

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.165 of 1995

1. ASHOK RAI Son of Sri Sonelal Rai,
2. Chulhai Rai Son of Rajdeo Rai,
Both resident of Saidpur Milki, P.S. Tajpur, District Samastipur

... .. Appellants

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	M/s Shailendra Kumar Singh, Advocate Surya Nilambari, Amicus Curiae
For the Informant	:	M/s Vishwanath Prasad Sinha, Sr. Advocate Sanjay Kumar Singh
For the State	:	Mr. Dilip Kumar Sinha, APP

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

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

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

Date : 26-06-2019

This criminal appeal has been preferred against Judgment of conviction and sentence Order dated 26.6.1995 passed by the learned 1st Additional Sessions Judge, Samastipur, in Sessions Trial No. 6 of 1987, arising out of Patory P.S. Case No. 19 of 1986, by which and whereunder he convicted the appellants for the offences punishable under Section 467 and 201 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years for the offence punishable under Section 467 of the Indian Penal Code and to undergo imprisonment for 2 ½ years for the offence punishable under



Section 201 of the Indian Penal Code. The learned trial court directed that the above stated sentences on each count shall run consecutively. It is pertinent to note here that by the impugned judgment, learned trial court acquitted the appellants from the charges framed against them for the offences punishable under Sections 302 and 302/201 of the Indian Penal Code.

2. It is pertinent to note here that the State of Bihar aggrieved by acquittal of appellants for the charges framed under Section 302, 302/201 of the Indian Penal Code preferred Government Appeal No. 35 of 1995, which was dismissed by a Co-ordinate Bench of this Court *vide* order dated 26.9.1996.

3. Briefly stated prosecution case is that P.W. 7, Sukhlal Paswan, Chaukidar of Bit No. 1/7, gave his *fard-e-beyan* before S.I. of Patory P.S. on 13.2.1986 at about 10.00 A.M., to this effect, that in the night of 12.2.1986, Chaukidar Sita Ram Paswan (P.W. 6) gave information to him that a dead body was lying near well situated at Situahi Ghat. Having got the aforesaid information, he as well as P.W. 6 send Sital Rai to Hetanpur Centre for giving information in respect of the above stated information. P.W. 7 as well as P.W. 6 remained near the place of occurrence for whole night. The dead body could not



be identified. P.W. 7, further, claimed that in the evening of 12.2.1986, when Fuleshwar Ram (P.W. 4) had gone to see his well, he noticed a gunny bag in the well. When he took out the aforesaid gunny bag and untied the gunny bag, one dead body of a women aged about 65 years came out from the aforesaid gunny bag. P.W. 7 claimed that some unknown persons having committed the murder of the aforesaid old woman threw the dead body in the above stated well.

4. On the basis of aforesaid *fard-e-beyan* of P.W. 7, Patori P.S. case No. 19 of 1986 for the offence punishable under Section 302 of the Indian Penal Code was registered and, accordingly, formal first information report was drawn up against unknown persons. P.W. 19 Mithileshwar Prasad Sharma took charge of investigation. He inspected the place of occurrence and recorded the statement of witnesses. In course of investigation, P.W. 9 Laldeo Rai learnt from P.W. 7 that a dead body was found from a well and having got the aforesaid information, P.W.9 along with others went to concerned police station and having seen the photographs of recovered dead body, they claimed that the aforesaid photographs were of deceased Chandrawati Devi, who was aunt of P.W.9. However, P.W.19 completed the investigation,



submitted chargesheet against the appellants and one Binod Kumar Rai for the offences punishable under Sections 302, 201, 420, 467, 465, 468 of the Indian Penal Code. The cognizance of the offences was taken and the case was committed to the court of sessions, in usual way. Accordingly, the appellants along with co-accused Binod Kumar Rai were put on trial before sessions court in Sessions Trial No. 6 of 1987.

5. The appellants along with co-accused Binod Kumar Rai stood charged for the offences punishable under Sections 468, 468/201, 302 and 302/201 of the Indian Penal Code. The charges were read over and explained to them to which they denied and claimed to be tried. However, during the pendency of the trial, the co-accused Binod Kumar Rai was found juvenile and, accordingly, his trial was separated and was sent to competent authority for trial.

6. In course of trial, prosecution examined, altogether, 23 prosecution witnesses and got exhibited some documents as documentary evidence. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they reiterated their innocence and claimed their false implication. One defence witness was produce by the appellants in their defence and from perusal of the statements recorded



under Section 313 of the Cr.P.C. as well as trends of cross examination of prosecution witnesses, it is obvious that the appellants claimed that they had never got executed any gift deed from deceased Chandrawati Devi nor they had committed murder of deceased Chandrawati Devi.

