

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.63 of 1995

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Jogendra Paswan @ Yogendrra Paswan son of late Ramcharan Paswan,
resident of mohalla Sabeb Para P.S. and district Katihar.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Kaushal Kr. Jha, Advocate
For the Respondent/s : MR.PP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

Date : 29-04-2019

The sole appellant has been convicted vide impugned judgment dated 06.04.1995 passed by learned 2nd Additional Sessions Judge, Katihar in Sessions Trial No. 7/89 for the offences punishable under Sections 420,302 and 201 of the Indian Penal Code and accordingly, has been sentenced vide sentence order dated 12.04.1995 to undergo imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code and to undergo rigorous imprisonment for two years for the offence punishable under Section 420 of the Indian Penal Code. No separate sentence was awarded to the appellant for the offence punishable under Section 201 of the Indian



Penal Code. The appellant was acquitted from the charges framed against him for the offences punishable under Sections 120-B and 364 of the IPC. By the same impugned judgement, the co-accused, Janki Devi, was acquitted from the charges framed against her.

2. The appellant has challenged the impugned judgment of conviction and sentence order dated 06.04.1995 and 12.04.1995 respectively, passed by the learned Additional Sessions Judge, Katihar, in Sessions Trial No. 7 of 1989 by filing this appeal.

3. Briefly stated the prosecution case is that P.W. 2, namely, Badri Rai, gave written report to the Officer-in-Charge of Katihar Police Station on 03.05.1988 stating therein that appellant had taken Rs. 8,000/- from him on pretext to get his son namely, Kamleshari Rai, employed and when even after lapse of near about six months, his son could not get any job, his son started demanding the aforesaid amount but appellant did not return the above stated amount on this or that pretext. P.W. 2, further stated in his written report that on 15.04.1988 at about 6 P.M., his son went to the house of appellant on cycle to make demand of his money but he did not return and, thereafter, informant (P.W. 2) searched his son but could not succeed to



trace him out.

4. On the basis of aforesaid written report Katihar P.S. Case No. 194 of 1988, was registered for the offences punishable under Sections 420 and 364 of the I.P.C., and, accordingly, formal F.I.R. was drawn up against the appellant for the above stated offences on the same day. However, subsequently, Sections 302, 201 and 120-B were also added in the F.I.R. on 5.5.1988.

5. P.W. 13, Shamim Ahmad Khan, took the charge of investigation and in course of investigation, he inspected the house of appellant, recovered human hair and skin from the house of the appellant. He prepared seizure list of the aforesaid recovery which has been marked as Ext. 3. P.W. 13 recorded the confessional statement of appellant and on the basis of his confessional statement, he recovered some human bones, clothes and slippers near Laliahi bridge. P.W. 13 prepared seizure list of the aforesaid recovery which has been marked as Ext. 3/1. He arranged Test Identification Parade (T.I.P.) of the recovered articles and claimed that the witnesses, who participated in T.I.P., identified the articles. However, after completion of investigation, P.W. 13 submitted charge sheet against appellant and co-accused Janki Devi, for above stated



offences.

6. The cognizance of the offence was taken and case was committed to the court of sessions, in usual way.

7. The appellant and co-accused, Janki Devi were put on trial and, accordingly, appellant and co-accused, Janki Devi, stood charged for the offences punishable under Sections 302, 201, 120-B and 364 of the Indian Penal Code, whereas appellant was separately charged for the offences punishable under Section 420 of the Indian Penal Code. The appellant as well as co-accused denied the charges and claimed to be tried.

8. In course of trial, prosecution examined, altogether, 13 prosecution witnesses and also got exhibited formal F.I.R., as Ext. 1, signatures of prosecution witnesses as Ext. 2 series, seizure list as Ext. 3 series and endorsement on written report as Ext. 4.

9. The statements of appellant and co-accused Janki Devi, were recorded under Section 313 of the Cr.P.C., in which they reiterated their innocence. However, no evidence was adduced by appellant as well as co-accused in support of their defence but from perusal of statements recorded under Section 313 of the Cr.P.C., as well as trends of cross-examination of prosecution witnesses, it appears that the defence of the



appellant as well as co-accused was total denial of prosecution story.

10. The learned trial court after analyzing the prosecution evidence convicted the appellant having relied upon his confessional statement leading to recovery of bones, clothes and slippers. However, learned trial court acquitted the co-accused Janki Devi, from the charges.

