

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 668 of 2013

Arising Out of PS. Case No.-419 Year-2011 Thana- Nawada District- Nawada

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Mukesh Kumar, son of Ram Chandra Mahto, resident of village –
Ghostawan, P.S. and District – Nawada.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Amrit Anunay, *Amicus Curiae*

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

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 12-07-2019

The sole appellant, who was convicted and sentenced in Sessions Trial No. 307 of 2011/230 of 2011 (arising out of Nawada Town P.S. Case No. 419 of 2011), has preferred the present appeal under Sections 374(2) r/w Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'). The appeal was admitted on 19-07-2013, however the prayer for bail was rejected and appellant is still in custody.

2. The appellant by judgment dated 18-01-2013 was convicted for offence under Sections 302/34, 201 and 411 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.'). By



order dated 18-01-2013 under Section 302/34 of the I.P.C., he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand). In case of default in payment of fine, he was directed to further undergo rigorous imprisonment for one year. Under Section 201 of the I.P.C. by the same order i.e. order dated 18-01-2013, he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- (five thousand). In case of default in payment of fine, he was directed to further undergo rigorous imprisonment for six months and under Section 411 of the I.P.C., he was sentenced to undergo rigorous imprisonment for one year. All the sentences were directed to run concurrently. The appellant was convicted and sentenced by Sri Bimal Kumar Sinha, learned Additional Sessions Judge (Adhoc), - III, Nawada (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 307 of 2011/230 of 2011.

3. The case has been initiated on the basis of *fardbeyan* of Upendra Kumar, son of deceased Dr. Kameshwar Prasad. Though, it was *fardbeyan* of Upendra Kumar, on the top of the *fardbeyan*, the Sub-Inspector of Police N.P.Singh (not examined) has mentioned, as if, he was recording *fardbeyan* of one Rabindra Kumar. However in the body of the *fardbeyan*, informant's name



is Upendra Kumar (P.W.3) and he has also put his signature on the bottom of the *fardbeyan*. The *fardbeyan* was recorded on 04-09-2011 at 9:00 AM. Upendra Kumar (P.W.3) gave *fardbeyan* in front of dead body of his father Dr. Kameshwar Prasad on the eastern bank of Sakri river on the metalled road, which was going towards village Ghostawa. He disclosed that his father was a homeopathic doctor. He was running his clinic in a rented house in Kadirganj market and every day, he used to leave house at 8 hrs. in the morning for Kadirganj and in night in between 7-8, he used to return his village Ghostawa after closing his clinic on foot. His father was completely disabled with his hands and leg and one eye. On the previous date i.e. 03-09-2011 in the night till 9:00 hrs. his father had not returned, then the informant from his house went to Kadirganj at clinic of his father and found that shutter was closed and his father was not present. Thereafter, he returned back. He explained that his father sometimes after having meal and drink used to remain somewhere else and due to this reason, he thought that his father might had stayed somewhere else. In the morning on 04-09-2011 he went on the bank of Sakri river for his usual morning run, then at 5.00 hrs in the morning he saw Mukesh Kumar (appellant), who was trying to



conceal blood mark, which was on his T-shirt by his arm. At that very time, from Kadirganj market he received a call on his mobile and an information was given to him that shutter of his father's shop was open. After hearing this, he immediately rushed to his shop in Kadirganj market, where he saw that shutter of clinic was open. He inquired from the neighbours in respect of his father. He searched the shop and when he returned back, then he saw that appellant Mukesh had already disappeared. After returning, he had a discussion with his family members, then he gave information to Kadirganj O.P. and only thereafter, police arrived there and started inquiring the matter. At that very time, his family members and others, who were searching his father, also arrived their and intimation was given that near the bank of Sakri river by the side of road going towards Ghostawa in the river, his father's dead body was lying. The informant when reached there, then he noticed that his father was murdered and his dead body was thrown in the river. At the same place, while inspecting, a piece of stone having mark of blood was found and on the bank of the river, one pair of plastic slipper was found. The informant claimed that he identified the said slippers to be slippers of Mukesh Kumar (appellant). Thereafter, he came to conclusion that his father was