7. The learned trial court, after analysing the evidence of the prosecution, acquitted the appellants from the charges framed against them under Sections 302, 302/201 of the Indian Penal Code but convicted them for the offences punishable under Sections 467 and 201 of the Indian Penal Code having relied upon the testimonies of P.W.16, P.W. 20, P.W. 21 as well as exhibit 4.

8. Shri Shailender Kumar Singh, learned counsel appearing for appellant no. 2, Chulhai Rai, challenged the impugned judgment of conviction and sentence order, arguing that the learned trial court failed to appreciate the prosecution evidence properly. Continuing his submission, he submitted that in course of trial, prosecution filed registered sale deed dated 25.09.1956 (Ext. 4) said to be executed by one Lakshminiya Devi in favour of P.W.16 Sita Ram Rai and also summoned L.T.I. Register of Registry Office, Dalsinghsarai. He, further, submitted that the prosecution got compared the thumb



impression of Lakshminiya Devi with the so-called thumb impression of Chandrawati Devi affixed on gift deed (Ext. 12) and P.W. 21, who is a handwriting expert, in his deposition claimed that the thumb impression found on exhibit 8 as well as thumb impression found on exhibit 12 are both of the same person. He, further, submitted that the learned trial court having taken note of the aforesaid fact, passed the impugned judgment of conviction and sentence order. He submitted that the learned trial court failed to take note of this fact that the appellant no. 2, specifically, denied in his statement recorded under Section 313 of the Cr. P. C that he had never signed the gift deed (Ext. 12) and, admittedly, prosecution did not take any step to get the signature of appellant no. 2 compared and, therefore, in the aforesaid circumstance, it is obvious that the prosecution failed to prove that the gift deed (Ext. 12) was manufactured by the appellant no. 2.

9. Learned *Amicus Curiae* Miss Surya Nilambari appearing for the appellant no. 1 assailed the impugned judgment of conviction and sentence order arguing that, admittedly, the gift deed (Ext. 12) does not contain the signature or thump impression of appellant no. 1. She submits that no doubt, according to Ext. 12, the appellant no. 1 happens



to be beneficiary but only on the ground that the gift deed had been executed in favour of the appellant no. 1, it cannot be said that the document in question was got prepared by the appellant. She, further, submits that both the appellants were of tendered age, which is evident from the perusal of impugned judgment as well as statements recorded under Section 313 of the Cr. P. C.

10. On the other hand, learned Senior Counsel, Shri Vishwanath Prasad Sinha, appearing for the informant refuted the above stated submissions arguing that the learned trial court rightly convicted the appellants. He submits that the execution and existence of gift deed (Ext 12) is not in dispute and the Ext.12, gift deed in question, clearly goes to show that appellant no. 1 was beneficiary of the aforesaid gift deed whereas appellant No. 2 identified the thumb impression of executor of the said gift deed. He, further, submitted that prosecution proved in course of trial that the thumb impression affixed on Ext. 12 was not of Chandrawati Devi rather the said thumb impression was of Lakshminiya Devi and, therefore, the aforesaid circumstance, clearly, goes to show that deceased Chandrawati Devi was impersonated by the Lakshminiya Devi and, furthermore, it is also established that appellants had prepared forged and, fabricated document.



11. Learned Additional Public Prosecutor, Shri Dilip Kumar Sinha, seconded the submissions advanced on behalf of the informant.

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

13. Admittedly, the appellants were charged for the offences punishable under Sections 302, 302/201, 468/201 and 468 of the Indian Penal Code and they were acquitted from the charges framed against them under Sections 302 and 302/201 of the Indian Penal Code. It is also an admitted position that the State of Bihar preferred Govt. Appeal No. 35 of 1995 against the judgment of acquittal, which was dismissed *vide* order dated 29.06.1996. Therefore, it is obvious that that acquittal of appellants from the charges of Sections 302 and 302/201 of the Indian Penal Code has already been confirmed. Therefore, the only question arises in this appeal, as to whether, the learned trial court rightly convicted the appellants for the offences punishable under Sections 467 and 201 of the Indian Penal Code or not.

14. P.W.1 Harihar Mahto is an employee of Registry Office, Dalsinghsarai. This witness produced the



thumb impression register of original deed of gift dated 07.01.1986 before the trial court. On cross examined, this witness admits that he does not know about the contents of gift deed dated 07.01.1986.

15. P.W. 3 Arvind Thakur states that the statement of one Lakshminiya Devi was recorded under section 164 of the Cr. P. C by Shri B. S. Singh, the then Judicial Magistrate in his presence. This witness proved the statement of aforesaid Lakshminiya Devi recorded under Section 164 of the Cr. P. C as Ext. 1.

