

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.806 of 2015

Arising Out of PS. Case No.-69 Year-2002 Thana- PATNA CITY CHOWK District- Patna

Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum Wife of Satish Kumar Singh, Resident of Saket Tower, Flat No. 301, S.P. Verma Road, P.S. Kotwali, District- Patna

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 973 of 2015

Arising Out of PS. Case No.-69 Year-2002 Thana- PATNA CITY CHOWK District- Patna

Suraj Kumar son of Beni Prasad resident of Village - Kewla Tal, P.S. Fatwah, District - Patna.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 806 of 2015)

For the Appellant: Mr Bindhyachal Singh, Senior Advocate
Mr Devendra Narayan, Advocate

For the Respondent: Mr Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 973 of 2015)

For the Appellant: Mr Rajesh Ranjan, Advocate
Mr Ratnakar Pandey, Advocate

For the Respondent: Mr Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 26-06-2023

Both these appeals have been preferred under Section 374(2) of the CrPC against the same judgment of conviction dated 14.09.2015 and order of sentence dated 21.09.2015 passed by the learned Additional District and Sessions Judge-III, Patna, in



Sessions Trial No. 1148 of 2005, arising out of the same Chowk P.S. Case No. 69 of 2002and, 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. 806 of 2015				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum	302/34 and 120-B of the Indian Penal Code	Life	10,000.00	S.I. for six months
Cr. Appeal (D.B.) No. 973 of 2015				
Suraj Kumar	302/34 and 120-B of the Indian Penal Code	Life	10,000.00	S.I. for six months

3. Heard Mr Bindhyachal Singh, learned Senior Counsel appearing on behalf of the appellant in Cr. Appeal (DB) No. 806 of 2015 and Mr Rajesh Ranjan, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB) No. 973 of 2015. Mr Sujit Kumar Singh learned Additional Public Prosecutor has appeared for the state in both appeals.

4. The *fard-beyan* of the father of the deceased, Mahabir Prasad Kamalia (PW 4), recorded on 17.04.2002 by the Sub-Inspector of Police, R.P. Paswan, of Chowk Police Station (not examined), is the basis for registration of the concerned Chowk P.S. Case No. 69 of 2002, which was registered against the



unknown. The case, as unfurled in the *fard-beyan*, is that the informant received a piece of information at 7.30 in the morning of 17.04.2002 that his son (the deceased) had been shot at near Hitaishi Pustakalaya, Mangal Talab, and he had been shifted to a nursing home for treatment. The informant rushed to the hospital with the wife of the deceased, Rita Kamalia (PW 5), and his (informant's) nephew Rajesh Kumar Kamalia (PW 2). On reaching the hospital, they learnt that the deceased had been declared dead. The dead body of the deceased was thereafter taken to N.M.C.H., Patna. It further discloses that the deceased used to go for playing badminton in the morning in Hitaishi Pustakalaya, situated at Mangal Talab. He was not going there for the last three-four days. On the date of occurrence, while going to the place, where he used to play badminton, he had informed the informant telephonically to keep a vehicle ready with a driver which was to be made available to someone. He also mentioned that nearly 11 months ago, his brother, Om Prakash Kamalia, was also killed. The nephew of the informant, Rajesh Kumar Kamalia (PW 2), became the witness to the recording of the *fard-beyan* of the informant by the police officials.

