

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.134 of 2022

Arising Out of PS. Case No.-414 Year-2019 Thana- BEGUSARAI MUFFASIL District-
Begusarai

Subodh Kumar, son of Late Parmanand Singh @ Parmanand Singh, resident
of Village- Khamhar, Ward No. 09, P.S. Muffasil, District- Begusarai

... .. Appellant/s

Versus

1. The State of Bihar
2. Bandan Singh @ Bandan Kumar, son of Sri Ram Shankar Singh, resident of
Village- Khamhar, Ward No. 09, P.S. Muffasil, District- Begusarai
3. Deepak Singh, son of Rambalak Singh, resident of Village Khamhar, Ward
Number 09, Police Station Muffasil, District Begusarai

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Aaruni Singh, Advocate
Mr. Sandip Kumar Gautam, Advocate
For the Respondent/s : Mr. Ajay Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 14-11-2022

The informant of Begusarai Muffasil Police Station
case No. 414 of 2019 has preferred this appeal under Section 372
of the Code of Criminal Procedure putting to challenge a
judgment and order dated 24.12.2021 passed in Sessions trial
No. 44 of 2020 (G.R. No. 2917 of 2019) by learned Sessions
Judge-IX, Begusarai. By the said judgment and order, learned
trial court has acquitted respondents No. 2 and 3 of the charge of



commission of the offences punishable under Sections 302, 201, 120-B read with Section 34 of the Indian Penal Code.

2. We have heard Mr. Aaruni Singh, learned counsel for the appellant and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

3. The prosecution's case as disclosed in the written report of the informant, addressed to the S.H.O. of the Police Station dated 11.08.2019 at 11:05 hours is that on 09.08.2019 at about 4:00 P.M., respondents No. 2 and 3 (hereinafter referred to as the 'private respondents') had come at the door of the informant and called his brother Prakash Kumar(the deceased). All of them, thereafter, left together on a *Pulsar* Motorcycle. As he did not return till late in the night on the said day, the informant made a call on his mobile phone which was though ringing but without any response. When he enquired from the private respondents about the deceased, they declined to furnish any information. On 11.08.2019 at about 7:00 AM, he heard from the villagers that the dead body of the deceased was lying in the field of one Hanuman Singh, nearly 500 yards away from the residence of the private respondents. The informant immediately rushed with his mother and a neighbour, Bilo Singh to the place where the dead body was lying. They noticed sign of



injuries on the person of the deceased. The neck was found cut from the back side. Several other injuries were there on the person of the deceased. The co-villagers, in large number, thereafter assembled. It was also alleged that the *Pulsar* motorcycle and the slippers of the deceased were found lying in the cowshed of the respondent No. 3.

4. The police upon completion of investigation submitted chargesheet on 27.10.2019 against the private respondents while keeping the supplementary investigation pending. Supplementary investigation was also closed with the submission of final form on 30.12.2019. Cognizance was taken of the offences punishable under Sections 302, 201, 120-B, 34 of the Indian Penal Code by the court below on 22.01.2020. On 02.03.2020 the charges under Sections 302, 201, 120-B, 34 of IPC were framed against the private respondents.

5. At the trial, six prosecution's witnesses were examined, namely, P.W. 1, mother of the informant, P.W.2, a neighbour of the informant, P.W. 3, a co-villager of the informant, P.W.4, the informant himself, P.W. 5, the Medical Officer and P.W., 6 the Investigating Officer.

6. P.W. 4 (the informant), in his deposition, apart



from supporting the prosecution's case as was disclosed by him in the first information report reiterated that the deceased had took out his *Pulsar* motorcycle and had gone with the private respondents and his dead body was subsequently found on 11.08.2019 at 7:00 AM. He further deposed that the Pulsar motorcycle and a pair of sandals were recovered from the cowshed of respondent No. 3. The private respondents were arrested by the police from their houses.

7. From the impugned judgment of the trial court, it transpires that the defence had set out a case that the story of the prosecution about the occurrence on 09.08.2019 was absolutely false, in fact, on 09.08.2019 at about 10:00 AM, the deceased had come in his *Pulsar* motorcycle at the door of respondent no. 3. The private respondents had some conversation with the deceased. He had parked his motorcycle in the cowshed of respondent no. 3 and had walked towards the main road. The accused persons presumed that he was going to board a public transport on the main road. They learnt in the morning of 11.08.2019 that the dead body of the deceased was lying. The motorcycle was seized from the cowshed of the respondent No. 3. As regards sandals, he claimed that the same belonged to him (the accused) which he had purchased from a shop.



8. The mother of the deceased (PW-1) supported the prosecution's case that the deceased had gone with the private respondents on 09.08.2019. PW-2, a neighbour of the informant deposed in his examination-in-chief that he was on the road in front of his house when he had seen the deceased going on motorcycle with the private respondents.

9. The trial court has noted in its impugned judgment that during the investigation, PW-2 in his statement under Section 161 of the Cr.P.C., had stated that he had come to know about the said fact from the informant. The trial court has, accordingly, not believed PW-2 to be an eye witness to the fact that the deceased was last seen with the private respondents.

