

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1098 of 2012

Arising Out of PS. Case No.-88 Year-2008 Thana- PIPRA District- Supaul

Raben Das, son of Raghu Das, resident of village Ram Nagar, P.S. Pipra District Supaul.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 913 of 2012

Arising Out of PS. Case No.-88 Year-2008 Thana- PIPRA District- Supaul

Raghu Das, son of Late Dukhi Das, resident of village Ram Nagar, P.S. Pipra District Supaul.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1098 of 2012)

For the Appellant : Mr. S.D. Sanjay, Senior Advocate

Ms. Priya Gupta, Advocate

Ms. Ananya Maitin, Advocate

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

(In CRIMINAL APPEAL (DB) No. 913 of 2012)

For the Appellant : Mr. S.D. Sanjay, Senior Advocate

Ms. Priya Gupta, Advocate

Mr. Mohit Agrawal, Advocate

Ms. Ananya Maitin, Advocate

For the Respondent : Km. Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 22-08-2022

Both these appeals have been preferred against the same judgment of conviction dated 30.08.2012 and order of sentence dated 05.09.2012 passed by learned Adhoc Additional Sessions



Judge, Supaul, in S.T. No. 56 of 2010/T.R. No. 360 of 2010 and S.T. No. 111 of 2009/T.R. No. 363 of 2010, arising out of the same Pipra P.S. Case No. 88 of 2008 (G.R. No. 856 of 2008) and accordingly they have been heard together and are being disposed of by the present common judgment and order.

2. By the impugned judgment and order, the appellants have been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 1098 of 2012				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sole appellant (Raben Das)	302 of the Indian Penal Code	Life	10,000/-	Six months simple imprisonment
	201 of the Indian Penal Code	Three years R.I.	10,000/-	Six months simple imprisonment
Cr. Appeal (D.B.) No. 913 of 2012				
Sole appellant (Raghu Das)	302 of the Indian Penal Code	Life	10,000/-	Six months simple imprisonment
	201 of the Indian Penal Code	Three years R.I.	10,000/-	Six months simple imprisonment

The sentences have been ordered to run concurrently.

3. Heard Mr. S.D. Sanjay, learned Senior Counsel appearing on behalf of the appellants and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor representing the State.

4. The appellant, Raben Das of Cr. Appeal (D.B.) No. 1098 of 2012 is the husband of the deceased. Appellant Raghu Das of Cr. Appeal (D.B.) No. 913 of 2012 is father of Raben Das.



5. The First Information Report has been registered based on the *fardbeyan* of a village Chaukidar viz. Bishnudev Sada (P.W. 12). In his *fardbeyan*, he disclosed to a Police Officer of Pipra police station that on 03.08.2008, he learnt that the dead body of a female was lying nearly 200 yards away near a canal. He reached the place where the dead body was lying. On seeing the dead body, he could gather that the deceased was assaulted the previous night and the dead body of deceased was thrown away near the canal with the purpose of disappearance of evidence. On enquiry, he learnt that the deceased was wife of the appellant Raben Das and daughter-in-law of the appellant Raghu Das. He however, started inquiring about the incident and upon enquiry he learnt from appellant Raghu Das that in the previous night, the deceased and her husband, appellant Raben Das, had quarreled. On a discreet enquiry, the *Chaukidar* (informant)(PW-12) learnt that these appellants, after having killed the deceased, had thrown away the dead body for the disappearance of the evidence. Based on *fardbeyan* of the informant to the aforesaid effect, these appellants came to be named in the First Information Report. The police, upon completion of investigation, submitted charge-sheet on 03.08.2008 against the appellant Raghu Das and a cognizance was taken accordingly on 07.11.2008, whereafter the case was



submitted for trial. By way of supplementary charge-sheet, the appellant, Raben Das, came to be charge-sheeted. Cognizance, based on the supplementary charge-sheet filed by the police, was taken by the Court on 26.01.2009.

