

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (D.B.) No.1503 of 2019

Arising Out of P.S. Case No.-102 Year-2007 Thana- KHUSRUPUR District- Patna

Sugreev Mahto, Son of Late Saryug Mahto, Resident of Village-Sheikh Mohammadpur, P.S-Khushurupur, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. Suresh Paswan, Son of Late Jagdeo Paswan, Resident of Village-Sheikh Mohammadpur, P.S-Khushurupur, District-Patna.
3. Ram Nandan Mahto, Son of Late Laxmi Mahto, Resident of Village-Sheikh Mohammadpur, P.S-Khushurupur, District-Patna.
4. Ram Sakal Paswan, Son of Late Haricharan Paswan, Resident of Village-Sheikh Mohammadpur, P.S-Khushurupur, District-Patna.
5. Krishna Mahto, Son of Late Dhalu Mahto, Resident of Village-Sheikh Mohammadpur, P.S-Khushurupur, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s: Mr Sanjay Kumar, Advocate

For the Respondent/s: Mr Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 29-11-2022

This is an appeal under Section 372 of the Cr.P.C. putting to challenge a judgment dated 17.02.2019 passed by the learned Additional Sessions Judge-V, Patna City, in Sessions Trial No. 464 of 2008/2465 of 2008, whereby respondents No. 2 to 5 have been acquitted of the charges of commission of offences punishable under Sections 302/34 and 364/34 of the Indian Penal Code. The said sessions trial had arisen out of Khushurupur P.S. Case No. 102 of 2007 on 24.10.2007 levelling



commission of an offence punishable under Section 364/34 of the I.P.C. of which the appellant is the informant.

2. A written report of the appellant was the basis for registration of the said Khusrupur P.S. Case No. 102 of 2007. He asserted in his written report that at the relevant point of time, he was sitting in his house when respondent No. 3 (Ram Nandan Mahto) came and invited his younger brother (the deceased) to accompany him for eating bread and fish. Respondent No. 2 told the informant that he was taking his brother (the deceased) to a hut situate near the eastern side of a community hall. The informant is said to have followed them and seen them in the shed with other persons, namely, Suresh Paswan (respondent No. 2), Ram Sakal Paswan (respondent No.4), Krishna Mahto (respondent No. 5) and Kameshwar Paswan, all of whom were having fish and consuming liquor. They are said to have offered the deceased fish and forced him to consume liquor. The informant claimed that he had witnessed this event with his own eyes while sitting in the nearby community hall. After having taken the meal, the deceased had proceeded towards the southern side of the village in a field, in which direction the accused persons had also gone after that. The deceased, however, did not return on the said night, whereafter the informant and his brother



started searching for him. Till late in the light, he did not return. Subsequently, he noticed crushed paddy crops in the field of one Tejan Mahto in which a *gamcha* of the deceased was found lying. This gave rise to suspicion to the informant that the deceased might have been kidnapped, which led to the registration of the aforesaid Khusrupur P.S. Case No. 102 of 2007 registered for the offence punishable under Section 364/34 of the I.P.C.

3. During the course of the investigation, the dead body of the deceased was subsequently recovered. The police, thereafter, submitted a charge sheet against the private respondents on 20.01.2008, whereafter cognizance was taken on 21.08.2008 by the learned Magistrate. The case was subsequently committed to the Court of Sessions. Charges were framed on 19.01.2009 against respondents No. 2 to 4 for the commission of the offences punishable under Sections 364/34 and 302/34 of the I.P.C. The private respondents pleaded not guilty and claimed to be tried.

4. At the trial, altogether, eight prosecution's witnesses were examined, including this appellant as PW-7. The trial court, after having scrutinized the evidence of the prosecution's witnesses, reached a conclusion that the prosecution attempted to establish its case based on



circumstantial evidence, merely on the depositions of the witnesses that the accused persons had gone after the deceased in the night of the incident, which itself could not be said to be completing the chain of circumstances, to arrive at a definite conclusion that the private respondents had murdered the deceased.

5. The trial court, referring to the celebrated Supreme Court's decision in the case of *Sharad Birdhi Chand Sarda vs State of Maharastra (A.I.R. 1984 SC 1622)*, concluded in its judgment that there was a break in the chain of circumstances and in such event, the benefit of doubt must go to the accused.

6. Mr Sanjay Kumar, learned counsel appearing on behalf of the appellant assailing the impugned judgment of the trial court, has submitted that the prosecution was able to prove at the trial that the deceased was last seen with the private respondents in the hut, having meal and wine, together. Further, it was also proved at the trial that the informant had seen the deceased going towards the agricultural field and these respondents following him. In such circumstances, he had contended that the private respondents were under obligation to explain the circumstance in which the deceased was done to



death.

7. We have perused the impugned judgment of the trial court, which is well-reasoned and has been passed after duly taking into account the depositions of the prosecution's witnesses at length. It is not the case of the appellant that the evidence of the witnesses has been incorrectly or inadequately mentioned in the impugned judgment of the trial court.

8. It emerges from the evidence of the prosecution's witnesses, as recorded in the impugned judgment of the trial court, that all the witnesses claimed at the trial that the deceased had gone to the community hall and had attended a feast with liquor with the accused persons and thereafter he had gone to his agricultural field. They further claimed that they had seen the accused persons moving in the same direction towards which the deceased had gone after having had the meal and wine together. The trial court noted that the accused persons, according to the prosecution's witnesses, had proceeded 10-20 minutes after the deceased had left the place where he and his other friends (the accused persons) had taken the meal together. In the opinion of the trial court, this time gap was sufficient to create reasonable doubt about the veracity of the prosecution's case. Further, the witnesses deposed that they had seen the accused persons in the



field armed with a rifle, pistol, *fasuli* and on seeing them, they had returned, which fact was not disclosed in the First Information Report. The trial court has rightly taken note of the fact that though the F.I.R. cannot be expected to contain each and every detail of the incident, non-mentioning of such a vital fact would certainly raise a reasonable doubt about the veracity of the prosecution's case as set out at the trial.

9. The trial court, in our opinion, has rightly concluded that the accusation against private respondents was based merely on suspicion, and a suspicion, howsoever grave, cannot assume the character of proof.

10. In such a view of the matter, in our opinion, the trial court has rightly acquitted respondents No. 2 to 5, giving them the benefit doubt.

11. Accordingly, we do not find any merit in this appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2022
Transmission Date	07.12.2022

