

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.151 of 1995

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Rajeshwar Poddar s/o Nebi Poddar, r/v-Chennah Shisba, P.S.- Salkhua,
District - Saharsa

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Surya Nilambari, Amicus Curiae
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 23-08-2019

Heard Amicus Curiae Ms. Surya Nilambari Advocate
for the appellant as well as learned Additional Public Prosecutor
Mr. Dilip Kumar Sinha appearing for the State and perused the
record along with lower court records.

2. This criminal appeal has been preferred against
impugned judgment of conviction and sentence order dated
26.05.1995 passed by learned Ist Additional Sessions Judge,
Saharsa (hereinafter referred to as trial court) in Sessions Trial
No. 5 of 1984 by which and whereunder he convicted the sole
appellant for the offences punishable under Sections 302 and
201 of the Indian Penal Code and, accordingly, sentenced him to



undergo rigorous imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code, but no separate sentence was awarded to appellant for the offence punishable under Section 201 of the Indian Penal Code.

3. It is pertinent to note here that altogether five persons including appellant faced trial in the above stated Sessions Trial No. 5 of 1984, but four persons were acquitted of the charges framed against them for the offences punishable under Sections 302/149 and 201/149 of the Indian Penal Code by the same impugned judgment.

4. On 25.11.1979, a skeleton of unknown woman was recovered near railway track and one old *saree* having red border and one *lungi* soaked with blood were also recovered from there.

5. The officer-in-charge Rail Thana Saharsa recorded his self statement after recovery of skeleton and drawn up First Information Report for the offence punishable under Section 302 of the Indian Penal Code against unknown person and himself took the charge of investigation. However, after investigation, the charge-sheet under Sections 302, 201/34 of the Indian Penal Code was submitted against appellant and five other persons. Out of them, one charge-sheeted accused namely,



Debu Poddar was shown absconding.

6. The cognizance of the offence was taken and the case was committed to the Court of Sessions and, accordingly, appellant along with chargesheeted accused Ayodhya Poddar, Ramchandra Poddar, Rajendra Poddar and Tanuk Poddar were put on trial.

7. Appellant and the above-stated co-accused stood charged for the offences punishable under Sections 302/149 and 201/149, to which they denied and claimed to be tried.

8. In course of trial, prosecution examined, altogether, twelve prosecution witnesses and also got exhibited inquest report, forensic medical report as well as First Information Report. The statement of appellant and others were recorded under Section 313 of the Cr.P.C in which they denied the prosecution story and claimed themselves to be innocent.

9. No evidence was adduced by appellant and other accused persons in support of their defence, but from perusal of the statements recorded under Section 313 of the Cr.P.C as well as trends of cross-examination of the prosecution witnesses, it would appear that the defence of appellant and others, was total denial of the prosecution story.

10. Learned trial court after evaluating the prosecution



evidence convicted the appellant having relied upon the testimonies of P.W. 3, P.W. 4 and P.W. 6. The learned trial court also relied upon so-called extra judicial confession of the appellant made before P.W. 3 and P.W. 4.

11. Learned Amicus Curiae Ms. Surya Nilambari Advocate assailed the impugned judgment of conviction and sentence order submitting that the learned trial court failed to appreciate the evidence available on the record in its right perspective. She, further, submitted that P.W. 3 and P.W. 4 have, nowhere, in their respective depositions claimed that the appellant confessed before them that he had killed the deceased, rather P.W. 3 and P.W. 4 only claimed that when they inquired from appellant and his family members about the deceased, the appellant disclosed that the deceased was no more, but the learned trial court twisted the aforesaid statement of P.W. 3 and P.W. 4.

She next submitted that the seized saree and lungi were never put for identification. She argued that P.W. 3 and P.W. 4 claimed that they had seen the seized *lungi* and *saree* in court, but there is nothing in their evidence as to when that when they saw the seized *lungi* and *saree* in court rather P.W. 3 admitted that the seized *lungi* and *saree* were not before him



when his statement was recorded.

She further submitted that the Investigating Officer has not been examined and formal witnesses have proved the F.I.R as well as case diary and non-examination of informant and Investigating Officer has caused serious prejudice to appellant, as the appellant could not get an opportunity to bring the improvements made by P.W. 3 and P.W. 4 before the trial court.

