

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.260 of 1995

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1. Brahmdeo Singh
 2. Bishundeo Singh both sons of Tribhuwan Singh
 3. Sudama Singh son of Badri Singh
 4. Munna Singh
 5. Shailendra Singh both sons of Hazari Singh
 6. Prem Nath Singh son of Ram Nath Singh, all resident of village Bibipur, Police Station Paliganj, District Patna (appeal against appellant No.6 abated vide order dated 21.06.2022)

... .. Appellant/s

Versus

The State of Bihar Respondent/s

with
CRIMINAL APPEAL (DB) No. 290 of 1995

Sanjay Singh son of Kamaldeo Singh, resident of village Bibipur, P.S. Paliganj, District Patna

... .. Appellant/s

Versus

The State of Bihar Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 260 of 1995)
For the Appellants : Mr. Sidhendra Nr. Singh, Advocate
For the Respondent : Mrs. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 290 of 1995)
For the Appellant : Mr. Kumar Uday Singh, Advocate
For the Respondent : Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 24-06-2022

Both the appeals are being taken up together as they arise out of the same judgment and order, by which the appellants have been convicted.

2. Both the appeals have been preferred against the judgment and order dated 26.08.1995 passed by the learned IVth Additional District & Sessions Judge, Patna in Sessions Trial



No.37 of 1991 arising out of Paliganj P.S. case No.17 of 1989, whereby and whereunder the appellants have been convicted for the offences under Sections 302 read with Section 34 of I.P.C., Section 201 read with Section 34 of I.P.C. and Section 364 read with Section 34 of I.P.C. The appellants have been sentenced to undergo imprisonment for life under Section 302 read with Section 34 of I.P.C., rigorous imprisonment for five years under Section 201 read with Section 34 of I.P.C. and also rigorous imprisonment for five years under Section 364 read with Section 34 of I.P.C. All the sentences have been ordered to run concurrently.

3. Facts in brief which are necessary may be taken note of. It is the case of the prosecution that on 22.09.1989 at about 7:30 A.M., the informant came to know that a dead body was lying in the paddy field situated south of Kurkuri Bridge. The informant (P.W.6) along with his son, namely, Ajay Kumar Singh (P.W.2), Ram Kumar Singh (P.W.3), Kanhyai Ram as well as other villagers went there and identified that the dead body was of Arun Kumar Singh (deceased), nephew of the informant. The informant told the police that on 21.09.1989 at about 5:00 P.M., accused appellants Brahmdeo Singh, Bishundeo Singh, Shailendra Singh, Munna Singh, Sanjay Singh and Sudama Singh came to his house on a tempo. Brahmdeo Singh was driving the tempo. They called the



deceased and interacted with him. Thereafter the deceased took some money from his mother and went along with them towards Paliganj on the same tempo. When the deceased did not return till late night, the informant went to the house of the above referred appellants in order to enquire regarding the whereabouts of the deceased. The informant found that the above referred appellants had also not returned till then. By then in the morning, the informant received information regarding a dead body lying in a paddy field near Kurkuri Bridge. He went there and identified the dead body as that of his nephew Arun Kumar Singh. There were stabbing injuries below the left eye and above right eye brow. There were injuries on his neck also. On the basis of the statement of the informant, the present was registered against the appellants in both the appeals.

4. After investigation, the police submitted charge sheet. The Additional Chief Judicial Magistrate, Danapur took cognizance and committed the case to the court of Sessions and Charge under Sections 302/34 IPC, 201/34 IPC and 364/34 IPC was framed against the Appellants. The accused persons pleaded not guilty and were put on trial.

5. During trial, the prosecution examined altogether eight witnesses, namely, Triveni (P.W.1), Ajay Kumar (P.W.2),



Ram Kumar Singh (P.W.3), Kaushalya Devi (P.W.4), Vijay Singh (P.W.5), Ram Byash Singh (P.W.6), Dr. Radha Kant Choudhary (P.W.7), who conducted the postmortem of the deceased and Shekh Noor Mohammad (P.W.8), Investigating Officer of the case. The defence has not examined any witness in support of the case.

6. It is the case of the appellants before this Court that none of the prosecution witnesses are eye witness to the alleged occurrence. The present case is based on circumstantial evidence. The only evidence which has come against the appellants is that they were all seen together with the deceased. Except for this, there is no other evidence which has come during trial against the appellants. Therefore, the chain of circumstances was not complete to prove the guilt of the appellants beyond reasonable doubt. It has also been argued that in the present prosecution except for P.W.1, P.W.7 and P.W.8, all the prosecution witnesses are related to the deceased and, as such, they can be said in law, to be interested witness. It has also been contended that the prosecution has not assigned any motive on the part of the appellants for having committed murder of the deceased.

7. Learned counsels appearing for the State submit that the order under challenge needs no interference and the prosecution has proved its case beyond reasonable doubt.



8. Having heard learned counsels for the parties and considering the materials available on record, following issues arise for consideration in both the cases: -

(i) Whether the prosecution has been able to prove that the chain of circumstances is so complete that there is no other conclusion except for the fact that with all human probability the crime was committed by the appellants and none else?

