Babu Yadav is witness to the seizure list in respect of seizure of motorcycle bearing registration no. BR44A6407. The said seizure list was prepared on 14.07.2010 at 12.15 Hours in the house of the aforesaid three appellants. On the seizure list he put his signature which was marked as Ext. 5. He also proved signature of one Harendra Singh (not examined) on the said seizure list, which was marked as Ext. 5 /A.

18. P.W. 9 / Anil Kumar Upadhyay one of the Chaukidars who had produced the material ext. i.e. 'dav' which he produced as per the order of Officer –In-Charge of Buxar (Muffassil) Police Station . The said 'dav' was marked as Material Ext. X. In his cross -examination he stated that the said sealed cover was not bearing any signature.

19. P.W. 10 / Ramashray Singh is witness to the seizure list relating to seizure of 'dav' [sharp cutting 'dav']. The said 'dav' was recovered on 14.07.2011 at 4.30 P.M. beneath the



Ganga bridge which was buried in sand. He proved his signature on the said seizure list, which was marked as Ext. 5/B. He also claimed to identify Material Ext. M i.e. the 'dav' which was seized in his presence.

20. P.W. 11 – Manoj Kumar Singh, S/o Narendra Singh is also one of the witness to the seizure list relating to seizure of 'dav' and he identified his signature on the seizure list, which was marked as Ext. 5/C.

21. P.W. 13 / Manoj Kumar Singh, S/o Dhruv Singh in his evidence has stated that on 26.06.2010 in the evening at 8 ½ hours while he was returning from attending call of nature and came on Jagdishpur -Mahda road then he saw one motorcycle with two persons. They had kept one bag. They were going on the said motorcycle to Mahda and in the morning he got information that in Jagdishpur a bag containing dead body was thrown.

22. PW. 14 / Ramdhin Yadav who was Chaukidar No. 4 / 4 had accompanied the informant/ Gupteshwar Paswan and in his presence different parts of dead body was found in a bag in Jagdishpur.

23. P.W. 15 / Ram Niwas Singh is witness to inquest report which was prepared on 27.06.2010 in the evening at 6.00



P.M. The said inquest report was signed by this witness and one Upendra Prasad and he identified signatures of his as well as Upendra Prasad, which were marked as Ext. 6 and 6 /A. This inquest report was in relation to a headless dead body without legs and hands which was kept in a bag which was found in चार land of one Jamuna Lal Shivjee Lal's field by the Industrial Police Station.

24. P.W. 16 / Upendra Prasad is also one of the witness to the inquest report which was prepared in relation to seizure of a headless dead body without hands and legs. He identified his signature on the said inquest report, which was marked as Ext. 6 /A.

25. P.W. 1 is Buchan Rajbhar whose statement was recorded by the Investigating Officer on 14.07.2010 whereas unclaimed dead body was found at two places on 27.06.2010. This witness in his evidence has stated that on the date of occurrence he was at his residence. Umesh (deceased) on his Hero Honda motorcycle came to his house and requested him to accompany him to the house of Amar Pandey / appellant no. 1 for consuming heroin. It is pertinent to note here that in the evidence witnesses have said that this witness -Buchan Rajbhar (P.W. 1) was using to consume and sell heroin and once he was



lodged in jail in heroin case. This witness asked the deceased that he is coming after changing his dress. When he came out he saw that deceased was taking tea on a tea stall which was opposite the house of this witness. He also took tea. Then deceased told him to accompany him to the house of Amar Pandey. This witness as pillion rider on the motorcycle of the deceased went to the house of Amarkant Pandey. While he was moving on way one person met Umesh who was his friend. He asked Umesh as to where he was going then deceased told him that he was going to the house of Amar Pandey / appellant no. 1. After moving ahead one of his another friend met him and stopped him. He also enquired as to where he was going then deceased said that he was going to the house of Amarkant Pandey. They reached the door of Amarkant Pandey/ appellant no. 1 at 7.00 in the morning. There he met with Amar Pandey. At that very place there were other two appellants also. The deceased-Umesh after paying rupees one hundred took two *pudia* of heroin from appellant no. 1 / Amarkant Pandey and in the campus of Amarkant / appellant no. 1 both of them started to consume heroin. While consuming heroin they were intoxicated. After about one hour he came out from intoxication then he saw that Umesh after leaving the chair had laid himself on a cot and he was sleeping. This witness tried to