11. Learned counsel appearing for the appellant assailed the impugned judgment of conviction and sentence order arguing that the learned trial court failed to take note of this fact that the so-called confessional statement of appellant was not brought on record. He further submitted that learned Trial Court also failed to take note of this fact that no T.I.P., chart of recovered articles was brought on record nor the learned Judicial Magistrate, who did T.I.P., was examined. He, further, submitted that learned court also failed to take note of this fact that prosecution could not succeed to prove this fact that seized hair, skin and bones were of human being because no F.S.L., report was brought on record. He submitted that the learned trial court committed error in ignoring the aforesaid infirmities of the prosecution case. He, further, submitted that according to prosecution case itself, none had seen the actual killer of the



deceased and the entire prosecution was based upon the circumstantial evidence but as a matter of fact, prosecution could not succeed to prove the complete chain of circumstances, which could point out fingers towards the guilt of appellant. He, further, submitted that no doubt, some prosecution witnesses, who happen to be family members of P.W. 2, claimed that the appellant had taken Rs. 8,000/- on pretext to get employment to the deceased but except the oral evidence, there was nothing before the trial court to prove that the appellant had taken even a single pie either from P.W. 2 or from the deceased. He submitted that the aforesaid claim of prosecution witnesses appears to be doubtful, particularly, in the circumstance when P.W. 13 admitted in his cross-examination that during course of investigation, some witnesses claimed before him that the deceased had illicit relation with wife of appellant. He, further, submitted that the witnesses, who claimed about the illicit relation of deceased with the wife of appellant, were intentionally not produced by the prosecution

12. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order, arguing that the prosecution witnesses including P.W. 2 as well as his son very clearly stated that appellant had



taken Rs. 8,000/- from P.W. 2 on pretext to provide job to deceased and when appellant failed to provide job to deceased, the deceased demanded his money back and that was the reason appellant committed the murder of deceased. He, further, submitted that remains of skin and hair of deceased were recovered from the house of appellant, when P.W. 13 got dug the room of appellant and, thereafter, appellant was arrested and confessed his guilt leading to recovery of human bones, clothes and slippers and, subsequently, witnesses identified the clothes and slippers of deceased. He submitted that the aforesaid circumstances were sufficient to show that it was appellant, who committed the murder of deceased in his house and, subsequently, threw his dead-body near Laliahi bridge and, therefore, learned trial court rightly convicted and sentenced the appellant.

13. Having heard the above stated contentions of the parties, we went through the records along with the lower court records.

14. On perusal of evidence available on lower court records, we find that P.W. 8, P.W. 9 and P.W. 10 have been tendered by the prosecution and they have stated nothing in respect of the alleged occurrence. Similarly, P.W. 12, Awadhesh



Kumar Mishra, has been declared hostile and stated nothing in respect of the alleged occurrence. Furthermore, we find that P.W. 1 is a formal witness who has proved formal FIR whereas P.W. 13 is Investigating Officer.

15. The material prosecution witnesses are P.W. 2, Badri Rai (informant), P.W. 3, Ramsingari Devi, the wife of deceased, P.W. 4, Bhola Rai, brother of deceased and P.W. 6, another brother of deceased. Furthermore, we find that P.W. 5 and P.W. 7 are witnesses of seizure list.

16. P.W. 2, Badri Rai, is the informant of this case and he has supported the averments made in his written report. He claimed that after institution of the case when police visited the house of appellant, his house was found locked and when the lock was got opened, a bad smell was coming out from the house of the appellant and after that Daroga got dug at one place in the house of appellant from where dead body of his son was recovered. P.W. 2, further claimed that he had narrated the entire incident to his daughter-in-law (P.W. 3). This witness stated that he had given money to appellant but no document regarding the aforesaid payment was executed though he had consulted P.W. 6 before handing over money to appellant. This witness further admitted that after 8-10 days of missing of his son, he lodged



the case. However, this witness admitted at para 9 of his cross-examination that he had not seen the dead body of his son.

17. P.W. 3 is the wife of deceased. This witness admitted in her cross-examination that she had no personal knowledge regarding the case. However, she claimed that she had identified bones and clothes of her husband.

18. P.W. 4, Bhola Rai, and P.W. 6, Ram Chandra Rai, are full brothers of deceased Kamleshwari Rai. Both the aforesaid witnesses claimed that the appellant had taken Rs. 8,000/- on pretext to get provide job to Kamleshwary Rai but failed to manage any job and also failed to return the aforesaid amount. The aforesaid witnesses further claimed that Kamleshwary Rai had gone to the house of appellant on 15.04.1988 for making demand of return of his money but did not return till morning 16.04.1988 and after that they went to the house of appellant and made enquiry about the whereabouts of deceased Kamleshwary Rai, but appellant stated that Kamleshwary Rai, had not come to his house. P.W. 4 claimed that on 23.04.1988, he along with P.W. 5, Sunil Kumar Singh, and P.W. 7, Bhikhari Kumar Rai, again went to the house of appellant and made an enquiry but the appellant gave similar reply and fled away from there after locking his house. P.W. 4 and P.W. 6 claimed that



police broke the lock of the house of appellant and after digging the earth, recovered the dead body of Kamleshwary Rai. P.W. 4, Ram Chandra Rai, at para 5 of his cross-examination stated that human dead body was recovered from the house of the appellant. Similarly, P.W. 6 claimed that he witnessed when the recovery of dead body was made from the house of the appellant.

