

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.35 of 1995

1. Krishna Ballabh Narain Singh alias Krishna Singh.
2. Vijay Singh.
3. Binay Singh.
 All sons of Late Mundrika Singh.
4. Sanjay Singh alias Babloo Singh, son of Shri Krishna Singh.
 All resident of village and P.S. Fatehpur, District-Gaya.
5. Kishore Tiwary, son of Late Bhagwat Tiwary, resident of village-Paharpur,
 P.S. Fatehpur, District-Gaya.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

with
CRIMINAL APPEAL (DB) No. 36 of 1995

Shuli Singh, son of Late Kuer Deo Singh, resident of village-Bargaon, Police
Station-Fatehpur, District-Gaya.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

with
CRIMINAL APPEAL (DB) No. 41 of 1995

Gauri Singh, son of Mathura Singh, resident of village-Fatehpur, P.S.
Fatehpur in the district of Gaya.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In CRIMINAL APPEAL (DB) No. 35 of 1995)

For the Appellants : Miss Surya Nilambari, Amicus Curiae.

For the State : Dr. Mayanand Jha, A.P.P.

(In CRIMINAL APPEAL (DB) No. 36 of 1995):

For the Appellant : Miss Surya Nilambari, Amicus Curiae.

For the State : Mr. S.N. Prasad, A.P.P.

(In CRIMINAL APPEAL (DB) No. 41 of 1995)

For the Appellant : Miss Surya Nilambari, Amicus Curiae,.

For the State : Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 23-11-2021

By these appeals, the appellants/accused in Sessions Trial



No.37 of 1994(357 of 1990) are challenging the Judgment and Order dated 24th of March, 1995 passed by the learned 2nd Additional Sessions Judge, Gaya, thereby convicting them of the offences punishable under Section 302 read with Section 34 as well as under Section 201 of the Indian Penal Code. For the offences punishable under Section 302 read with Section 34 of the Indian Penal Code, they all are sentenced to suffer rigorous imprisonment for life whereas for the offence punishable under Section 201 of the Indian Penal Code, the appellants/accused are sentenced to suffer rigorous imprisonment for five years.

2. In all, eight accused persons were put on trial in the said Sessions Case. However, accused no.7 Arun Kumar Sharma came to be acquitted by the learned trial court. That is how, remaining seven accused persons are appellants before this Court in these appeals. For the sake of convenience, the appellants shall be referred to in their original capacity as 'accused'.

3. Facts in brief leading to the prosecution of the appellants/accused are thus:

On occasion of Durga Puja, programme of Kauwali took place in the field where deity was installed at village-Fatehpur, Police Station-Fatehpur, District-Gaya. As a



Secretary of Organizing Committee of Durga Puja festival, Bal Mukund Singh (since deceased) was supervising the said programme. In the night intervening 20/21.10.1988, the programme of Kauwali took place at the said venue. Bal Mukund Singh (since deceased) was present in the Pandal where the programme of Kauwali was going on. However, he left that programme on a call from labourer named Bharat Singh. According to the prosecution case, as projected from the Charges-sheet, Bal Mukund Singh left the Pandal with Bharat Singh. Thereafter, accused persons also left the programme of Kauwali and went behind Bal Mukund Singh in the night intervening 20/21.10.1988. However, Bal Mukund Singh did not reach his house in that night. On the next morning, P.W.9 Ram Nandan Singh as well as other relatives of Bal Mukund Singh started searching him in the vicinity. However, he could not be traced out. As such, P.W.9 Ram Nandan Singh and P.W.7 Sargun Singh went to Police Station-Fatehpur and submitted the missing report (Ext.6). Accordingly, entry in the Station Diary (Ext. 7) bearing No.361 dated 21.10.1988 came to be recorded on 21.10.1988. Then police proceeded to village-Fatehpur. During search of Bal Mukund Singh, his dead body came to be fished out from a well situated near his house. Accordingly,



inquest notes were taken and dead body was dispatched for autopsy. P.W.8 Dr. Mithlesh Kumar Sinha conducted post-mortem examination of dead body of Bal Mukund Singh and opined that the death was due to asphyxia and injuries found on the dead body were ante-mortem in nature.

4. Accordingly, Crime No.143 of 1988 came to be registered at Police Station-Fatehpur on 24.10.1988 for the offences punishable under Sections 302 and 201 of the Indian Penal Code against unknown accused persons.