awake him but he did not say anything. He brought water and sprinkled the same even then he did not come out from intoxicant condition. About 12.00 noon this witness told Amar Pandey / appellant no. 1 that he was going to his house and stated that he will come back in the evening. In the evening at 6.00 P.M. again this witness came to the house of Amar Pandey / appellant no. 1. He saw that Samar Pandey (Appellant No. 2) was sitting on chair near the door. This witness enquired about Amar Pandey. In the meanwhile Amar / appellant no. 1 and Abhay Pandey / appellant no. 3 wearing only कच्छा [under garment] came out from the house . This witness saw that on their कच्छा and body there were blood stains . This witness enquired from Amar Pandey as to how there was blood stains. Then appellant no. 1 said that Umesh had not come out from intoxication and this is the reason that all his three brothers had cut him into pieces. This witness thereafter was frightened and entered into the room of Amar Pandey and saw the trunk of the deceased- Umesh. At that very place he also saw one iron 'dav'. The trunk was kept in a bag. He saw that the chopped head was put on the floor . One hand , one leg after amputation was kept there. One more leg was to be amputated. Then he enquired from accused persons as to why they had done this. Then he was replied that he was not coming



out from intoxication and this was the reason that they had done that. This witness further states that in his presence all the three brothers (accused) amputated another leg and they threatened this witness not to divulge this fact to anyone otherwise being Advocate he would falsely implicate him in a case. This witness further deposed that the accused persons kept parts of dead body of Umesh in a bag and asked him to throw the bag otherwise he will be implicated. Then this witness said that he was going to lock his rickshaw which was parked outside and thereafter he fled away and since he was frightened he did not divulge this fact to anyone. In paragraph 3 of his evidence he stated that since he was frightened he had ran away and after eighteen days he came to his house where he met with the Police and his statement was recorded by the Police. His statement was also got recorded in the court . In paragraph -7 of his cross examination he denied that he was consuming heroin however he said that he was consuming heroin with Umesh (deceased). Since last four years he was consuming heroin with Umesh and he was pulling rickshaw since ten years. In paragraph- 10 of cross examination he sated that there was one case against him in respect of heroin and he denied that he was accused in 4-5 cases relating to heroin. On examination of the evidence of P.W. 1 it appears that the story



made out by this witness appears to be not believable. This witness himself has accepted that he was a rickshaw puller and pulling rickshaw since last ten years and he himself has accepted that he was accused in relation to consuming or selling heroin. In his evidence he stated that on the date of occurrence he had gone along with the deceased to the house of the appellants in the morning and again in the evening he went there. While in the evening he went to the house of the appellants he saw that appellant no. 2 was sitting on a chair. In the meanwhile he saw that appellant no. 1 and 3 who had come out from the house wearing only कच्छा and in his presence the appellants further amputated one leg from the trunk of the deceased inside the room. It has come in evidence that Amarkant Pandey (Appellant No. 1) was an Advocate and the manner in which the story has been depicted by P.W. 1 is totally unbelievable. Moreover the appellant no. 1 was an Advocate and as such it was not expected that in presence of P.W. 1 he would have amputated one leg from the trunk of the deceased. It also further appears to be not believable that once P.W. 1 had seen all those happenings then how this witness was allowed to return back. In normal course it cannot be a conduct of an accused that he will leave one of the eyewitness from the place of occurrence. Moreover once in his presence such