done to death by the appellant with his other associates by use of stone and this was the reason that the appellant was trying to conceal the blood mark, which was on his T-shirt. The informant further disclosed that with family of Mukesh Kumar (appellant), there was old animosity. The informant claimed that while his father (Dr. Kameshwar Prasad) was going to his house after closing his clinic at Kadirganj market, at isolated place due to old animosity, Mukesh Kumar (appellant) with his other associates had killed his father by use of stone. The *fardbeyan* was read over to him and after finding it correct, he put his signature on the *fardbeyan*. As a witness to the *fardbeyan*, one Brajesh Kumar (not examined) also put his signature.

4. On the basis of said *fardbeyan*, on the same date i.e. 04-09-2011 at 18.30 hrs. (6:30 PM), a formal F.I.R., vide Nawada Town P.S. Case No. 419 of 2011, was registered for offence under Sections 302/34 of the I.P.C. only against the appellant-Mukesh Kumar. The appellant immediately thereafter on 05-09-2011 was arrested and surprisingly, the police within two days from his arrest and three days from lodging of the F.I.R. i.e. on 07-09-2011 submitted chargesheet under Sections 302, 201, 379, 411 of the I.P.C. against the sole appellant. After submission



of chargesheet, on 27-09-2011 learned Chief Judicial Magistrate, Nawada took cognizance of the offence and case was committed to the court of sessions on 16-11-2011. Thereafter, charge under Sections 302, 201, 379, 411 of the I.P.C. was framed against the sole appellant on 06-01-2012, which was denied by him and he claimed to be tried.

5. Accordingly, with a view to prove the case from the prosecution side, altogether 11 witnesses were examined. Out of 11 witnesses, P.W.1 Subodh Kumar (son of deceased and brother of the informant), P.W.2 Sharda Devi (wife of deceased and mother of the informant), P.W.3 Upendra Kumar is the informant and son of the deceased, P.W.6 Arvind Kumar (cousin brother of the informant and nephew of the deceased) and P.W.7 Sharvan Kumar is the younger brother of the deceased and uncle of the informant. P.W.4 Sadhu Sharan Prasad and P.W.5 Bisheshwar Manjhi are witnesses to the inquest report. P.W.9 Ramnandan Prasad is the chowkidar of Kadirganj O.P. P.W.10 Sanjay Kumar is witness to the seizure list relating to preparation of seizure list in respect of old plastic slipper, plastic bag containing homeopathic medicine and a piece of stone weighing about 5-7 Kg., which was marked as Ext.7 and also a seizure list was prepared marked as



Ext.7/1 relating to seizure of T-shirt & full pant of appellant and a wrist watch (watch of the deceased). P.W.11 Dr. Raj Kishor Prasad on 04-09-2011 was posted as Medical Officer in Sadar Hospital, Nawada and he conducted *post-mortem* on the dead body of the deceased. P.W.8 Raju Ranjan Kumar on the date of occurrence was posted as Sub-Inspector of Police, Kadirganj O.P. and he is the investigating officer.

6. After completion of the prosecution evidence, on 03-10-2012 circumstances and evidences, which were brought on record, were explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded, in which, specific plea was taken that he was falsely implicated and the investigating officer had taken bribe for implicating him. Besides this, he took the plea that due to old animosity, he was implicated in the present case.

7. Sri Amrit Anunay, learned *Amicus Curiae*, after placing entire evidence on record, has argued that it was clear-cut case of false implication, since none had seen the occurrence. He submits that circumstances, which have been brought on record, suggest that it was not a murder, rather it was an accidental death. After noticing the fact that deceased died due to accident,



the informant side, in connivance with the police, had come out with a case, as if, the deceased was done to death by the appellant. He submits that a false confessional statement was obtained from the mouth of the appellant by the police and it was shown, as if, the confession had led to recovery of the T-shirt and full pant of appellant having mark of blood as well as recovery of wrist watch of the deceased from the possession of the appellant. He submits that falsity of such confessional statement is evident from the fact that at least one of the witness during his evidence has stated that one pair of slipper, one polythene bag containing some homeopathic medicine and a wrist watch were found at the place of occurrence and as such, as per Mr. Anunay, learned *Amicus Curiae*, the story of the prosecution that wrist watch was recovered on confession of the appellant before the police itself fails and no reliance can be placed on such confession.