5. During the course of investigation, the Investigating Officer found the complicity of the accused persons in the crime in question and, accordingly, they came to be arrested and charge-sheeted.

6. After filing of the charge-sheet, the case was committed to the court of sessions and accused persons were put on trial as they pleaded not guilty and claimed to be tried.

7. The defence of the accused persons was that of total denial. They examined two defence witnesses.

8. After hearing the parties, the learned trial court by the impugned Judgment and Order was pleased to convict and sentence the appellants as indicated in the opening paragraph of this Judgment.



9. We have heard Miss Surya Nilambari, learned Amicus Curiae, who was appointed to represent the appellants/accused and to assist the Court in arriving at proper conclusion. She argued that the prosecution has utterly failed to establish the guilt of the appellants/accused by establishing chain of circumstances leading to sole hypothesis guilt of accused persons. In fact, nothing is proved against the appellants/accused and entire evidence of the witnesses is sketchy and unbelievable.

10. As against this, the learned Additional Public Prosecutor contended that there is cogent evidence to show that the accused persons followed the deceased, who left Pandal of Kauwali Programme and, thereafter, dead body of the deceased came to be recovered from the well with ante-mortem injuries. With this, learned Additional Public Prosecutor contended that the appeals deserve to be dismissed.

11. We have carefully considered the submissions so advanced and also the record and the proceeding including the oral evidence of the witnesses adduced by both the parties.

12. Undisputedly, the case of the prosecution is purely based on the circumstantial evidence. Even according to the prosecution case, no body had seen the accused persons



committing the murder of the deceased Bal Mukund Singh in the night intervening 20/21.10.1988. Therefore, the heavy burden lies on the prosecution to establish the evidentiary facts, i.e., probabandun factum, from the existence of which this Court may infer existence of the facts in issue.

13. Let us, now, examine whether the deceased Bal Mukund Singh died homicidal death and the appellants/accused persons or any of them are responsible for his homicidal death. We shall make endeavour to examine the evidence of the prosecution witnesses in order to ascertain circumstance proved by the prosecution and, subsequently, we shall make an exercise to ascertain whether such proved circumstance leads to unerring conclusion of the guilt of the accused persons in respect of the crime in question.

14. At the outset, let us examine whether it is proved that the deceased Bal Mukund Singh died homicidal death. The evidence of the prosecution shows that the dead body of the deceased Bal Mukund Singh was recovered from a well in the locality, which was dispatched for autopsy by the police. P.W.8 Dr. Mithlesh Kumar Sinha conducted the post-mortem examination of the dead body. During autopsy, this Medical Officer found that 4th and 5th ribs of the dead body had



sustained ante-mortem fracture injuries. Its left lung was grossly contusion. Upon conducting the examination of the dead body, the autopsy surgeon has opined that Bal Mukund Singh died due to asphyxia and he had suffered ante-mortem injuries of grievous in nature caused by hard and blunt objects. This evidence is sufficient to conclude that Bal Mukund Singh died homicidal death.

15. Let us put on record, names of the prosecution witnesses, whose evidence is sought to be relied by the prosecution to bring on record incriminating circumstances against the accused persons, those are:

- (a). P.W.1 Shashi Ranjan Singh (son of the deceased).
- (b). P.W.4 Ramchandra Singh (elder brother of deceased).
- (c). P.W.6 Laloo Singh (co-organizer of Kauwali Programme).
- (d). P.W.7 Sargun Singh (co-villager, present at Kauwali Programme).
- (e). P.W.9 Ram Nandan Singh (son of the deceased).
- (f). P.W.10 Renu Kumari (daughter of the deceased).
- (g). P.W.11 Bimla Devi (daughter-in-law of the deceased).
- (h). P.W. 13 Kumari Nitu (niece of the deceased).
- (i). P.W.15 Ujala Prasad Singh (co-villager, who was present at Kauwali Programme).



Most of these witnesses are close relatives of the deceased and few of the them are co-villagers. Needless to mention that one will have to make close scrutiny of their evidence to cull out nuggets of truth from their statement before the Court, for ascertaining which circumstances are established from their evidence. Let us do that exercise.