She next submitted that P.W. 3, P.W. 4 and P.W. 6 have made contradictory statements and moreover, P.W. 3 and P.W. 4 claimed that on 21.11.1979 they met appellant and others at Saharsa railway station and, at that time, deceased was also with them, but it is surprising enough that P.W. 3 has, nowhere, stated that P.W. 4 was also there and similarly, P.W. 4 has also not stated that P.W. 3 was there. She further submitted that both the aforesaid witnesses are chance witnesses and, admittedly, P.W. 3 is maternal uncle of the deceased whereas, P.W. 4 is son-in-law of P.W. 3.

She next submitted that so far as P.W. 6 is concerned, he happens to be brother of the deceased and claimed that appellant disclosed that the deceased was no more, but even then P.W. 6 did not take any step to lodge the case or to give



information to police in respect of missing of the deceased and therefore, the above-stated conduct of P.W. 3, P.W. 4 and P.W. 6 makes the prosecution case doubtful.

She next submitted that prosecution could not succeed to establish this fact that seized remains of human body as well as clothes were of deceased and, therefore, it can be said without any hesitation that the prosecution miserably failed to prove the charges levelled against the appellant.

12. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that the prosecution proved its case beyond all shadow of reasonable doubts. He further submitted that P.W. 3 and P.W. 4 very clearly stated that they had seen the deceased in the company of appellant and others on 21.11.1979 and on that very date, the deceased was wearing white coloured *saree* with red border and the aforesaid *saree* was found near the recovered skeleton and, therefore, the aforesaid circumstance was sufficient to prove that appellant committed the murder of deceased.

13. Having heard the rival contentions of both the parties, we went through the record. Admittedly, the prosecution case hinges upon circumstantial evidence and none had seen the



actual killing of the deceased. It is also an admitted position that a headless skeleton was recovered and one *saree* with red border and one old *lungi* soaked with blood were recovered near the skeleton.

14. P.W. 3 and P.W. 4 claimed in course of trial that the recovered *saree* was of deceased, and they claimed that they had seen the deceased on 21.11.1979 and at that time she was wearing the aforesaid *saree*. However, P.W. 3 and P.W. 4 both claimed that they identified the aforesaid *saree* in court, but P.W. 3 at para 17 of his cross-examination admitted that the aforesaid *saree* was not before him at the time of his deposition. There is nothing on the entire record to show as to when the P.W. 3 saw the seized *saree* in court. Moreover, this witness expressed his inability to remember as to whether he had made statement before the police to this effect that he had seen the deceased wearing *saree* with red border on 21.11.1979. Admittedly, the Investigating Officer has not been examined and the defence could not get opportunity to show before the court that P.W. 3 improved his statement in course of trial. Similarly, P.W. 3 claimed that on 21.11.1979 he had seen the charge-sheeted accused Tanuk Poddar wearing blue coloured *lungi*, but the F.I.R goes to show that only one old *lungi* was recovered and



the colour of aforesaid *lungi* was not mentioned in the F.I.R and similarly, in inquest report, the colour of aforesaid *lungi* was also not mentioned. Apart from this, P.W. 3 admitted that he could not remember as to whether he had made statement before the police regarding the identification of recovered *lungi*. P.W. 3 further claimed that on 21.11.1979, when he met appellant and others as well as deceased, deceased disclosed that she was being taken to her natal place by appellant and others and she also disclosed that her in-laws used to quarrel with her on account of partition dispute. He further stated that after seven days of the alleged occurrence, he went to in-laws house of deceased and made inquiry about her and, thereafter, appellant Rajeshwar Poddar disclosed that Sarda Devi was no more. The aforesaid fact goes to show that appellant never made extra judicial confession before P.W. 3 to this effect that he had killed Sarda Devi, but the impugned judgment goes to show that the learned trial court treated the aforesaid statement of appellant as his extra judicial confession. However, P.W. 3 also claimed that the local *Mukhiya* and several other persons disclosed him that Sarda Devi was killed by appellant and others, but admittedly, the local *Mukhiya* and those persons, who made the aforesaid disclosure before P.W. 3 were not examined by the prosecution



in course of trial. It is also surprising that even after getting the information of killing of Sarda Devi, P.W. 3 did not give any information to police regarding killing of Sarda Devi. Although, P.W. 3 claimed that the appellant and others had given threat to him and that was the reason he did not go to police station to lodge the case, but the aforesaid explanation of P.W. 3 does not appear to be convincing. P.W. 3 claimed that appellant and others killed Sarda Devi, as they wanted to grab the share of Sarda Devi in ancestral property, but P.W. 3 admitted that Sarda Devi had two sons at the time of alleged occurrence and, therefore, the aforesaid fact goes to show that after death of Sarda Devi, her share would go to her sons and, therefore, there was no motive to the appellant and others to commit the murder of Sarda Devi. Moreover, P.W. 3 admitted that Sarda Devi disclosed about her torture by her in-laws for the first time on 21.11.1979, and, prior to that she had never disclosed the aforesaid fact to him.