8. Learned *Amicus Curiae* further reiterated that the prosecution case appears to be doubtful, in view of the fact that informant, who is son of the deceased, has stated that early in the morning at 5.00 hrs., while he was, as usual, going to start practice of running near the Sakri river, he had noticed appellant, as if, the appellant was trying to conceal blood mark on his cloth.



It has been argued that it appears to be completely improbable that had the appellant was involved in the murder, which according to the prosecution, had taken place in the night, in the morning at the same place of occurrence, there was no question of presence of the appellant with T-shirt having blood mark. Moreover, it is case of the prosecution that *fardbeyan* was recorded at 9:00 AM on 04-09-2011 at the place, where dead body was found i.e. near the river, the investigating officer/P.W.8 Raju Ranjan Kumar himself has stated that he after getting information regarding the occurrence had firstly left the police station on 04-09-2011 and reached the place of occurrence at 13.50 hrs. i.e. 1:50 PM on the same date.

9. By way of referring to inquest report, it has been argued by learned *Amicus Curiae* that once the police had found the dead body on the bank of river, there was no reason for preparing inquest report in Sadar Hospital, that too at 12.30 PM. All the sequences suggest that there was some oblique motive evident behind the prosecution case. According to learned *Amicus Curiae*, save and except unreliable confessional statement of the appellant, there is no other material to connect the appellant in the present case, however; the learned Trial Judge, in a



mechanical manner, has passed the judgment of conviction and sentence, which is not sustainable in the eye of law.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor opposing the appeal has argued that it is true that Ext. 5 i.e. confessional statement of the appellant, made before the police, is not to be taken into account, but since confession had led to recovery of facts, which were only within the knowledge of the appellant and having connection with the case, that part may not be ignored, however; he has not disputed the fact that prosecution in the case has not been able to connect all the chain of circumstances.

11. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. However, before proceeding further, it would be necessary to notice the evidences, which have been brought on record.

12. The informant Upendra Kumar has been examined as P.W.3. In his evidence, he has stated the fact as disclosed in the *fardbeyan* and has stated that while he reached near the river for usual morning running practice, then at about 5.00 in the morning, he saw the appellant near a cement-iron shop and his shirt was having blood mark. After noticing the informant, as per



this witness, the appellant tried to conceal the said mark. In the meanwhile, he received telephonic call that lock of his father's shop was broken. He went to the shop and found that shutter was open. He further stated that he went to inform Kadirganj Police Station, whereupon, Kadirganj police arrived at the shop. In the meanwhile, he got an information that dead body of his father was found on the bank of the river, then he alongwith the police, returned there and saw the dead body. He further stated that besides the dead body of his father, he found slipper of the appellant.

13. At this juncture, the Court is of the opinion that it is difficult to comprehend as to how the informant had come to know that it was slipper of the appellant, which was lying on the bank of the river. Such conduct certainly gives some lead to this Court to draw an inference that steps were taken by the prosecution to implicate the appellant by hook or by crook. While hearing, we had noticed that animosity in between the appellant's family and deceased was going on since long. The appellant was shown as *bataidar* of the uncle of the informant and in relation to distribution of grain, dispute in between the parties was going on. The informant in his evidence had admitted the fact regarding



animosity with the appellant. In paragraph – 1 of his examination-in-chief, this witness has further stated that he gave his statement before the police in police station and police recorded the same thing whatever was stated by the informant, however *fardbeyan* was shown to be recorded at 9:00 AM on the same date. The contents of the *fardbeyan* indicates that it was recorded near the place where dead body was found i.e. bank of the river, even then, the informant (P.W.3) in his evidence has stated that *fardbeyan* was recorded in the police station. If for the time being, it is assumed that this *fardbeyan* was recorded in the police station, there is another big question as to how the investigating officer/P.W.8 in his evidence has stated that he got information in the police station and then he left the police station and reached the place of occurrence at 1:30 PM on the same date. Such unanswered questions certainly create serious doubt on the prosecution case.