16. P.W.1 Shashi Ranjan Singh, son of the deceased, deposed that he saw the accused persons drinking liquor at the house of the accused no.1 Krishna Singh and, thereafter, he saw Krishna Singh at the programme of Kauwali arranged on the occasion of Durga Puja festival. However, in cross-examination, he admitted that he had not seen the accused persons consuming the liquor but saw the accused persons on the road.

17. P.W.13 Kumari Nitu, the niece of the deceased, stated that on Dussahera, she went to the house of the accused Krishna Singh and saw 4-5 persons sitting there. Upon inquiry, wife of Krishna Singh told her that they are friends of Krishna Singh.

18. Thus, the evidence of both these witnesses utmost indicates that accused Krishna Singh was in the company of few people much prior to the incident in question.



19. Star witness of the prosecution is stated to be P.W.9 Ram Nandan Singh, another son of the deceased Bal Mukund Singh. He deposed that his father was one of the persons, who was managing the programme of Kauwali, which was going on at the ground of the village. As per his version, he saw his father Bal Mukund at that programme till 01.00 A.M. of the night intervening 20/21.10.1988. This witness testified that in the morning, he found his father went missing and, therefore, after searching his father, he lodged missing report with the police station. This witness further stated that on 21.10.1988, he saw accused Binay Singh and Babloo Singh looking at the well from which subsequently, dead body of his father came to be fished out. He stated about the motive in respect of the crime in question as some dispute between two parties of the village. As per his version, that well is situated at the distance of about 60 yards from the place where programme of Kauwali was going on. What has stated by this witness, neither leads us here or there. Except the fact that dead body of his father was recovered from the well, nothing is established by this evidence. Villagers looking at the well in rustic rural life cannot give inference of their guilt.

20. Similar is the evidence of P.W.7 Sargun Singh



(co-villager of the deceased). He stated that the deceased Bal Mukund Singh was present at Kauwali programme till midnight. Thereafter, this witness went to his house for sleeping. On the next day, he searched Bal Mukund Singh, who went missing. Rest of the part of his evidence is not admissible as the same is hearsay. To quote, he said that one Bharat Singh told him that accused persons killed Bal Mukund Singh. He further said that accused persons were found present near the well. This cryptic sentence cannot lead us to infer anything adverse against the accused persons.

21. P.W.4 Ramchandra Singh (elder brother of the deceased) has only spoken about the presence of Bal Mukund Singh at the programme of Kauwali. As per his version, a labourer named Bharat Singh took away Bal Mukund Singh from that programme and accused persons also went behind Bal Mukund Singh. He stated that Bharat Singh told him that accused persons killed Bal Mukund Singh. It needs to be noted that this Bharat Singh was not examined by the prosecution. Hearsay evidence in that regard given by this witness is of no consequence. In the midnight, if guests/spectators leave the programme of Kauwali for going to their house for sleeping, such circumstance cannot be given any overwhelming



importance particularly when there is no evidence to show that the deceased Bal Mukund Singh was subsequently found in the company of any of the accused persons.

22. P.W.6 Laloo Singh, who claimed to be present at the programme of Kauwali, has stated that at about 01.00 A.M., accused no.1 Krishna Singh came and told that somebody is shouting at the well. He further claimed that then he as well as Arvind Kumar went towards that well but nothing was found. Ultimately, on the next day, dead body of Bal Mukund Singh was recovered from that well. One fails to understand how this evidence can be used to infer something incriminating against the accused no.1 Krishna Singh, particularly, when this witness, P.W.6 Laloo Singh, immediately rushed to the well to see nothing objectionable at that place. Accused no.1 Krishna Singh, as per version of this witness, had not told that somebody fell down in the well.

23. P.W.10 Renu Kumari (daughter of the deceased) and P.W.11 Bimla Devi (daughter-in-law of the deceased) in unison have claimed to have seen the deceased Bal Mukund Singh leaving the programme for going to his house at about 01.00 A.M. Both these witnesses have claimed that accused persons were going behind the deceased Bal Mukund Singh.



However, in cross-examination, P.W.10 Renu Kumari admitted that she had not seen accused persons present at the programme of Kauwali. Hence, it cannot be understood how she could have stated that she saw accused persons following her deceased father when her deceased father left the programme of Kauwali. P.W.11 Bimla Devi does not claim that she saw what happened when her father-in-law left the programme of Kauwali. P.W.11 Bimla Devi also claimed that on the next day, she saw accused Binay Singh and Babloo Singh looking at the well.