an occurrence had taken place there is no plausible explanation as to why for such a long time he did not disclose those facts to anyone. It is also unexpected that after about eighteen days from the date of occurrence simply he came back to his house and thereafter Police arrived there and he narrated the entire story before the Police as if entire occurrence had taken place in his presence. His evidence can be examined in the background of defence version also. In this case from defence side one witness has been examined namely D.W. 1 / Gaurishankar Tiwary. It is case of defence that appellant no. 1 since being an Advocate was doing pairvi in a case instituted against two Police officials they were made accused in the present case. On minute examination of the evidence of P.W. 1 it would be difficult for us to place reliance on his evidence in a case in which it is defence of the accused that appellant no. 1 was fabricated since being Advocate he was doing pairvi in a case instituted against two local Police officers. If the evidence of P.W. 1 is considered as doubtful, there is no reason to approve the judgment of conviction and sentence on the basis of evidence of other witnesses who have deposed that on 26.06.2010 they had seen deceased with P.W. 1 entering into the campus of appellant no. 1 on a motorcycle. The reason is that those witnesses have stated as if they had seen the deceased



entering into the campus in the morning on 26.06.2010. It is not a case that immediately when the deceased entered into the house of appellant no. 1 he was done to death nor this version has been supported by medical evidence. In the case during trial Dr. R.B. Srivastava was examined as P.W. 3 . This witness on 27.06.2010 was posted as Medical Officer in Sub Divisional Hospital, Buxar and on the same day i.e. on 27.06.2010 at 3.30 P.M. he conducted post mortem examination on an unknown male aged about 40 years of age brought by Chowkidar. The parts of the body were brought by Police in pieces containing head , both upper limbs , both eyes, both legs, a feet, total 07 parts and following anti- mortem injuries and facts were noticed by him:-

“ i) Front of face is cut from above nose to below up chin with incised wound of size 6” x6”x3” with emucleatus of both eye balls nose and lips. The eye balls are missing.

ii) Head is cut from front with sharp cut wound of size 16” circumference with regular margin of lower level of neck.

iii) Upper end of both thighs are cut from Trunk with the sharp cut wound of about 20” circumference with regular margin.

iv) Both legs are cut from thigh at above knee with sharp cut wound of about 14” circumference with regular margin.

v) Both upper limbs are cut from trunk with sharp cut wound of about 12” circumference with regular margin

Weapon – By heavy sharp edge substance and the cut may be of Dav

Time elapsed since death - about 24 to 72 hours.

In our opinion the death is due to haemorrhage and shock.

Note: Hair, Skin and muscle tissue are taken and sealed for D.N.A. testing as demanded by Police.”



The said post mortem was done by a Medical Board consisting of P.W. 3, Dr. H.C. Hari and Dr. A.K. Gupta of Sub Divisional Hospital, Buxar. He proved the post mortem examination report in respect of 07 parts of the body which was marked as Ext. 2 .

26. On 28.6.2010 at 9.20 A.M. he conducted post -mortem examination on unknown male body brought by Chowkidar. The post -mortem was done over the parts of the body [one chest and abdomen] but he could not judge rigor mortis because only trunk was present. Maggots were also present. In the post mortem following ante-mortem injuries were noticed by this doctor:-

“i) Chest is severed from head and neck by an incised wound encircling whole of neck with regular margin, both lower limbs are severed from trunk at upper end of the thigh by an incised wound encircling whole of the thigh with regular margin.

ii) Weapon – both are due to heavy and sharp edged substance.

Time elapsed since death - within 48 to 72 hours.

In our opinion the death is due to haemorrhage and shock.

5) Note : Skin and muscle tissue of the trunk is taken and sealed for D.N.A. test as demanded by the Police.”

This post -mortem was also done by the same Medical Board. In cross- examination in para – 10 he stated that he had found semi digested food in the stomach and he had not found any sign of drug in stomach . The second Post Mortem Report was marked as Ext. 2/A.



27. Learned counsel for the appellants has rightly argued that had it been a case of consumption of heroin, in the post- mortem examination report such fact would have been noticed.