14. One of the brother of the informant i.e. P.W.7 Sharwan Kumar in his evidence has stated that he had informed the informant regarding lying of a dead body, however the informant is silent on the point both i.e. in his *fardbeyan* as well as in his evidence as to who had telephonically informed.



15. Besides this, almost in similar manner, P.W.1 Subodh Kumar (brother of the informant), P.W.2 Sharda Devi (mother of informant and wife of deceased) and P.W.6 Arvind Kumar (cousin brother of the informant) have stated in their evidence.

16. P.W.6 Arvind Kumar, in his examination-in-chief, has categorically stated that "watch" of doctor sahab (deceased) was seized at the place of occurrence. In paragraph – 6 of his cross-examination, he himself has stated that due to dispute of grain, the appellant was falsely implicated. In paragraph – 7 of his cross-examination, he has stated that informant was his cousin brother.

17. So far as inquest report is concerned, P.W.4 Sadhu Sharan Prasad and P.W.5 Bisheshwar Manjhi, though have identified their signature on inquest report, which were marked as Ext. 2 and 2/1 respectively, in cross-examination they have stated that police had obtained their signature on blank paper. P.W.4 Sadhu Sharan Prasad has further stated that occurrence had taken place at 10-11 PM on 03-09-2011.

18. P.W.9 Ram Nandan Prasad was the chowkidar of Kadirganj O.P. He in his evidence has stated that on 04-09-2011



he was posted at Kadirganj O.P. He received information regarding murder of Dr. Kameshwar Prasad, which was received at police station. On the said information, they went to the bank of Sakri river where dead body of Dr. Kameshwar Prasad was lying. He further stated that at that very place, *Bada Babu* of police station got an information that murderer of deceased was present in Roh Bazar (Roh Market). Thereafter, the chowkidar/P.W.9 stated that *Bada Babu* (officer incharge) went to Roh Bazar (Roh Market). At Roh Bazar, *Bada Babu* arrested Mukesh Kumar (appellant) and arrest memo was prepared. Raju Ranjan Kumar i.e. *Chota Babu* (Sub-Inspector, who is the investigating officer of the case) prepared memo and this witness put his signature and also identified memo of arrest, which was marked as Ext.6. In paragraph – 2 of his cross-examination, he stated that as per order of *Bada Babu* (officer incharge) he had gone to place of occurrence alongwith *Bada Babu*. He denied the suggestion that all the papers were prepared and his signature was obtained on blank paper in police station itself.

19. On examination of the evidence of P.W.9, it is evident that information regarding lying of dead body near the bank of river Sakri was received in police station and this witness



alongwith officer incharge visited the place of occurrence and at the place of occurrence itself, without any rhyme and reason, the officer incharge got an information regarding presence of the appellant in Roh Bazar, from where, information was gathered that the appellant was the accused, has not been clarified, rather such conduct appears to be suspicious and cryptic. It is further evident from the evidence of P.W.9 that arrest memo was prepared by the investigating officer of the present case namely Raju Ranjan Kumar.

20. Raju Ranjan Kumar/P.W.8 is the investigating officer of the case. On 04-09-2011, he was posted as Probationer Sub-Inspector of Police in Kadirganj O.P. In his evidence, he stated that on the same date, he got an information that Dr. Kameshwar Prasad was murdered near the eastern bank of Sakri river. The Out-Post Officer incharge Nagendra Prasad Singh (not examined), this witness (P.W.8) and other police personnel reached place of occurrence. At the place of occurrence, he recorded *fardebayan* of Upendra Kumar (P.W.3), as per order of O.P. officer incharge. He identified signature of Nagendra Prasad Singh and also identified the *fardebayan*, which was already marked as Ext.1. He further stated that the inquest report was prepared



by O.P. incharge, Kadirganj, on which, signature of two independent witnesses were obtained. The inquest report was also containing signature of incharge O.P. This witness identified the inquest report, which was marked as Ext.3.