6. It is noted that in the *postmortem* report following *antemortem* injuries were found on the dead body of the deceased: -

“External findings:

1. Eye – both eyes are opened, eye ball are protruded.

2. Mouth opened, tongue protruded outside the mouth.

3. Multiple bulla all over the chest.

4. Whole body is swollen.

Internal findings:

I. Neck is swollen on opening supercutanea bruise/haematoma seen. Hyoid bone are broken.

II. On opening the chest there is bruising seen at upper part of Rt lump.

III. On opening the abdominal cavity: No abnormality are seen.

IV. On opening the skull vault. No abnormality are seen.

Cause of death: Cardio-respiratory failure due to Asphyxia caused by throatling.

Time elapsed since death within 48 hours (fourty eight)”

7. Charges were framed by the Court of learned Additional Sessions Judge-I, Supaul, on 04.02.2010 for



commission of the offences punishable under Sections 302 read with 34 and Section 201 read with 34 of the Indian Penal Code. After framing of the charges, the appellants were put on trial. During the course of trial, the prosecution examined altogether 13 witnesses, including the Doctor as PW-13 who proved the *postmortem* report, the informant, Bishundev Sada as PW-12. The Investigating Officer was not examined. The father of the deceased, Nago Das was examined as P.W. 10 and the mother, Triphul Devi of the deceased as P.W. 11. The defence examined three witnesses.

8. It is worthwhile mentioning, at the juncture, that Prosecution witnesses 1 to 9 did not support the prosecution's case and they expressed their complete ignorance about the manner in which the occurrence had taken place. Accordingly, all of them came to be declared hostile at the instance of the prosecution. The informant (P.W. 12), though proved the First Information Report, he did not support the prosecution's case, in any manner, that the deceased was killed by these appellants.

9. After closure of the evidence of the witnesses, for the purpose of the complying the requirement under Section 313 (1) (b) of the Code of Criminal Procedure, the Trial Court



purportedly explained the circumstance in the evidence appearing against the appellant.

“प्रश्न :- आपने गवाहों का बयान सुना है ?

उत्तर :- हां

प्रश्न :- आपके बिरुद्ध साक्ष्य है के आप अपने पत्नी रीना देवी को दिनांक 03.08.08 ई० के रात्रि में मौजा रामनगर, थाना - पिपरा, जिला - सुपौल में अपने घर पर हत्या कर लाश छुपाने के नियत से घर पश्चिम ड्रेनेज पर फेक दिए थे ?

उत्तर :- नहीं

प्रश्न :- सफाई में क्या कहना है ?

उत्तर :- (illegible)”

10. Apparently, the Trial Court vaguely mentioned in its question put to the appellant that there was evidence appearing at the trial against them that they had killed the deceased on 03.08.2008 and with the intention of causing disappearance of the dead body, they had thrown away the same near the drainage situated on the west side of their house. The Trial Court, however, failed to even briefly explain the circumstances which were appearing in the evidence against them to the effect that the deceased was killed by them and with the intention of disappearance of the dead body, they had thrown away the same near the canal. After having seen the evidence of the prosecution witnesses which have been briefly mentioned hereinabove, in our opinion, the Trial Court failed in its duty to properly comply with the requirement of Section 313(1)(b) of the Code of Criminal Procedure.



11. It is manifest, on the basis of the discussion above, that the judgment of conviction, recorded by the Trial Court, is based on evidence of P.Ws. 10 and 11.

12. The sole question for determination in these appeals is whether the prosecution can be said to have established the charges of commission of the offences punishable under Sections 302 read with 34 and 201 read with 34 of the Indian Penal Code against these appellants beyond all reasonable doubts, based on evidence of two prosecution witnesses, namely, P.W. 10, father of the deceased and P.W. 11, the mother of the deceased. It is also pointed out that it is not the prosecution's case that the said P.Ws. 10 and 11 were the eye-witnesses to the occurrence. It is rather admitted case of the prosecution that these witnesses were not present at the place of occurrence.

13. P.W. 10, in his examination-in-chief, evidenced that the deceased was married to the appellant Raben Das, whereafter she was being tortured for non bringing a buffalo from her parental home. The deceased had earlier made complaint in this regard to her parents. He further deposed that a *Panchayati* was held for resolving the dispute arising out of the demand of a buffalo, in which Jagdish Tanti, Ganga Rai, Vindo Sutihar, Harishchandra Tanti and Shambhu Tanti were present *panchas*.



