

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.895 of 2013

Arising Out of PS. Case No.-55 Year-2009 Thana- NAVINAGAR District- Aurangabad

Badri Singh Son of Late Janki Singh R/o Vill.- Thengo, P.S. - Navinagar,
Distt.- Aurangabad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 826 of 2013

Arising Out of PS. Case No.-55 Year-2009 Thana- NAVINAGAR District- Aurangabad

Vijay Thakur Son of Sri Doman Thakur Resident of Village - Thengo, P.S. -
Nabinagar and District - Aurangabad

... .. Appellant/s

Versus

The State of Bihar through The Chief Secretary, Govt. of Bihar (Patna)

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 895 of 2013)

For the Appellant/s : Dr. Leelawati Kumari

(In CRIMINAL APPEAL (DB) No. 826 of 2013)

For the Appellant/s : Mr. Praveen Kumar, Amicus Curiae

Mr. Shivesh Chandra Mishra

Mr. Anirudh Kumar Verma

For the Informant/s : Ms. Roona, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 01-04-2019

As the aforesaid both criminal appeals have
cropped up from the same judgment and order of conviction and
sentence, hence, they are taken up together for consideration



and disposed of by this common judgment.

2. Heard Mr. Praveen Kumar, learned Amicus Curiae for the appellants, Ms. Roona learned counsel for the informant as well as Mr. Ajay Mishra learned Addl. Public Prosecutors in the aforesaid appeals.

3. The aforesaid two criminal appeals have been preferred against the judgment and order of conviction dated 17.07.2013 and order of sentence dated 22.07.2013 passed by learned Adhoc Additional Sessions Judge-I, Aurangabad in Sessions Trial No. 163 of 2009 arising out of Navinagar P.S. Case No. 55 of 2009 whereby the learned trial court convicted the accused Vijay Thakur and Badri Singh for the offence punishable under Sections 302/34, 201 and 120(B) of the Indian Penal Code and sentenced them to undergo life imprisonment and also slapped them with a fine of Rs. 2,000/- each and in default of payment of fine to further undergo S.I. for one month under Sections 302/34 and 120(B) of the Indian Penal Code and further sentenced them to undergo S.I. for three years and also slapped them with a fine of Rs. 1,000/- each and in default of payment of fine to further undergo S.I. for 15 days under Section 201 of the Indian Penal Code. All the sentence were directed to run concurrently.



4. The factual matrix of the case is that Navinagar P.S. Case No. 55 of 2009 was instituted under Sections 302, 201 and 120(B) of the Indian Penal Code against accused Badri Singh and Vijay Thakur on the basis of written report of Ram Naresh Sao S/o Late Ram Jatan Sao scribed by Sudarshan Sao dated 26.04.2009 addressed to S.H.O., Navinagar, Aurangabad with the allegation, in succinct that on 16.04.2009 at around 10:00 AM, son of the informant, namely, Anand Kumar Gupta was taken by the accused Badri Singh and Vijay Thakur to Sone river on the pretext of fishing. At 12:00 O'clock, Vijay Thakur arriving to him informed that his son Anand Kumar Gupta has drowned in the Sone river in the course of fishing. Then, he along with villagers made search of his son in the Sone river, but in vain. On the following day, on 17.04.2009 during the course of search, dead body of his son was found in the Sone river near Koiridih and Dangwar village. U.D. Case No. 04/09 was lodged on 17.04.2009 regarding the aforesaid occurrence. Badri Singh and Vijay Thakur absconded from the village. On making clandestine inquiry of the occurrence, he learnt that Badri Singh and Vijay Thakur after committing murder of his son had dumped his dead body in the Sone river. Further allegation is that he had forbidden Badri Singh to enter into his



house 15-20 days back. Whereupon, he had extended threatening of dire consequence. Postmortem report of his son indicates that death of his son was not caused due to drowning rather due to strangulation. He has claimed that both the aforesaid accused persons taking his son on the pretext of fishing strangled to death his son and dumped his dead body in the Sone river.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the accused Badri Singh and Vijay Thakur under Sections 302, 201, 120(B)/34 of the Indian Penal Code.

6. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions, and after commitment and on transfer finally the case came in seisin of the learned Adhoc Additional Sessions Judge-I, Aurangabad for trial.

7. Charge against the accused Badri Singh and Vijay Thakur was framed under Sections 302, 201 and 120(B) of the Indian Penal Code. Charge was read over and explained to them by the court to which they pleaded not guilty and claimed to be tried.