16. P.W. 4 Fuleshwar Rai, P.W. 5 Bidya Rai, P.W. 6 Sita Ram Paswan, P.W. 7 Sukhlal Paswan are the witnesses either on the point of recovery of the dead body or identification of the dead body and they have stated nothing in respect of execution of gift deed dated 07.01.1986.

17. P.W. 8 Dina Nath Singh is a formal witness and this witness has also stated nothing in respect of execution of the gift deed in question.

18. P.W. 9 Laldeo Rai states that on 11.02.1986, he saw the appellant Ashok Rai going towards Patori along with deceased Chandrawati Devi and after sometime, he noticed that the appellant Chulahi Rai and others were also going



towards Patori but when deceased Chandrawati did not return till late night, he doubted that the appellant Ashok Rai as well as others took the deceased for execution of some deeds in respect of her lands and, thereafter, on 12.02.1986 he went to Samastipur Registry Office and inquired about execution of any deed in name of deceased Chandrawati Devi but he learned that no deed had been executed by deceased Chandrawati Devi and, thereafter, he returned to his home. He, further, claims that again, he went to Registry Office, Mahua and inquired about the execution of any deed by the deceased Chandrawati Devi but could not succeed to trace out any deed executed by deceased Chandrawati Devi. He, further, submitted that he, again, went to Registry Office, Dalsinghsarai, where one Jamun Rai disclosed that one document had been executed in the name of Chandrawati Devi on 07.01.1986 and the aforesaid document had been executed in favour of the appellant Ashok Rai. He, further, claims that while he was returning from Registry Office, Dalsinghsarai, he met P.W. 6 Sitaram Paswan, who disclosed about the recovery of dead body, thereafter, he as well as others went to concerned police station and identified the photographs of deceased Chandrawati Devi. This witness, further, claims that he again went to Registry Office, Dalsinghsarai and obtained a



certified copy of gift deed dated 07.01.1986 and then came to know that the aforesaid deed was executed in favour of appellant Ashok Rai and the appellant no. 2 Chulhai Rai had identified the execution of the aforesaid document and P.W. 2 Ginesh Lal Rai was witness on the aforesaid gift deed. He, further, claims that he went to village Mohanpur and inquired from Sita Ram Paswan P.W. 6 and Lakshminiya Devi about execution of gift deed dated 07.01.1986 and then he came to know that deceased Chandrawati Devi was impersonated by above stated Lakshminiya Devi and, thereafter, he gave a petition to Superintendent of Police. He, further, claims that the statement of Lakshminiya Devi was recorded under Section 164 of the Cr.P.C.. This witness admitted in his cross examination that on 15.02.1986, he came to know about execution of gift deed dated 07.01.1986.

19. P.W. 10 Monawati is *Gotia* of deceased Chandrawati but she has, no where, stated about the execution of gift deed dated 7.2.1986 in her examination-in-chief. This witness happens to be the mother of P.W. 9 Laldeo Rai. This witness admits in her examination-in-chief that deceased Chandrawati used to reside with appellant Ashok Rai as well as co-accused Binod Kumar Rai. The defence has given suggestion



to this witness that P.W. 9 had greedy eyes on the property of deceased Chandrawati Devi that was the reason she has made false statement before the court although this witness has denied the aforesaid suggestion but it is significant to note that the appellants from the very inception of the case claims their false implication.

20. P.W. 11 Suraj Rai has been tendered by the prosecution witness whereas P.W. 12 Mahenddra Rai and P.W.13 Shiv Chandra Rai have stated nothing in respect of execution of gift deed dated 07.01.1986 and, therefore, the testimonies of the aforesaid witnesses are not relevant for proving the charges framed against the appellants.

21. P.W. 14 Ayodhya Rai happens to be brother-in-law of the deceased Chandrawati Devi and this witness also admitted that the deceased Chandrawati Devi was residing with appellant no. 1 Ashok Rai. This witness also claimed that he went to Registry Office, Dalsinghsarai where Jamun Rai disclosed that one month back deceased Chandrawati had transferred her land in favour of appellant no. 1 Ashok Rai. This witness claimed that he took the certified copy of the deed executed by deceased Chandrawati Devi. On being cross examined by the defence, this witness admitted at para 6 of his



cross examination that he resides in the same courtyard in which P.W. 9 Laldeo Rai resides and this witness *suo motu* admits that P.W.9 Laldeo Rai is his nephew.