10. PW-3 is another co-villager who supported the prosecution's case of the dead body of the deceased lying two kilometers away from his house. He supported the prosecution's case that *the Pulsar* motorcycle and a pair of sandals were recovered from the cowshed of respondent No. 3. He is said to have witnessed the recovery of motorcycle from a distance of about 100 yards.

11. The defence got examined 14 documents to bring home the case before the trial court that the deceased was having



criminal antecedents and there were at least five police cases against him. He was chargesheeted in a case registered for the offences punishable under Sections 395/412 of the IPC.

12. The Investigating Officer in his deposition testified that he did not find any blood or weapon of assault at the place of occurrence and he could not find out the place where the deceased was killed. DW-1, a co-villager of the accused stated that he had seen the deceased parking the *Pulsar* motorcycle in the cowshed of respondent No. 3 at 10:00 AM.

13. The learned trial court, upon scrutiny and evaluation of the evidences adduced at the trial, has recorded acquittal by the impugned judgment and order, as according to him, the prosecution failed to establish the case against the private respondents beyond all reasonable doubts, relying on the principles laid down by the Supreme Court in case of *Sharad Birdhichand Sarda vs. State of Maharashtra* reported in (1984) 4 SCC 116. The trial court noticed the postmortem report and the medical evidence to arrive at a conclusion that the time of death of the deceased was approximately between 12 PM on 08.08.2019 to 12 PM on 09.08.2019. This conclusion is based on the reasoning that the body of the deceased was received at Sadar Hospital, Begusarai for autopsy on 11.08.2019 at about



11:40 AM and the date and time of completion of autopsy as mentioned in the postmortem report was 11.08.2019 at 12:02 PM. The medical officer, who conducted the postmortem examination, had opined that the time elapsed since death was within 48 to 72 hours.

14. Based on the medical evidence, the trial court concluded that the deceased had died before 4:00 PM on 09.08.2019 whereas it is the prosecution's case that the deceased had gone with the private respondents at 4:00 PM on 09.08.2019. This major contradiction in the prosecution's case, the trial court opined, was not explained by the prosecution.

15. It transpires that the prosecution heavily relied on the seizure of the pair of sandals which the deceased was wearing. The trial court has dealt in detail the seizure of the sandals in the background of the claim of respondent No. 3, that in fact his sandals were seized by the police.

16. The trial court has noticed that the sandal was seized by the police from the cowshed of the respondent No. 3 on the information furnished by the informant (PW-4). The said sandals were produced before the court by PW-7, the Malkhana in-charge of Muffasil Police Station. The trial court has recorded



in his judgment that the packet containing the sandals produced before the court did not bear signature of any judicial or police officer. Further, the sandals in the packet did not have any identification details which could show that they were the same which were seized by the police from the cowshed of respondent No. 3. The trial court has concluded that the seized sandals were not produced before the court. No independent witness of search and seizure was examined and the informant also did not disclose as to how and when he received the knowledge about the presence of the sandals in the cowshed. The trial court has doubted the prosecution's case as disclosed in the FIR on various counts including the main allegation that the deceased had gone with the private respondents in a motorcycle at 4:00 PM.

17. Upon perusal of the impugned judgment and order of the trial court, we are of the considered opinion that the view taken by the trial court acquitting the private respondents by impugned judgment is a possible view, based on due analysis and scrutiny of evidence. The law on this aspect has been lucidly laid down in paragraph 34 of the Supreme Court's decision in case of **Murugesan and others vs. State through Inspector of Police** reported in (2012) 10 SCC 383 which reads as under:

"34. It will be necessary for us to



emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.”

18. It is evident that the prosecution attempted to establish its case on two counts. Firstly, that the deceased was last seen with the private respondents at 4:00 PM on 09.08.2019



when they had left the informant's house together and secondly, that the *Pulsar* motorcycle and the sandals of the deceased were recovered from the cowshed of respondent No. 3. Based on these circumstances, the prosecution attempted to prove the guilt of the private respondents before the trial court. The postmortem report giving the time elapsed since death of the deceased as discussed by the trial court casts doubt on the prosecution's case that the deceased was alive at 4:00 PM and had left the house at 4:00 PM. If the finding given in the postmortem report indicating lapse of time since death, as discussed in the judgment of the trial court, the deceased had died between 12 PM on 08.08.2019 to 12 noon on 09.08.2019. The medical evidence casts serious doubt on the prosecution's case as disclosed in the First Information Report. The cowshed of respondent No. 3 from where the motorcycle of the deceased was recovered, has been found to be an open space.

19. In our view, thus, if the trial court has recorded finding of acquittal of the private respondents by giving them benefit of doubt, such view cannot be said to be not a possible view in the facts and circumstances based on the evidence adduced at the trial, requiring this Court's interference.

20. We, therefore, we do not find any merit in this



appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

Rajesh/Gaurav

AFR/NAFR	NA
CAV DATE	NA
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