21. On examination of this part of evidence of P.W.8 that he after getting information arrived at the place of occurrence, where dead body was lying and recorded *fardbeyan* at the place of occurrence vis-a-vis on examination of the evidence of P.W.9/chowkidar, we find several unexplained circumstances. As per evidence of P.W.8, after getting information in the police station, they reached the place of occurrence and recorded *fardbeyan*, whereas P.W.9/chowkidar has stated that while alongwith officer incharge he reached the place of occurrence, where dead body was lying, the officer incharge got information regarding presence of accused i.e. appellant in a market i.e. Roh market, where he was apprehended. There is also some reason to consider the conduct of the prosecution suspicious, since *fardbeyan* was shown to be recorded at 9:00 AM on 04-09-2011 on the eastern side of river Sakri, this witness (P.W.8) in paragraph - 2 of his cross-examination has stated that on 04-09-2011 he reached place of occurrence at 13.50 hrs. i.e.



1:50 PM and he further accepted that on the same date, he had arrested accused at 10:00 AM. The investigating officer i.e. P.W.8 in paragraph 1 of his examination-in-chief has further stated that at the place of occurrence itself he had seized one pair of old plastic slipper, one packet containing homeopathic medicine and one old कटोरी (steel bowl) and also one stone having mark of blood about 5-7 kg. Regarding those articles, a seizure list was prepared, which was marked as Ext.4. In the same paragraph, he gave the description of the place of occurrence, which was near the bank of Sakri river. He also noticed that dead body from the water of the river was pushed out to some extent and thereafter, it was dragged. Mark of dragging was found at the place of occurrence. On examination of description of the place of occurrence, it is also difficult to verify that once as per prosecution case deceased was killed by smashing stone on his head and he was thrown in river, there was no reason for accused person(s) to push the dead body out of the river and finding of such mark, whereas, as per the trend of cross-examination and defence version, it appears that deceased used to drink and he might had been accidentally fallen from the bridge in the river and thereafter, he got head injury after falling in the river. He tried to come out



from river to some extent and this was the reason that some mark was noticed at the place of occurrence, which shows that deceased had come out to some extent from the river.

22. P.W.8/investigating officer in paragraph -1 of his examination-in-chief has further stated that he had found slipper of the deceased, which was found in the bush near the place of occurrence, however; the informant/P.W.3 in his evidence had said that after noticing one pair of slipper at the place of occurrence and he could recollect that the said slipper was of the appellant. It is also difficult to conceive that the informant was having such an elephant memory that he could recollect the name of owner of old slipper, which was found at the place of occurrence. Even contrary to the stand of the informant, the investigating officer/P.W.8 in paragraph 1 of his examination-in-chief himself has stated that he had found slipper of the "deceased" near the place of occurrence, which was in bush. He further stated that he arrested Mukesh Kumar (appellant) in Roh Bazar and recorded his confessional statement, which was recorded in presence of Nagendra Prasad Singh (not examined), officer incharge of the Kadirganj O.P. This witness stated that the appellant confessed his guilt and put his signature. The said



confessional statement was got marked as Ext.5. He further stated that on disclosure made by the appellant in his confessional statement, from the house of one Jawaharlal (not examined), a raid was conducted in the house of the appellant in village Kawakol and from one locker, he seized one old white colour T-shirt having blood mark, old white colour full pant having mark of blood, belt and also old wrist watch of the deceased, which was having no belt and seizure list was prepared in respect of those articles and marked as Ext.4/1. However, P.W.6 Arvind Kumar (cousin brother of the informant) in his evidence in paragraph – 1 (page 24) has stated that at the place of occurrence itself watch of doctor sahab (deceased) was seized. The evidence of P.W.6 itself demolishes the story of recovery of certain articles and so called seizure list i.e. Ext.4/1 showing, as if, watch of the deceased was recovered from the house of the appellant. The said seized articles were sent to Forensic Science Laboratory. In paragraph – 2 of his cross-examination, this witness (P.W.8) has stated that on 04-09-2011 at 13.50 hrs. (1:50 PM) he reached place of occurrence and further on the same date at 10:00 AM, he had arrested the accused (appellant). In this paragraph, he has stated that he with *Bada Babu* had gone to Kawakol, however; he



accepted that he had not stated regarding boundary or description of the place i.e. Kawakol as well as boundary of the place i.e. Roh Bazar where the appellant was arrested in the case diary. In paragraph 4 of his cross-examination, he further stated that Kadirganj pool was busy road.