8. To substantiate its case, in ocular evidence, the prosecution has examined altogether eleven prosecution witnesses namely, Purushottam Sao, who happens to be son of the informant and brother of the deceased as PW-1, Jagi Devi wife of the informant and mother of the deceased as PW-2, Lakhan Saw uncle of the deceased as PW-3, Savita Kunwar wife of the deceased as PW-4, informant Ram Naresh Sah as PW-5, I.O. Jogindra Prasad Singh as PW-6, Dr. Savasuddin, who conducted autopsy of the cadaver of the deceased as PW-7, Dhananjay Kumar Gupta as PW-8, Sudarsan Saw as PW-9, Chalitra Prajapati as PW-10 and Bhola Prasad as PW-11. Out of the aforesaid witnesses, PW-8, PW-9 and PW-11 happen to be formal witnesses of the case while PW-10 is the witness of the inquest report. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

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

10. After hearing the parties and perusing the



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

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Badri Singh has preferred Cr. Appeal (DB) No. 895 of 2013 and convict Vijay Thakur has preferred Cr. Appeal (DB) No. 826 of 2013.

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

13. It is submitted by learned *amicus curiae* for the appellants that it is a case of circumstantial evidence, but the prosecution has utterly and miserably failed to substantiate any of the circumstances indicating the complicity of the appellants in the occurrence. Though, the informant and other witnesses have stated about taking the deceased by the appellants in the Sone river on the pretext of fishing at the time of occurrence, but the informant and PW-1 has not divulged the aforesaid fact to the I.O. As per the account of the informant, at the time of taking the deceased by the appellants from his house, PW-1,



PW-2, PW-4 and PW-5 were present at the house, but as the informant has not seen the appellants taking his son from the house, witnessing of taking the deceased by the appellants from the house by other witnesses is also ruled out. It is further submitted that the informant got lodged U.D. Case No. 04/09 after recovery of dead body. Though, as per the account of the informant, after perusing the injury on the dead body, he suspected complicity of the accused persons in committing murder of the deceased and dumping his dead body in the Sone river. But, in the said U.D. case, he has not narrated the aforesaid fact which creates serious doubt about the prosecution case. It is further submitted that as per the account of witnesses, inquest report, postmortem report and evidence of doctor, nose and mouth of the deceased were bleeding and the blood was also fallen on the ground while as per account of doctor clotting of the blood starts after one hour. Aforesaid aspect of the case rules out the occurrence of committing murder of the deceased by the appellants and dumping his dead body into Sone river on 16.04.2009. Thus, the prosecution has failed to establish any of the circumstances indicating complicity of the appellants in the occurrence and failed to bring home the charges levelled against the appellants beyond all reasonable doubt by adducing



convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial court is liable to be set aside and the appellants are entitled to be acquitted.

14. Per contra, learned counsel for the informant and learned APP for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that though it is a case of circumstantial evidence, but the informant and other material witnesses have unanimously stated about taking the deceased by the appellants along with them to the Sone river on the date of occurrence on the pretext of fishing. Thus, the deceased was last seen with the appellants. There was animosity between the parties as the informant had forbidden the appellant Badri Singh not to enter into his house 15-20 days back. Whereupon, he had extended threatening of dire consequence to him and as per the account of the informant, there was dispute between Vijay Thakur and the deceased over cutting of Kutti and Vijay Thakur had also extended threatening to the deceased, and the appellants due to aforesaid animosity taking the deceased with them on the pretext of fishing committed his murder and dumped his dead



body in the Sone river to cause the evidence of commission of offence to disappear. It is further submitted that doctor has also found swelling on the neck and injury on the person of the deceased and opined cause of death due to strangulation. Thus, the ocular evidence also stands corroborated by the medical evidence and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and the aforesaid two appeals are shorn of merit and are liable to be dismissed.

15. From perusal of record, it appears that to substantiate its case, the prosecution has examined altogether five material witnesses in the case. Out of the them, PW-1 (Purushottam Sao) happens to be brother of the deceased, PW-2 (Jagi Devi) happens to be mother of the deceased, PW-3 (Lakhan Saw) happens to be uncle of the deceased, PW-4 (Savita Kunwar) happens to be wife of the deceased and PW-5 (Ram Naresh Sah) is the informant himself. From perusal of testimony of the aforesaid witnesses, it appears that there is no eye witness of the occurrence and it is purely a case of circumstantial evidence. Informant and PW-1, PW-2, PW-3 and PW-4 have unanimously stated that on 16.04.2009 at 10:00 AM,



