

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1224 of 2019

Arising Out of PS. Case No.-32 Year-2001 Thana- NATWAR District- Rohtas

SHAKUNTALA KUER Widow of Sri Ram Singh (Deceased Victim) R/o
village- Bishwambhar Pur, P.S.- Natawar, District- Rohtas

... .. Appellant

Versus

1. The State of Bihar
2. Shambhu Sah S/o Late Shesh Nath Sah R/o village- Natawar Bazar, P.S.-
Natawar, District- Rohtas
3. Arun Sah S/o Late Shesh Nath Sah R/o village- Natawar Bazar, P.S.-
Natawar, District- Rohtas
4. Vinod Sah S/o Late Shesh Nath Sah R/o village- Natawar Bazar, P.S.-
Natawar, District- Rohtas
5. Budhram Sah S/o Late Ram Adhar Sah R/o village- Lilawachh, P.S.- Dinara,
District- Rohtas
6. Birbal Chaudhary S/o Mithai Chaudhary R/o village- Tenauaj Tola, P.S.-
Natawar, District- Rohtas
7. Bhulan Paswan S/o Mani Ram R/o village- Maudihara, P.S.- Natawar,
District- Rohtas
8. Mallu Ojha S/o Suryabali Ojha R/o village- Maudihara, P.S.- Natawar,
District- Rohtas
9. Musti Paswan S/o Kailash Ram R/o village- Maudihara, P.S.- Natawar,
District- Rohtas

... .. Respondents

Appearance :

For the Appellant	:	Mr. Pandit Jee Pandey, Advocate Mr. Radha Raman, Advocate Mr. N.K.Tiwari, Advocate Mr. R.P.Tripathy, Adv
For the Respondent State:		Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 14-12-2022

This appeal has been preferred under the *proviso* to
Section 372 of the Cr.P.C. putting to challenge the judgment dated

26.07.2019 passed by learned Additional District and Sessions Judge-7, Sasaram, Rohtas in Sessions Trial No. 125 of 2003/C.I.S. No.879 of 2014, whereby respondents No. 2 to 9 have been acquitted of the charge of commission of the offence punishable under Sections 302, 201 read with Section 34 of the IPC. The appellant is the widow of the deceased and, therefore, a victim within the meaning of Section 2(wa) of the Cr.P.C.

2. We have heard learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

3. A *fardebayan* of the Dafadar Manmohan Singh (not examined at the trial) recorded by the SHO of Natwar Police Station in the district of Rohtas is the basis for registration of FIR. According to the informant, while he was at his house, he had received an information that a dead body of an unknown person was lying in a well of village Pipari, acting on which he had proceeded to that place and got the dead body pulled out, with the aid of the villagers, who had assembled there. The deceased was found to have been murdered and his dead body thrown into the well, with his both hands tied from behind with a *gamcha*. He was also found to have been brutally assaulted all over his body, before the body was thrown into the well. He was found wearing a pair of pink shorts. The persons, who had assembled there, too could not

identify the dead body of the deceased. During the course of investigation, the informant in his further statement, suspected that the deceased might be a resident of village Biswambharpur, who was seen near the house of one Sesh Nath Sah on 15.04.2001. He further suspected that he might have been killed in the house of Sesh Nath Sah by the family members of Sesh Nath Sah. During the postmortem examination, several *antemortem* injuries were found on the body of the deceased and the cause of death was found to be asphyxia caused by strangulation. The time elapsed since the death of the deceased till his autopsy came to be assessed by the doctor as between 24 -36 hours. The autopsy was done on 18.04.2001.

4. Based on the materials collected during the course of investigation, the police submitted its charge-sheet, whereupon cognizance came to be taken for the offences punishable under Sections 302, 201 read with Section 34 of the IPC. The charges were accordingly framed against respondents No. 2 to 9 and co-accused Sesh Nath Sah and Jagdish Sah. Co-accused Sesh Nath Sah and Jagdish Sah died during the pendency of the trial. The respondent No. 2 to 9 denied the charges framed against them and accordingly they were put to trial. Further, from the impugned order it transpires that all together 9 witnesses were examined at

the trial including the doctor, who had conducted the postmortem examination as PW-8 and the investigating officer as PW-9. The prosecution also proved the formal FIR, *fardbeyan* of the informant and the postmortem report.