22. P.W. 15 Arvind Thakur is a formal witness and this witness has stated nothing regarding execution of gift deed dated 07.01.1986.

23. P.W.16 Sita Ram Rai is resident of village Mohanpur and this witness claims that he had executed one sale deed in favour of Laxmi Kuwari wife of Jaggi Rai @ Doggi Rai. This witness proved the aforesaid sale deed as Ext. 4 as well as endorsement on the aforesaid sale deed as Ext. 5. This witness claims that the aforesaid Laxxi Kuwari is also called Lakshminiya Devi.

24. P.W.17 is doctor, who had conducted the postmortem examination on the corpus of the deceased and the statement of P.W. 17 is not much relevant for disposal of the present appeal.

25. P.W. 18 Sashinath Lal Das is a police official and this witness claims that he had taken charge of investigation of Patori P. S. Case no. 19 of 1986 from the then Officer-in-charge M. P. Sharma (P.W.19) and in course of investigation, on 24.05.1986, he arrested Lakshminiya Devi and recorded her



statement. This witness also claims that he got recorded the statement of aforesaid Lakshminiya Devi under Section 164 of the Cr. P. C before Judicial Magistrate, Samastipur. This witness claims that in course of investigation, he learnt that deceased Chandrawati Devi was impersonated by aforesaid Lakshminiya Devi at the time of execution of gift deed dated 07.01.1986. However, this witness admits that aforesaid Lakshminiya Devi was released after taking her thumb impression on plain paper by the order of Superintendent of Police. This witness, further, admits at para 6 of his cross examination that he had sent the thumb impression of Lakshminiya Devi for examination .

26. P.W.19 Mithileshwar Prasad Sharma is the first Investigating Officer and this witness states that in course investigation, he went to Registry Office, Dalsinghsarai on 06.03.1986 and asked the photocopy of gift deed dated 07.01.1986 from the competent authority. The competent authority refused to handover the photostat copy of the aforesaid document to him. This witness admitted in his cross examination that he had not seen the original document or the concerned register of Registry Office, Dalsinghsarai.

27. P.W. 20 Arun Kumar Mishra and PW-22 Mahesh Kumar are photographers and they had taken



photographs of the thumb impression. However, deposition of P.W. 20 does not reflect as to from which document the photograph of thumb impression was taken by him. So far as P.W.22 is concerned, it appears that he had taken photograph of thumb impression of Lakshminiya Devi from register of Registry Office.

28. P.W. 21 Shrikant Choudhary is handwriting expert. This witness claimed in his examination in chief that he compared the thumb impressions send to him by the Public Prosecutor, Samastipur, and, further, claims that after comparison of thumb impressions, he came to conclusion that all the thumb impressions except one, were of the same person.

29. It is an admitted position that on the basis of aforesaid statement of P.W. 21, the learned trial court convicted the appellants for the offences punishable under Sections 467 and 201 of the Indian Penal Code. Therefore, it is obvious that the learned trial court has taken into consideration the only circumstance that the gift deed dated 07.01.1986 does not contain the signature of deceased Chandrawati Devi. Admittedly, the so-called thumb impression/signature of appellant no. 2 Chulhari Rai found on gift deed dated 07.01.1986 was not examined by any expert and, therefore, it



can be said that the appellant no. 2 had put his thumb impression or had signed the gift deed dated 7.1.1986 particularly, in the circumstance, when the appellant no. 2 has, specifically, denied his signature and thumb impression on gift deed dated 07.01.1986.

30. In our view, it was incumbent duty of the prosecution to prove that the thumb impression found on gift deed dated 07.01.1986 was of appellant no. 2 Chulhai Rai but prosecution failed to prove the aforesaid fact. So far as appellant no. 1 Ashok Rai is concerned, admittedly, the gift deed dated 07.01.1986 does not contain either his signature or thumb impression and the only fact which goes against him that the aforesaid gift deed has been executed in his favour and he was beneficiary of the aforesaid gift deed but only on this ground, it can not be said that appellant no. 1 had participated in forging the aforesaid document, especially, in the circumstance when appellant Ashok Rai as well as appellant Chulhai Rai were of tendered age at the time of execution of gift deed. Moreover, in our view, prosecution could not succeed to prove this fact that the appellants were involved in manufacturing and forging the aforesaid gift deed dated 07.01.1986 and, accordingly, in our view, the learned trial court has committed error in convicting



the appellants for the offences punishable under Sections 467 and 201 of the Indian penal Code.

31. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

32. Let the copy of the first page and last page of this judgment be handed over to Ms. Surya Nilambari, learned *Amicus Curiae*, so that she could make claim for her remuneration before the appropriate authority.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
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