28. The Investigating Officer namely Sri Ram Pratap / P.W. 20 on 27.06.2010 was posted as A.S.I. in Buxar (Muffasil) Police Station and on the same day he received information regarding finding of a bag containing unknown dead body. Thereafter he recording Sanha entry left to the place of occurrence where he found a bag near a pitch road in the village Jagdishpur to Mahdah. The bag was thrown in the चाट land. After opening the bag he found a head, two hands, two legs and both thighs in separate pieces. He recorded fardbyan of Gupteshwar Paswan which was marked as Ext. 7. Then he prepared inquest report which was marked as Ext. 8. He also proved endorsement on the fardbyan which was marked as Ext. 9. Thereafter he was entrusted the charge of investigation of the case. He examined the witnesses and also examined the place of occurrence. The place of occurrence has been described in paragraph- 4 of his evidence. In the meanwhile he got an information that in Industrial Area Police Station in the village Dantsagar in the 2nd half of the day trunk of an unknown person was found which was perhaps of the same



person whose parts were found in Jagdishpur. He also got information that the said trunk was sent for post-mortem after preparing inquest report. After getting such information he went to Sadar Hospital, Buxar and took charge of the inquest report from the Officer –in- Charge of Buxar Industrial Area Police Station. The said inquest report was marked as Ext. 10. He on the same day assembled parts collected in two bags and thereafter he could identify that both parts which were found at two different places were of the same dead body and thereafter after putting those parts jointly photography was done and then he visited the second place of occurrence i.e. Industrial Area Police Station where second bag was recovered. On 30.06.2010 he recorded statement of Baban Singh / P.W. 19, Sunil / P.W. 17 and Suresh Singh / P.W. 18 who identified the photograph as of Umesh Kumar [deceased]. On 30/06/2010 itself this witness went to the Dumraon Police Station where motorcycle was found and he inspected the said place where motorcycle was found. On 14.07.2010 he recorded statement of Buchan Rajbhar / P.W. 1 and his statement under Section 164 of the Cr.P.C. was also recorded in the court on the same day. On 14.07.2010 he arrested aforesaid three appellants and he recorded their confessional statement and on the basis of the said confession metallised iron



‘dav’ which was used in the occurrence was recovered which was buried in sand beneath the Ganga bridge. It may be indicated here that though this witness has stated that on the basis of confessional statement he recovered the ‘dav’ used in the occurrence, the said confessional statement was not got exhibited and as such it would be difficult to come to conclusion that the said confession had led to recovery of ‘dav’ in question. On the same day i.e. on 14.07.2010 at 2.15 he seized the motorcycle bearing registration no. BR44A607 from the house of the appellants . The said seizure list was marked as Ext. 11/A. He visited the alleged place of occurrence i.e. the house of the appellants which was of two rooms however no incriminating articles or any material was found at the place of occurrence . On 22.07.2010 after finding sufficient material, with the order of Superintendent of Police , Buxar he submitted charge sheet and charge sheet was proved as Ext. 12. He also proved formal F.I.R. which was marked as Ext. 13. In paragraph 20 of his cross- examination this witness has stated that he has not arrested Buchan Rajbhar / P.W. 1 however he recorded his statement after visiting his house . In para- 29 of his cross -examination he stated that he was not aware as to whether Sudhakar Verma had lodged any case or not . He further stated that he was not knowing as to whether in the said case



parivi was being done by Amarkant Pandey (Appellant No. 1) . In paragraph 33 of the cross -examination he further stated that in the statement of Parsuram Yadav which was recorded in para 42 of the case diary it has come that Amarkant Pandey was doing Wakalat in court. In paragraph 48 of his cross examination he stated that all the three appellants were found sitting on the floor of the room. In paragraph 46 of the cross examination he stated that on 14.07.2010 it was rainy season however on the 'dav' there was no rust. He further accepted in paragraph- 48 of cross -examination that he had not sent the 'dav' for chemical examination. In paragraph 52 of his cross examination he has denied that the appellant no. 1 / Amarkant and his two brothers were not accused and since Amarkant was an Advocate in Sudhakar Verma's case which was instituted against two Police officers namely: Taslim and Daroga- Avdhesh Kumar they were falsely implicated.