5. PW-1 has been declared hostile at the instance of the prosecution.

6. PW-2, the widow of the deceased and the appellant herein, deposed that on 15.04.2001, in the afternoon, the deceased had gone to the co-accused Sesh Nath Sah on 15.04.2001 at about 1:30 p.m. to collect the due amount of money from him. On 17.04.2001, the dead body of the deceased was found in a well in the outskirts of the village Pipari. After having heard the rumours, she reached there at about 05:06 p.m. when she saw that the slippers and the clothes, which the deceased was wearing, were lying there. The dead body was sent for postmortem examination and on the next day the dead body was sent to her house. She learnt that co-accused Sesh Nath Sah (since deceased), Vinod Sah (appellant No. 4), Arun Sah (appellant No.3), Sambhu Sah (appellant No. 2), Musti Paswan (appellant No. 9) and 5-6 others had killed her husband. During her cross examination, she deposed that she did not make any attempt to search for the deceased as he had not returned till the night of 15.04.2001. On 16.04.2001, she

had attempted to know the whereabouts of the deceased from the co-villagers. The appellant No. 2 is apparently not an eye-witness and cannot be said to be even a hearsay witness as she did not disclose as to how did she learn that the aforesaid respondents had killed the deceased.

7. PW-3, Bikesh Kumar, nephew of the deceased, in his evidence deposed that on 15.04.2001, the deceased had gone to Sesh Nath Sah for payment of money against sale of paddy to him by the deceased to Sesh Nath Sah. Sesh Nath Sah had prevented him (the deceased) from going back to his house and, in the meanwhile, Vinod Sah (appellant N.4) came, whereafter some altercation had ensued. Evidence of PW-4, Sachin Kumar, who is the son of the deceased, is also to the same effect that the deceased had gone to collect money from Sesh Nath Sah and when he did not return, in order to know his whereabouts he had gone to Natwar with Bikesh Kumar (PW-3), Mantu Rai (PW-6), Upendra Rai (PW-5) to the place of Sesh Nath Sah where he had seen his father (the deceased) near his (Sesh Nath Sah) *gola* (grain market). He also deposed that some altercation had taken place between the deceased and son of Sesh Nath Sah in his presence. The deceased had stayed back at Natwar that night. On 16.04.2001, he, with Bikesh Sah had gone to enquire about his

father at the *gola* of Sesh Nath Sah, but he found none present there. Thereafter, he learnt about recovery of the dead body of a person from the well. He identified the slippers, trousers and the shirt, which the deceased was wearing, which belonged to his father. He further deposed that before he had reached the place from where the dead body was recovered, the police had already moved the dead body for postmortem examination. He had learnt that on 15.04.2001 some scuffle had taken place between the deceased and Arun Sah (respondent No. 3) and thereafter Arun Sah had assaulted the deceased with iron-weights (*batkhara*) consequent upon which he died and his dead body was packed in a gunny bag and thrown in the well for disappearance of the evidence. He also described the manner in which the deceased was assaulted, as was learnt by him.

8. Upendra Rai (PW-5), also deposed that the deceased was seen standing near the house of Sesh Nath Sah and, in response to a query, he had told him that he had come to take from Sesh Nath Sah a sum of Rs. 48,000/- which was due on him. He had again met the deceased near the house of Sesh Nath Sah, when he was told by the deceased that he would return only after receiving money from Sesh Nath Sah. He (PW 5) too deposed that some altercation had taken place between the deceased and Arun

Sah (respondent No. 3), which he had pacified. Subsequently, he had though noticed that the bicycle of the deceased was standing there near the house of Sesh Nath Sah, but the deceased was not there. He, subsequently, learnt that the dead body of the deceased was found lying in a well, where he reached and thereafter learnt that the dead body of the deceased was sent for postmortem examination. PW-5 claimed to have identified the slippers and the clothings of the deceased. According to him, he learnt that during some altercation/scuffle, Vinod Sah (Respondent No. 4) had assaulted the deceased in his head with iron-weights because of which he had become unconscious. The respondents Vinod Sah, Arun Sah, Jagdish Sah, Budhram Sah, Sambhu Sah, Bhulan Paswan, Musti Paswan, Mallu Ojha and Birbal Chaudhary in connivance with each other, thereafter, packed the body of the deceased, who had become unconscious, in a gunny bag. Subsequently, after Sesh Nath Sah returned from Patna, the accused persons with due deliberation killed the deceased and threw away the dead body into the well.