15. It is also pertinent to note here that P.W. 3 has, nowhere, claimed that when he met appellant and others as well as Sarda Devi at Saharsa railway station, P.W. 4 was also with them. P.W. 4 is son-in-law of the P.W. 3 and he also claimed that he met appellant and others as well as Sarda Devi at Saharsa



railway station on 21.11.1979 and at that time Sarda Devi was wearing *saree* with red border and blue colour blouse. This witness claimed that subsequently, he along with P.W. 3, P.W. 6 and others went to inlaws house of Sarda Devi where appellant Rajeshwar Poddar disclosed that Sarda Devi was killed by him and others at Saharsa near railway track. This witness claimed that he had gone to court to identify the seized *saree*. It is pertinent to note here that P.W. 3 has, nowhere, stated that appellant Rajeshwar Poddar confessed before him and others that Sarda Devi was killed near railway track of Saharsa. Moreover, P.W. 4 admitted that he had not given any information to police regarding the aforesaid disclosure. This witness further admitted that appellant Rajeshwar Poddar told him that his relation with Sarda Devi was strained. This witness claimed that he had made statement before the police that on 21.11.1979, he had seen the appellant and others as well as Sarda Devi at Saharsa railway station, but as we have noticed that Investigating Officer could not be examined and due to non-examination of Investigating Officer, the aforesaid claim of P.W. 3 could not be tested.

16. After scrutinizing the entire evidence of P.W. 3 and P.W. 4 we come to the conclusion that it is very difficult to



place reliance upon the statement of P.W. 3 and P.W. 4. P.W. 6 Rajendra Poddar is a witness only on the fact of missing of Sarda Devi. This witness happens to be full brother of Sarda Devi and claims that appellant and his family members used to torture the deceased, as they were not in a mood to give Sarda Devi her share in ancestral property. This witness further claimed that on 25.11.1979, he went to the house of appellant, but he finds Sarda Devi missing from the house and when he inquired from appellant and charge-sheeted accused Tanuk Poddar, they disclosed that Sarda Devi was dropped at her natal place. Furthermore, this witness claims that having got the aforesaid information, he returned to his home, but he did not find Sarda Devi at his home and, thereafter, he along with P.W. 3, P.W. 4 and others again went to the house of appellant where appellant and charge-sheeted accused Tanuk Poddar said that Sarda Devi had been sent to another world and, thereafter, he went to Saharsa where he lodged the case, but there is nothing on the record to show that P.W. 6 had lodged any case in respect of killing of Sarda Devi as we have already stated that the present case was lodged by Rail Police official after recovery of unknown skeleton of a woman. It is apparent that there are several infirmities, contradictions and improvements in the



statements of P.W. 3, P.W. 4 and P.W. 6 and, therefore, it is difficult to place reliance upon the testimonies of P.W. 3, P.W. 4 and P.W. 6. Moreover, P.W. 6 never turned up for cross-examination and, therefore, his examination-in-chief becomes redundant.

17. The statement of appellant was recorded under Section 313 of the Cr.P.C, but perusal of his statement recorded under Section 313 of the Cr.P.C goes to show that the learned trial court failed to place the fact before him while recording his statement that on 21.11.1979 he was seen in the company of Sarda Devi and others and non-placing of the aforesaid important fact before appellant, caused serious prejudice to him. Similarly, the fact of so-called extra judicial confession made by appellant before P.W. 3 and P.W. 4 was also not placed before him at the time of recording his statement under Section 313 of the Cr.P.C and, therefore, in our view, a serious prejudice has been caused to the appellant, as the appellant could not get an opportunity to explain the aforesaid circumstances.

18. Therefore, on the basis of aforesaid discussions, we are of the view that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the impugned judgment of conviction and sentence order passed by



the trial court against the appellant could not sustain in the eye of law.

19. Accordingly, the impugned judgment of conviction and sentence order dated 26.05.1995 is, hereby, set aside. The appellant is acquitted of the charges framed against him. The appellant is on bail. He is discharged from the liabilities of his bail bonds.

20. Copy of first and last page of this judgment be handed over to Ms. Surya Nilambari Advocate, so that she could claim her remuneration before the competent authority.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

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