29. On examination of entire evidence it is difficult to come to conclusion that prosecution has proved its case beyond all reasonable doubt. In the case P.W. 1 - Buchan Rajbhar was introduced as star witness however on examination of his conduct the evidence of P.W. 1 comes into cloud of doubt. It is unbelievable that appellant no. 1 being an Advocate wearing



only कच्छा that too with blood stain would had come out from the house and told P.W. 1 that since the deceased had not come out from intoxication all the three brothers had cut into pieces the deceased. Further it is also not believable that in presence of P.W. 1 himself appellants had cut one leg from the thigh of the deceased in the room. It is also not believable that once P.W. 1 had seen everything i.e. cutting of the dead body by the appellants, the appellants would have allowed P.W. 1 to go back and give information to others that they had committed the crime. Moreover P.W. 1 has claimed that on the date of occurrence i.e. on 26.06.2010 he along with the deceased had gone to the house of the appellants and in the evening after seeing every thing he returned back and then he did not give any information to anyone and suddenly on 14.07.2010 when he returned back to his house, Police came to his house and before the Police he narrated entire story. Accordingly the circumstances suggest that the evidence of P.W. 1 is not credible nor believable . Moreover all those facts may be examined in the context in which a defence has been taken that since appellant no. 1 being an Advocate was doing pairvi in a case which was instituted against two local Police officers certainly prosecution case can be seen with suspicion. Other some of the witnesses were introduced as if



they had seen the deceased with P.W. 1 entering the campus of appellant no. 1 on 26.06.2010 in the morning at 7.00. It is not a case that immediately after entering the house of the appellants the deceased was done to death. Learned counsel for the appellants has argued that there was possibility that after consuming the so-called heroin the deceased had returned back and he was done to death in a different manner not the manner in which the prosecution has come out with the present case. In the case while uncle of the deceased namely Suresh Kumar Singh was being examined he was given suggestion that the deceased was having some illicit relation with a girl of village - Jagdishpur and also suggestion was given that from one day both the girl and the deceased was found missing. Of- course the suggestion was denied but on examination of entire facts of the case such suggestion also creates suspicion regarding the prosecution case.

30. On examination of entire evidence we are of the considered opinion that prosecution has not been able to establish its case beyond all reasonable doubt and as such by way of extending benefit of doubt it is desirable to interfere with the judgment of conviction and sentence. Accordingly, the judgment of conviction dated 29th May, 2012 and sentence dated: 05.06.2012 passed by Sri Bhanu Pratap Singh, learned Adhoc



Additional District & Sessions Judge-cum- F.T.C. 3rd, Buxar in Sessions Trial No. 240 of 2010 [arising out of Buxar (M) P.S. Case No. 141 of 2010, Gr. No. 1195 of 2010] is hereby set aside and Cr. Appeal (D.B.) No. 1170 of 2012 is hereby allowed.

31. So far Govt. Appeal (D.B.) No. 08 of 2013 is concerned of- course it was admitted for hearing and it was directed to be heard along with Cr. Appeal (D.B.) No. 1170 of 2012 , on going through the same it is evident that the Govt. Appeal has not been preferred against judgment of acquittal rather the Appeal has been preferred for enhancement of sentence i.e. for enhancement of sentence from life imprisonment to death sentence. Under Section 378 of the Cr.P.C. State can prefer Appeal against judgment of acquittal. Moreover since the judgment of conviction itself has been set aside there is no reason to entertain the Govt. Appeal which has been preferred for enhancement of sentence. Moreover the Govt. Appeal itself was not maintainable nor before filing the Appeal any leave was granted. Accordingly, Govt. Appeal (D.B.) No. 8 of 2013 stands dismissed.

32. All the three appellants are inside jail and since judgment of conviction and sentence has been set aside it is desirable to direct for their release. Accordingly, it is hereby



directed to release all the aforesaid three appellants namely (1) Amarkant Pandey (2) Samarkant Pandey and (3) Abhaykant Pandey forthwith , if not wanted in any other case.

33. The Cr. Appeal (DB) No. 1170 of 2012 is allowed and Govt. Appeal (D.B.) No. 08 of 2013 stands dismissed.

Arvind Srivastava, J.: I agree. **(Rakesh Kumar, J)**

praful/- **(Arvind Srivastava, J)**

AFR/NAFR	AFR
CAV DATE	08-08-2018
Uploading Date	31-10-2018
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