

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 341 of 2020**

Arising Out of PS Case No.-25 Year-2019 Thana- GAURICHAK District- Patna

Chhotu Kumar @ Amrendra Giri, aged about 32 years (Male) Son of Bhuneshwar Giri, Resident of Karai Karkhana Nand Gola, P.S.-Malsalami, District-Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Uday Prasad, Advocate
For the State : Ms. Usha Kumari 1, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 15-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Uday Prasad, learned counsel for the appellant and Ms. Usha Kumari No. 1, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The appellant is in custody in connection with Special Case No. 497 of 2019 arising out of Gaurichak PS Case No. 25 of 2019 dated 12.01.2019 instituted under Sections 341, 323, 328, 307, 379 of the Indian Penal Code to which later on Section 302 of the Indian Penal Code was added and Sections 1(1)(r) and 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.



4. The allegation against the appellant is of having killed the brother of the informant.

5. Learned counsel for the appellant submitted that he has been falsely implicated and has no role in the murder of the deceased. Learned counsel submitted that he had informed the family members and others with regard to the accident which had taken place and had also gone with them to the hospital where the victim was admitted. Learned counsel submitted that there has been no recovery from the appellant and that there is neither any eye witness nor any motive assigned as to why the appellant would kill the deceased. Learned counsel submitted that the FIR has been lodged after one week in the hospital, when the brother of the informant was alive and later on, he died and he is in custody since 14.10.2019. It was submitted that the death was due to accident and the appellant had informed the relatives of the deceased. It was further submitted that the postmortem report discloses that the viscera has been sent for forensic examination.

6. Learned APP, from the case diary, submitted that there is enough evidence to indicate the involvement of the appellant in the crime. It was submitted that admittedly, the appellant had taken away the deceased on the pretext that he was going to the house of the sister of the appellant and after that the



deceased was found lying in the ditch in a semi naked state. It was further submitted that the gold necklace of the deceased and his jacket were also seen on the person of the appellant. Learned counsel submitted that the appellant had not bothered to inform any person with regard to the accident and there is no explanation as to how the deceased was in a semi naked state. Learned counsel submitted that the acquaintances of the deceased were informed from his mobile phone which clearly indicates that one of the persons who had gathered at the place where the victim was found had used the mobile of the victim to contact persons whose telephone numbers were saved in the mobile phone. Learned counsel submitted that the appellant having not informed anyone of the occurrence, if the same was an accident, clearly indicates that it is only a defence created by the appellant and further, had there been an accident, the appellant and the deceased were travelling together, there would have been injuries on the appellant also, which is missing. Learned counsel submitted that the postmortem report indicates death due to hitting by hard blunt substance on the head and it has also been recorded that the body was dragged. It was, thus, submitted that the appellant being fully aware of the incident and not having informed the family members, if at all, an accident had taken place, clearly points to



the involvement of the appellant in the crime. It was further submitted that though on 08.01.2019, the FIR was lodged, but the appellant had absconded and only on 14.10.2019, he was taken into custody. It was submitted that there is no requirement of knowing whether there was poisoning, as on the basis of evidence which has been collected during investigation, including the condition in which the injured was recovered initially and the postmortem report as also the fact that the appellant had not intimated anybody with regard to the incident and was taken into custody only after 10 months of the occurrence, leaves no doubt that he is involved in the crime. It was further submitted that witnesses have also supported the prosecution case.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the appellant on bail.

8. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

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