9. PW-6, Mantu Rai, also deposed that he had seen the deceased with his bicycle near the house of Sesh Nath Sah and, subsequently, the deceased was seen by him standing in the *veranda* of the said accused Sesh Nath Sah. He also claimed to be

the witness of the occurrence of altercation and scuffle between the deceased and Arun Sah (Respondent No. 3, son of Sesh Nath Sah). Subsequently, he learnt that the dead body was lying in a well on 17.04.2001. On the basis of information, which he had received, he learnt that the deceased had been killed and in an attempt to get the body disappeared, it was thrown into the well by the accused persons.

10. PW-7, Shri Bhagwan Singh, brother of the deceased, also deposed that he had seen the deceased near the *gola* of Sesh Nath Sah. He also supported the prosecution's case that he had seen the deceased and respondent No. 3 (Arun Sah) altercation with each other, which was pacified by him. While the deceased remained there, this witness returned to his house and, subsequently, he learnt that the deceased was killed by the accused persons.

11. The Doctor, PW-8, who had conducted the postmortem examination, deposed that there were external injuries on the body of the deceased and death had occurred due to asphyxia caused by strangulation.

12. PW-9, the Investigating Officer, supported the prosecution's case only to the extent that the dead body of the deceased was recovered, based on the information given by the

Dafadaar, the informant. The Dafadaar could not be examined as it appears from the records that he had died during the course of trial.

13. Learned counsel appearing on behalf of the appellant has submitted that a holistic view of the prosecution's case based on the evidence of the prosecution's witnesses leads to an irresistible conclusion that the deceased was killed by the private respondents. According to him, the impugned judgment of acquittal recorded by the trial court is erroneous and requires interference by this Court.

14. We have perused the evidence of the prosecution's witnesses, which have been brought on record by way of supplementary affidavit filed on behalf of the appellant. We have also perused the impugned judgment of the trial court. Evidently, the prosecution attempted to prove its case based on the sole circumstance to the effect that the deceased was seen near the *gola* of Sesh Nath Sah, who had gone there to recover from Sesh Nath Sah an amount which was due against supply of paddy by the deceased to Sesh Nath Sah and further, some altercation had taken place between the deceased and the son(s) of Sesh Nath Sah.

15. It is apparent that though the deceased had not returned after leaving the house on 15.04.2001, apparently no

search was made to find him out. The widow of the appellant herself in her deposition clearly stated that no attempt was made to search for the deceased, though he had not returned on 15.04.2001. It does not emerge from her evidence that she had any knowledge about the deceased having stayed at the residence/*gola* of Sesh Nath Sah. PW-4, in his deposition, has narrated that an altercation had taken place between the deceased and son(s) of Sesh Nath Sah on 15.04.2001, which fact is not supported by PW-2, the appellant, as she had no idea about the altercation/scuffle having taken place. She had no knowledge that the deceased had stayed back in the house of Sesh Nath Sah. From the evidence of the prosecution's witnesses, who have supported the prosecution's case, it is evident that most of them had simply learnt that the deceased was killed by Sesh Nath Sah and these respondents and they are thus hearsay witnesses.

16. The deposition of the prosecution's witnesses at the trial do not make out, in our opinion, a case even of strong suspicion that the private respondents had committed the offence. No evidence at all was adduced at the trial based on which it can be decisively concluded beyond all reasonable doubts that respondents Nos. 2 to 9 have committed the offence punishable under Sections 302, 201 read with Section 34 of the IPC.

17. The trial court, in our opinion, has rightly acquitted the respondents by the impugned judgment, which does not require interference exercising appellate jurisdiction under the *proviso* to Section 372 of the Cr.P.C.

18. This appeal has thus no merit at all and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

Pawan-Nishant

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