the appellants had taken the deceased from his house to the Sone river on the pretext of fishing. They have further stated that on the same day at around 12:00 O' clock, appellant Vijay Thakur had approached the informant and informed that his son had died due to drowning in the Sone river in the course of fishing. Thus, the aforesaid witnesses have made an abortive bid to substantiate the circumstance of last seen of the deceased with the appellants. But, from perusal of testimony of I.O. (PW-6), it appears that I.O. has stated in paragraph 7 of his cross-examination that during the course of investigation of U.D. Case, Ram Naresh Sah (informant), Ram Lakhan Sah (PW-3) and Parshuram Singh (not examined) have not given statement about witnessing of proceeding Anand (deceased) with the appellants for fishing. In the said U.D. case, the informant and other witnesses have not divulged the commission of murder of Ananad Kumar Gupta by Vijay Thakur. The informant and other witnesses had not suspected Vijay Thakur for committing murder. The aforesaid statement of the I.O. candidly indicates that the informant, Ram Lakhan Sah (uncle of the deceased) and other witnesses had not seen the appellants taking the deceased for fishing on 16.04.2009 at 10:00 AM. The informant (PW-5) has stated in paragraph 1 of his examination-in-chief that on



16.04.2009, at the time of occurrence, he was at his house along with his family members. His wife Jagi Devi (PW-2), daughter-in-law Savita Kunwar (PW-4), daughter-in-law Durgawati Devi (not examined), deceased (Anand Kumar Gupta) and his son Purushottam Sao (PW-1) were present in the house at that time. Appellants Badri Singh and Vijay Thakur arriving at his house at that time took his son Anand Kumar Gupta with them to the Sone river on the pretext of fishing. But, as the informant (PW-5) and Lakhan Saw (PW-3) had not seen the appellants taking the deceased with them on the aforesaid date, there is no question of witnessing the aforesaid occurrence by the rest of the aforesaid witnesses, who happen to be family members of the informant and were present in his house at that time. PW-3 has stated in paragraph 6 of his cross-examination that he has given heresay evidence. Thus, the aforesaid aspects of the case rules out witnessing of taking the deceased by the appellants from his house on 16.04.2009 at 10:00 AM by the aforesaid witnesses and also rules out testimony of the aforesaid witnesses, namely, PW-1, PW-2, PW-3, PW-4 and PW-5 regarding the aforesaid aspect of the case. Thus, in view of the aforesaid facts and circumstances, we find and hold that the prosecution has utterly failed to substantiate the circumstance of



last seen of the deceased with the appellants on 16.04.2009 i.e. on the date of occurrence.

16. From perusal of record, it appears that the dead body of the deceased was recovered on 17.04.2009 and on recovery of the same, it was brought near the police station by the informant and the villagers and inquest report of the dead body was prepared on 17.04.2009 at 01:00 PM. The informant has stated in paragraph 3 of his cross-examination that on finding the dead body, he was fully assured that Badri Singh and Vijay Thakur have committed murder of his son Anand Kumar Gupta. In paragraph 6 of his cross-examination, he has further stated that he had lodged case on 17.04.2009 at 02:00 PM regarding murder of his son in the police. From perusal of Ext-6, which is Sanha No. 349 of U.D. Case No. 04/09, it appears that the aforesaid Sanha was entered on 17.04.2009 at 12:40 PM i.e. after recovery of the dead body of son of the informant. The contents of aforesaid *Sanha* is reproduced as follows:

“ इस समय राम नरेश साव पिता सा० ढेगो, थाना नवीनगर जिला-औरंगाबाद अपने ग्रामीणों के साथ थाना आए तथा बताए कि उनके पुत्र आनन्द कुमार गुप्ता की सोन नदी में डुबने से मृत्यु हो गयी है । जिसे वे ग्रामीणों के सहयोग से निकालकर नवीनगर थाना के पास लाए है । इस संबंध में



जॉच एवं आवश्यक कार्यवाही हेतु पु० अ० नि०
योगेन्द्र बैठा एवं पु० अ० नि० योगेन्द्र प्र० सिंह
थाना से प्रस्थान किए ।”

From perusal of aforesaid Sanha entry, it appears that the informant has not divulged the factum of commission of murder of his son by the appellants rather has merely informed about death of his son due to drowning in the Sone river at the time of recording Sanha after recovery of dead body. Hence, the aforesaid aspect of the case rules out the aforesaid testimony of the informant and complicity of the appellants in the occurrence. As had the informant had noticed the injury on the person of the deceased at the time of recovery of the dead body and suspected complicity of the appellants in the occurrence of murder of his son, he would have certainly informed the matter to the police accordingly and got the Sanha entered, but he had not done so rather has only informed the police about death of his son due to drowning in the Sone river.