(ii) Whether the absence of assigning any motive in the case of circumstantial evidence where the chain of circumstance is not complete, would weigh in favour of the accused?

9. While considering the first issue, we find that from perusal of the records, it is clear that there is no eye witness to the entire occurrence and the conviction is recorded on the basis of circumstantial evidence. The only evidence, which has come on record, is that the appellants were last seen with the deceased. The witnesses have been consistent in their testimony that the appellants have not used force or in any manner have coerced the deceased to come with them. Rather, the deceased had out of his own will gone along with the appellants. Therefore, no case of abduction can be made out against the appellants. The appellants had come to the house of the deceased and had taken him with them. In the next morning, the dead body of the deceased was



found in the paddy field near a Bridge. These facts even if taken cumulatively do not complete the chain of circumstances. There are many links in the chain which are missing. It is not the case of the prosecution that the appellants were seen near the dead body of the deceased or any incriminating article has been recovered from the possession of the appellants. Therefore, the only fact that the appellants were last seen with the deceased cannot lead us to an undoubted conclusion that it was the appellants, who have committed murder of the deceased. Apart from being last seen with the deceased, there is no iota of evidence to link the appellants with the commission of the offence. It is a case where circumstantial evidence available on record are not sufficient enough to record a conviction. The Hon'ble Supreme Court in the case of **Subhash Chandra vs. State of Rajasthan [(2002) 1 SCC 702]** has explained the theory of conviction on circumstantial evidence and the principles governing proving a guilt beyond reasonable doubt. Upon analyzing the case in the backdrop of the requirement of law, we find that the circumstances brought against the appellants are not sufficient enough to hold that the guilt is proved beyond all reasonable doubts. That apart, the Hon'ble Supreme Court in the case of **Raja @ Rajinder vs. State of Haryana [(2015) 11 SCC 43]**, **Kiriti Pal vs. State of West Bengal**



[(2015) 11 SCC 178] and Vijay Shankar vs. State of Haryana [(2015) 12 SCC 644], the principles for conviction on the basis of circumstantial evidence and the chain of link to be complete, have been delineated by the Hon'ble Supreme Court. In paragraphs 10, 11 and 12 in the case of **Raja @ Rajinder** (supra), it has been crystallized in the following manner: -

“10. As the factual matrix would show, the case of the prosecution entirely hinges on circumstantial evidence. When a case rests on circumstantial evidence, the Court has to be satisfied that :

“(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”



[See Padala Veera Reddy v. State of A.P. 1989 Supp (2) SCC 706]

11. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259] it has been laid down that :

“4.the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof.”

12. From the aforesaid it is clear as day that the court is required to evaluate the circumstantial evidence to see that the chain of events has been established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. [see



Ujjagar Singh vs State of Punjab (2007) 13 SCC 90]”

10. Similarly, in the case of ***State of Himachal Pradesh vs. Raj Kumar [(2018) 2 SCC 69]*** the principle has again been crystallized in the following manner:-

“9. Prosecution case is based on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances must be conclusive in nature unerringly pointing towards the guilt of the accused. Moreover, all the circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

10. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. In Trimukh Maroti Kirkan v. State of Maharashtra [(2006) 10 SCC 681], it was held as under:-



“12.The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence.”

The same principle was reiterated in State of Rajasthan v. Kashi Ram (2006) 12 SCC 254, Ganesh Lal v. State of Rajasthan (2002) 1 SCC 731, State of Maharashtra v. Suresh (2000) 1 SCC 471 and State of Tamil Nadu v. Rajendran (1999) 8 SCC 679.”

11. Upon evaluating the case in hand and the material available against the appellants, we find that the only circumstance appearing against the appellants is that they had accompanied the deceased from his house. In our considered view, they do not form a complete chain or link of circumstances which is sufficient



enough to hold the appellants guilty of the charges levelled against them. In view of the aforesaid, the prosecution has not been able to establish and prove a complete chain of circumstances which can lead to no other conclusion except for the fact that the appellants have committed murder of the deceased.

12. Now adverting to the second issue as formulated above, we find that the prosecution during the entire trial has not assigned any motive against the appellants for commission of murder of the deceased. At this juncture, we would gainfully refer to the observation made by the Hon'ble Supreme Court in the case of **Surinder Pal Jain vs. Delhi Administration, reported in AIR 1993 SC 1723**; regarding the significance of motive in the case of circumstantial evidence. In paragraph 12 it has been held as under:

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“12....In a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case. The absence of motive, however, puts the court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take place of legal proof.”

(emphasis supplied)



13. From the aforesaid observation of the Hon'ble Supreme Court, it is clear that motive assumes great significance in cases of circumstantial evidence and the absence thereof would certainly weigh in favour of the accused i.e., the appellants herein.

14. In view of the above referred judgments of the Hon'ble Supreme Court and discussions made hereinabove, we are of the considered view that the appellants' conviction is not sustainable as there is no conclusive circumstance which leads to only one conclusion that the appellants have committed murder of the deceased.

15. Accordingly, both the appeals are allowed. The judgment of the trial court is set aside. The appellants of both the appeals are discharged from the liabilities of their respective bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/

AFR/NAFR	NAFR
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