The said *Panchayati* was held eight days before the date of occurrence. None of *panchas* were, however, examined at the trial to establish the prosecution's case about the dispute between the deceased and the appellants and that the demand of buffalo was being made by the appellants.

14. The deposition of P.W. 11 is also on the same lines as of P.W. 10.

15. D.W. 1, in his evidence, deposed that these appellants had come to his place enquiring about the whereabouts of the deceased. Next day, he learnt that the deceased had been killed by some miscreants.

16. Mr. S.D. Sanjay, learned Senior Counsel appearing on behalf of the appellants has submitted that the finding of conviction, recorded by the trial Court, is patently erroneous and verges on perversity. He has contended that the prosecution miserably failed to establish the charges against the appellants of commission of the offences punishable under Sections 302 read with 34 and 201 read with 34 of the Indian Penal Code. There is no eye-witness to the occurrence and evidence of P.W.s 10 and 11 are deficient on the point of these appellants' role in the commission of the offence. He has submitted that P.Ws. 1 to 9, in their deposition, clearly stated that their statement was not



recorded by the Investigating Officer. No independent witness was examined at the trial to support the prosecution's case, he contends.

17. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor representing the State, on the other hand, has submitted that the finding of conviction recorded by the trial Court is apparently based on circumstantial evidence of P.Ws. 10 and 11, which cannot be said to be suffering from any legal infirmity requiring this Court's interference.

18. We have perused the impugned judgment and order of the trial Court as also the Lower Court Records. We have given our anxious consideration to the rival submissions made on behalf of the parties. We find force in the submission made on behalf of the appellants that the prosecution miserably failed to bring home the charge of commission of offence punishable under Sections 302 read with 34 and 201 read with 34 of the Indian Penal Code against these appellants. The evidence of P.Ws. 10 and 11 may, at the best, suggest that the matrimonial relationship between the appellant, Raben Das, and the deceased was not cordial. Non-examination of the *Panchas* to establish even this aspect of the prosecution's case is of much significance. The prosecution has further failed to establish as to how, when and where, the



deceased was killed, let alone the accusation against these appellants of having killed her.

19. The prosecution, in our opinion, has not been able to establish the essential ingredients of Section 302 of the Indian Penal Code to establish charge of murder against these appellants. As has been noted in the very beginning, the appellants were also charged of offence punishable under Section 201 read with 34 of the Indian Penal Code. On scrutiny of evidence on records, the prosecution, in our opinion, has, however, miserably failed to establish any act of these appellants amounting to causing disappearance of the evidence of offence alleged against them. We, at this juncture, take note of the evidence of the informant (P.W. 12), who deposed in paragraph 8 that appellant, Raghu Das, himself had come to the place from where the dead body was recovered, once he learnt about the death of the deceased.

20. This part of evidence of P.W. 12 has been disbelieved by the trial Court on the reasoning that he had not disclosed this fact in his First Information Report.

21. In our considered opinion, the prosecution, based on circumstantial evidence of P.Ws. 10 and 11 of the nature as noted above, cannot be said to have established the charges of commission of offence punishable under Sections 302 read with



34 and 201 read with 34 of the Indian Penal Code against these appellants. The finding recorded by the trial Court of conviction, in our considered opinion, is patently erroneous and legally unsustainable.

22. The impugned judgment of conviction dated 30.08.2012 and order of sentence dated 05.09.2012 passed by learned Adhoc Additional Sessions Judge, Supaul, in S.T. No. 56 of 2010/T.R. No. 360 of 2010 and S.T. No. 111 of 2009/T.R. No. 363 of 2010, arising out of Pipra P.S. Case No. 88 of 2008 (G.R. No. 856 of 2008) are accordingly set aside.

23. The appeals are allowed.

24. The appellant, Raben Das of Cr. Appeal (D.B.) No. 1098 of 2012 is in custody.

25. Let him be released forthwith.

26. Appellant Raghu Das of Cr. Appeal (D.B.) No. 913 of 2012 is on bail. He stands discharged of all the obligations of bail bonds.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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