23. The doctor, who conducted *post-mortem* examination on the dead body of the deceased i.e. Dr. Raj Kishore Prasad on 04-09-2011 was Medical Officer in Sadar Hospital, Nawada and on the same date at 2:00 PM, he conducted *post-mortem* on the dead body of the deceased and noticed following facts:-

"(i) Lacerated wound 3"x2" muscle deep at right parietal part of head.

(ii) Lacerated wound 6"x4"xbone deep on occipital part with contain mud.

(iii) Lacerated wound 1"x1/2"xmuscle deep on left parietal part of head.

(iv) Lacerated wound 1/2"x1/2"xbone deep on forehead.

(v) Bleeding from both ears. All body contain with mud and dirty particles.

On dissection

(i) Occipital with forehead bone on fracture.

(ii) Blood and blood clots contain in brain cavity.

(iii) All viscera were pale and intact.

(iv) Stomach empty, Heart empty

Cause of death

Shock and haemorrhage due to above findings due to hard and blunt substance (Head injury)

Time elapsed since death – Within 24 hours."



24. This witness identified the *post-mortem* report, which was marked as Ext.8. In paragraph -2 of his cross-examination, this witness has accepted that if any person falls from any bridge, then above-mentioned injuries may be caused. The injuries, which were found on the person of the deceased, were only on the head of the deceased, otherwise in whole body, there was no mark. If the prosecution version to the extent of dragging the dead body out from the river and finding dragging mark is considered, then in that event, there was every possibility of some other injuries like scratches on the person of the deceased, however; no such injury was found. Moreover, defence has taken a plea that deceased due to accident had fallen in the river and died. This contention of the defence is in consonance with the evidence of P.W.11 to the extent that such injury was possible in a case of fall.

25. On examination of the inquest report, it is evident that same was prepared in Sadar Hospital on 04-09-2011 at 12:30 PM. It is not in dispute that it is consistent case of the prosecution that after getting information, police reached near bank of river Sakri and found dead body of the deceased. If dead body was found at the place of occurrence, there is no explanation



why inquest report was not prepared at the place of occurrence itself, rather it was prepared in the premises of the Sadar Hospital. All such circumstances suggest that the prosecution case is completely suspicious and doubtful.

26. The statement of the appellant after completion of the prosecution evidence recorded under Section 313 of the Cr.P.C. again goes to suggest that the prosecution has not been able to establish its case beyond all reasonable doubt. In his statement recorded under Section 313 of the Cr.P.C., the appellant has stated that he was conductor of one star bus and he was in the bus stand near the vehicle and allegation against him was incorrect. In the answer to question that on 04-09-2011 at 4.00 hrs. in the morning, slipper of the appellant having blood mark was found at the place of occurrence as well as finding of one stone having blood mark, the appellant replied that he was not having any information regarding such fact. While answering to question no. 5 that the appellant had killed Dr. Kameshwar Prasad by giving blow of stone, the appellant answered that such evidence was completely false. He further denied the circumstance explained at question no. 6 that his slipper was found at the place of occurrence. The appellant stated that he was wearing his



slipper, which was never seized. Regarding question no. 7 that he had confessed his guilt in his confessional statement before the police, the appellant replied that he was beaten by लठी (*lathi*) and by threatening and forcefully, his confession was recorded. He further denied the circumstance i.e. question no. 8 that from his possession watch of deceased was recovered. In his statement recorded under Section 313 of the Cr.P.C., he pleaded that in his presence Upendra Kumar (informant) had given Rs. 15,000/- (fifteen thousand) to *Bada Babu* (officer incharge of police station) to lodge a case against him (appellant). The appellant further stated that he was doing agriculture work of uncle of Upendra (informant), with whom, dispute had taken place and due to such dispute, he was falsely implicated. After recording of his statement under Section 313 Cr.P.C., from the defence side also, his wife Archana Devi was examined as D.W.1.