24. P.W.15 Ujala Prasad Singh (co-villager) has claimed that till midnight deceased Bal Mukund Singh was present at the programme of Kauwali. At 04.00 A.M. of 21.10.1988, accused no.1 Krishna Singh came in perplex condition. As per his version, Krishna Singh had worn different dress in the evening and at 04.00 A.M., he had worn some another dress. This evidence leads us no where.

25. Undisputedly, as seen from the evidence of the prosecution, in the morning hours itself, persons in the locality had started search of Bal Mukund Singh. Therefore, there is nothing abnormal in the conduct of the accused Binay Singh and Babloo Singh in looking at the well when the person from their locality went missing. Except this, there is no other evidence



regarding the incident in question.

26. Rest of the witnesses are formal in nature or hostile witnesses. P.W.2 Arvind Kumar and P.W.3 Kuldeep Narayan Singh were turned hostile by the prosecution. P.W.12 Kameshwar Nath Ray, Judicial Magistrate, had recorded the statement of Bharat Singh, who is not examined as a witness by the prosecution. P.W.14 Braj Kishore Singh, A.S.I., and P.W.16 Ram Subhag Singh, P.S.O., only explained the line of investigation conducted by them. P.W.17 Ramesh Singh and P.W.18 Binay Singh are Clerks of Advocates, who have claimed that they are knowing the handwriting of the police officers. When P.W.9 Ram Nandan Singh himself was examined, there was no propriety in examining P.W.17 Ramesh Singh to state that he identifies the handwriting of P.W.9 Ram Nandan Singh on the missing report. P.W.18 Binay Singh claimed that he knows the handwriting of P.S.O. Ram Subhag Singh on the printed F.I.R. The evidence of this witness is totally inconsequential.

27. This is the all and all of critical analysis of the evidence adduced by the prosecution witnesses. They are faintly attributing motive to accused no.1 Krishna Singh by stating that the deceased had stopped his construction. Proved motive is an



additional link in the chain of circumstances. However, except demonstrating that the deceased was present till midnight in the programme of Kauwali and thereafter he left that programme, nothing more is proved by the prosecution.

28. The prosecution had attempted to bring on record the evidence regarding last seen theory. However, there is no iota of evidence to infer that soon before his death, the deceased Bal Mukund Singh was found to be in the company of the accused persons or any of them. Law on this regard is very clear and can be found in Para Nos.12, 13 and 15 of the Judgment in the matter of **Shivaji @ Dadya Shankar Alhat Vs. State of Maharashtra – AIR 2009 SUPREME COURT 56**, which are relevant to understand principles of appreciation of evidence in cases of circumstantial evidence. Para No. 12, 13 and 15 of that report needs reproduction and they read as under :-

“12. So far as last seen aspect is concerned it is necessary to take note of two decisions of this court. In State of U.P. v. Satish [2005 (3) SCC 114] it was noted as follows: “22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the



accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P. Ws.-3 and 5, in addition to the evidence of P. W. 2.”

“13. **In Ramreddy Rajeshkhanna Reddy v. State of A. P.[2006(10) SCC 722]** it was noted as follows: “27. The last seen theory, furthermore, comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration”.”

“15. Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial



evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidenciary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.”

In the case in hand there is no evidence to make the chain of circumstance so complete to give only hypothesis of the guilt of the accused.

29. We put on record words of appreciation for the able assistance rendered by Miss Surya Nilambari, learned Amicus Curiae, to this Court in arriving at the proper conclusion for deciding the instant appeals. We direct the High Court Legal Services Authority to pay an amount of Rs.5000/- to Miss Surya Nilambari, learned Amicus Curiae, for service rendered by her.

30. In the result, we note that we cannot approve the conclusion of guilt arrived by the learned trial court. The prosecution has utterly failed to prove the guilt of the accused persons or any of them in the crime in question. Therefore, the



order:

(I). The appeals are allowed.

(II). The impugned Judgment and order dated 24th of March, 1995 passed by the learned 2nd Additional Sessions Judge, Gaya, in Sessions Trial No.37 of 1994(357 of 1990) in between the parties, is quashed and set aside.

(III). The appellants are acquitted of the offences alleged against them. Their bail bond stands cancelled.

(A. M. Badar, J)

Sunil Kumar Panwar, J:- I agree.

P.S./-

(Sunil Kumar Panwar, J)

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