17. From perusal of testimonies of material witnesses, it appears that they have unanimously stated that the dead body of deceased was bleeding by nose and mouth. Inquest report marked as Ext-1 indicates that I.O. has found nose and mouth of the deceased bleeding. The postmortem report marked as Ext-4 and the evidence of doctor Savasuddin (PW-7) suggest



that the doctor has found blood and froth coming from mouth and nose of the dead body of the deceased. The said doctor in paragraph 4 of his cross-examination has stated that clotting of blood starts after one hour of death. The aforesaid medical evidence rules out the commission of occurrence of the murder of deceased by the appellants on 16.04.2009 as the dead body was recovered on 17.04.2009 and it was bleeding by that time indicating that the deceased was murdered within one hour of recovery of the dead body from Sone river and not on 16.04.2009 as the mouth and nose of the deceased was bleeding and blood was not clotted by that time while as per account of doctor clotting of blood starts after one hour of death. Thus, the aforesaid aspect of the case also rules out complicity of the appellants in the occurrence.

18. I.O. in paragraph 8 of his cross-examination has stated that none of the witnesses had divulged him about witnessing of committing murder of deceased by strangulating his neck by Vijay Thakur during the course of investigation. In paragraph 9 of his cross-examination, he has further stated that neither any evidence nor any statement regarding animosity between Vijay Thakur and the deceased was adduced in U.D. Case. In paragraph 10 of his cross-examination, he has also



stated that Purushottam Sao PW-1 (brother of the deceased) had not divulged the name of the appellants in the occurrence in the U.D. Case on the following day of occurrence. He had also not given any statement to him even after four days of the occurrence. In the said paragraph, he has further stated that no one had suspected complicity of Vijay in the occurrence at the time of preparation of inquest report. He had taken statement of Jagi Devi (mother of deceased) on 17.04.2009. Jagi Devi on 17.04.2009 had also not given any statement regarding animosity and commission of murder to him rather in her statement, she had stated about existing of friendship of deceased with Vijay Thakur. Jagi Devi had also not divulged him about any row between Anand and Vijay over cutting of Kutti. In paragraph 9 of his cross-examination, he has further stated that the statement of Lakhan Saw PW-3 (uncle of deceased) was recorded on 27.05.2009 and he had given hearsay statement regarding the occurrence.

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



required to be complied with and proved by cogent evidence:

(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely may be fully established (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) there must be a chain of evidence so complete as not to leave any reasonable ground from the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. Hon'ble Apex Court in ***Kanhaiya Lal Vs. State of Rajasthan reported in (2014) 4 Supreme Court Cases 715*** has been pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more establishing connection between accused and the crime, that points to guilt of accused and none else. Mere non-explanation of being last seen together with deceased person on part of accused, by itself cannot lead to proof of guilt



against him. It is further held that where a case rests squarely on circumstantial evidence, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

20. From perusal of record, it appears that the dead body of the deceased was recovered on 17.04.2009 and after perusing the injury on the dead body, the informant was fully assured that the appellants have committed murder of his son and dumped his dead body in the Sone river to cause the evidence of commission of offence to disappear. The record further indicates that the informant had filed written report dated 26.04.2009 narrating the aforesaid fact, but the aforesaid written report has been filed by the appellants after inordinate and abnormal delay of nine days. Though, to explain the aforesaid delay in lodging the written report, the informant has stated in paragraph 3 of his examination-in-chief and in paragraph 9 of his cross-examination that he used to pay visit to S.I. for lodging the case, but the S.I. used to avoid him on the pretext of lodging the case after investigation, but he had



not made any complain regarding the aforesaid conduct of S.I. at anywhere. The aforesaid act of the informant appears to be against natural course of conduct. As had the S.I. not recorded the case and taken the written report of the informant, he would have approached top brass police officer and lodged the written report before him, but he has not done so. Moreover, he has also not stated the factum of not lodging the case and taking the written report of the informant by S.I. rather avoiding him on the pretext of lodging the case after its investigation in the written report and the same appears to be after thought and improvement made by the informant at the later stage. Thus, the prosecution has failed to ascribe any plausible and convincing explanation for the aforesaid abnormal delay of nine days in lodging the written report which creates serious doubt about the prosecution case.

21. Having regard to the facts and circumstances of the case and discussions made by us hereinabove, we find and hold that the prosecution has utterly and miserably failed to substantiate even a single circumstance indicating the complicity of the appellants in the occurrence of murder of the deceased and bring home the charges levelled against the appellants beyond all reasonable doubt by adducing convincing,



cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court against the appellants is set aside and the appellants are acquitted of all the charges levelled against them giving them benefit of doubt. As the appellants of both the aforesaid criminal appeals are in custody, they are directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, the aforesaid two appeals are allowed.

22. Let a copy of the first and last page of this judgment be handed over to the learned *amicus curiae*, Mr. Praveen Kumar and learned *amicus curiae* be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J)

rohit/-

(Prakash Chandra Jaiswal, J)

AFR/NAFR	AFR
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