27. D.W.1 Archna Devi in her evidence has stated that Dr. Kameshwar Prasad (deceased) was having a clinic in Kadirganj. He was handicap. Everyday, at 7:00 PM after closing the clinic he used to return back. He was in the habit of drinking liquor. On the pool, he met with an accident and fell down from the bridge and died. The informant had falsely implicated the



appellant. She further deposed that appellant was doing agriculture work of doctor sahab (deceased) as *bataidar* and he was falsely implicated.

28. On examination of entire evidence, which we have discussed hereinabove, number of circumstances, which have been brought on record, appear to be suspicious and not properly explained. These are:

(i) The informant in his *fardbeyan* and evidence stated that in the morning on 04-09-2011 at about 4:00 as usual he had gone for practice of his running near the bank of river Sakri. He stated that at 5:00 in the morning he saw dead body of his father on the bank of the river. He further stated that in preceding night after closing his clinic, his father had not returned. If the father of the informant, who was handicap and had not returned during whole night after closing his clinic to his house, the conduct of the informant i.e. son of the deceased that as usual he had gone for taking run appears to be not believable. In normal course, if informant's father had not returned, there was possibility for all family members to conduct search or gather



information regarding non-return of the handicapped deceased for the whole night.

(ii) The investigating officer/P.W.8 and Chowkidar/P.W.9, who were present in the police station, have stated that they got information in the police station, then they proceeded for the place of occurrence and reached the place of occurrence i.e. bank of river and found the dead body. P.W.8/investigating officer has stated that he reached place of occurrence at 1:50 PM, however; to the reasons best known to the prosecution, the *fardbeyan* of the informant was shown to be recorded at 9:00 AM on 04-09-2011, that too at the place of occurrence i.e. near river Sakri. This also appears to be completely suspicious and no explanation has been given by the prosecution.

(iii) Though the investigating officer and other police officials reached the place of occurrence at 1:50 PM on 04-09-2011, surprisingly the appellant was shown to be apprehended in Roh Bazar at 10:00 AM on 04-09-2011.

(iv) It is prosecution case that the informant had firstly seen the dead body of his father on the bank of



Sakri river in early morning i.e. 5:00 AM on 04-09-2011, to the reasons best known to the prosecution inquest report i.e. Ext.3 on the dead body was prepared at 12:30 PM in the premises at Sadar Hospital, Nawada on 04-09-2011.

(v) Injury found on the person of deceased and evidence of the doctor, who conducted *post-mortem* i.e. P.W.11 Dr. Raj Kishore Prasad suggests that there was possibility of death due to fall from the bridge in the river not of murder.

(vi) The defence, which has been taken by the appellant in his statement recorded under Section 313 of the Cr.P.C., appears to be more probable than the case of prosecution.

29. On Examination of entire evidence, we are of the considered opinion that the prosecution has not been able to establish its case beyond all reasonable doubt. Further, the prosecution has completely failed to show connection of chain of circumstances, whereas, the case was mainly based on circumstantial evidence. In such situation, it would be difficult to approve the judgment of conviction and sentence.



30. Accordingly, the judgment of conviction dated 18-01-2013 and order of sentence dated 18-01-2013 passed by Shri Bimal Kumar Sinha, learned Additional Sessions Judge (Adhoc) – III, Nawada in Sessions Trial No. 307 of 2011/230 of 2011 (arising out of Nawada Town P.S. Case No. 419 of 2011) is, hereby, set aside and appeal is allowed.

31. Since the appellant namely Mukesh Kumar is in custody and the judgment of conviction and sentence has been set aside, he is directed to be released forthwith, if not wanted in any other case

32. Let a copy of the first and last page of this judgment be handed over to Sri Amrit Anunay, learned *Amicus Curiae* and he be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

Anay

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