19. P.W. 5, Sunil Kumar Singh, claimed that he witnessed the recovery made from the house of the appellant and had put his signature on seizure list. Similarly P.W. 7, Bhikhari Kumar Rai, claimed that on 04.05.1989 he had gone to the house of appellant and in his presence the lock of the house of the appellant was broken and after digging in the house of appellant, hair and skin were recovered.

20. P.W. 11, Savitri Devi, identified her signature on the seizure list but stated that the seizure list was not prepared in her presence nor was she made aware about the contents of seizure list. She further stated that she signed the documents on the direction of police.

21. P.W. 13, Shamim Ahmad Khan, the Investigating Officer, claimed at para 6 of his examination in chief that the appellant confessed before him that after committing the murder



of Kamleshwary Rai, he buried his dead body inside his house and after some days he exhumed the dead body and kept in a gunny bag and threw near Laliahi bridge. P.W. 13 further claimed that on the basis of aforesaid confessional statement, he went to near Laliahi bridge, where human bones, clothes etc., were recovered in presence of Sambhu Nath Jha and Radha Krishna Rai. P.W. 13 further claimed that on his dictation A.S.I., Ram Janam Sharma, prepared seizure list which has been marked as Ext. 3/1. This witness further claimed that after institution of the case, human hair and skin were recovered from the house of the appellant. He also claimed that the seized articles were put in Test Identification Parade and the witnesses identified the seized articles. However, on being cross-examined by the defence, this witness claimed that he had sent the seized hair and skin to Forensic Science Laboratory for examination but he expressed his ignorance about the report of Forensic Science Laboratory. This witness further admitted at para 12 of his cross-examination that the appellant had disclosed before him that the deceased had illicit relation with his wife that was the reason, he committed the murder of deceased but he did not investigate the case on the above stated point. This witness further admitted that he had sent the recovered bones for



examination to Darbhanga Medical College and Hospital but report was not received by him in course of investigation.

22. On perusal of entire prosecution evidence it is explicit clear that not a single witness claimed to have seen the appellant committing the murder of deceased nor carrying the dead body of deceased up to Laliahi Bridge. No doubt, P.W. 13 and other witnesses claimed that human hair and skin were recovered from the house of the appellant and the aforesaid recovered hair and skin were sent to Forensic Science Laboratory for chemical examination but admittedly, prosecution could not succeed to bring any Forensic Science Laboratory report in respect of seized hair and skin and therefore, there is nothing on the record on the basis of which it can be said that the recovered hair and skin were of human being. Similarly, the seized bones were also sent to Darbhanga Medical College and Hospital for examination but admittedly, no report of Darbhanga Medical College and Hospital in respect of the aforesaid bones was produced and in absence of the report, it is very difficult to believe that the seized bones were of bones of human beings.

23. P.W. 3 claimed before the Court that she had identified the clothes of her husband but no T.I.P., chart has been brought on record by the prosecution nor the Magistrate, who



held the Test Identification Parade of clothes and other seized articles was examined. Therefore, in absence of T.I.P. chart as well as statement of Magistrate, who held the Test Identification Parade of the seized articles, it is difficult to rely upon the claim of P.W. 3.

24. Admittedly, the prosecution case hinges upon so called recovery of hair, clothes and bones but from perusal of statement of appellant recorded so called under Section 313 of the Cr.P.C., we find that no question regarding recovery of bones and cloths from near Laliahi Bridge on the basis of so called confessional statement of appellant, was put before him while recording his statement under Section 313 Cr.P.C. Therefore, it is apparent that the appellant could not get an opportunity to explain the so-called confessional statement leading to recovery of bones, clothes etc., from near Laliahi Bridge, and therefore, in the aforesaid circumstance a serious prejudice has been caused to the appellant.

25. On the basis of aforesaid discussions, we are of the opinion that the prosecution failed to prove complete chain of circumstances to prove the guilt of the appellant and, in our view, the appellant is entitled to get benefit of doubt.

26. On the basis of aforesaid discussions, we are of the



opinion that the prosecution failed to prove the charges levelled against the appellant beyond all shadow of reasonable doubts. Accordingly, this criminal appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. The appellant is acquitted of the charges. The appellant is on bail. He is discharged from the liabilities of his bail bonds

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