5. It is the prosecution's case that during the investigation, Suraj Kumar (appellant in Cr. Appeal (DB) of 973 of



2015) was apprehended by the police, whose statement was recorded before a learned Magistrate under Section 164 of the CrPC. In the said statement recorded under Section 164 of the CrPC, he is said to have confessed his involvement in the commission of the offence in conspiracy with others including the appellant, Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum, of Cr. Appeal No. 806 of 2015. The said statement, recorded under Section 164 of the CrPC, has been marked as exhibit-4 at the trial. As the accusation against the Appellant, Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum is based primarily on the disclosure said to have been made by appellant Suraj Kumar in his statement under Section 164 of the CrPC, before considering evidence of the witnesses recorded at the trial, we have deemed it apposite to refer first to the facts said to have been disclosed by him in the said statement. To begin with, he disclosed his acquaintance with one Sultan Miya, who was introduced to him (appellant, Suraj Kumar), by another acquaintance Santosh. Nearly 4-5 days prior to 17.04.2002 (date of occurrence), a bearded *Maulavi*, with a beard, had come to Sultan Miya with a girl Anjum when the appellant Suraj Kumar and Santosh were already sitting at the house of Sultan Miya. The said girl and the *Maulavi*, both told Sultan Miya that they wanted a



businessman murdered. Sultan Miya agreed to execute the killing of the businessman on payment of Rs. 4-5 lakhs. After the two left the house of Sultan Miya, the appellant Suraj Kumar, Sultan Miya and Santosh discussed whether the work of killing should be executed or not. Santosh agreed to do it. Two days thereafter, the girl and *Maulavi* again came in a Maruti car. The appellant Suraj Kumar and Santosh both were sitting at the house of Sultan Miya. In the presence of Suraj Kumar, the girl and the *Maulavi* handed over to Sultan Miya a sum of Rs. one lakh with an assurance that they would pay the rest of the amount after one month. Sultan Miya wanted the person, to be killed, identified by the said two persons, namely, the *Maulavi* and the lady (Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum). The *Maulavi* thereafter narrated to him about the routine of the deceased playing badminton every day in the morning and assured him that he would get the target identified by his man. He further disclosed that reconnaissance was subsequently carried out about the time when the deceased used to come to play. Sultan Miya, Santosh and one Sunil went to the place where the victim used to come daily. He also disclosed that Sunil used to drive them (appellant Suraj and Sultan) to the place. On the third day, when they went, they saw the deceased going to play badminton towards Mangal Talab.



In one of the vehicles, the appellant Siraj and Santosh were seated, whereas in the second vehicle, Sultan Miya and Sunil were there. Sultan and Sunil parked their vehicle near the place where the deceased Manoj Kamalia used to park his vehicle. The moment, the deceased came out of his vehicle after parking, Sultan Miya shot a bullet targeting him. The appellant Suraj Kumar and accused Santosh also reached there. Santosh also opened fire, but he did not see whether the fire shot by Santosh hit the deceased or not. He saw that the deceased fell after having sustained injury caused by the shot fired by Sultan Miya. After having committed the offence, all of them returned to the house of Sultan Miya.

6. It is easily discernible from Exhibit-4 that below the signature of the learned Magistrate, there is a declaration made by the appellant Suraj Kumar that he had made his statement under Section 164 of CrPC voluntarily and had placed his signature after having read the same. After the signature of the appellant Suraj Kumar, there is an endorsement made by the learned Magistrate that before the statement of the appellant, Suraj Kumar was recorded, it was asked whether he was willing to make the statement or not. Further, the appellant had disclosed his willingness to make his statement, though it was disclosed to him that the said evidence could be used against him. After everything



was explained to him, he made his statement under Section 164 of CrPC voluntarily. It may also be noted, at the juncture, that it is the case of the appellant that except for the said confessional statement of the appellant Suraj Kumar, recorded under Section 164 of CrPC, there is absolutely no material, in the nature of evidence, on record to justify the conviction recorded by the trial court. We will consider the said aspect of the matter at an appropriate stage.

7. The police, upon conclusion of the investigation, submitted a charge sheet on 14.10.2002 against the appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum, appellant Suraj Kumar and Kaisher Javed @ Bittu for the commission of the offences punishable under Section 302, read with 34 of the Indian Penal Code and Section 120-B of the IPC and Section 27 of the Arms Act while keeping the investigation pending against accused Sultan Miya, Chota Santosh, Sunil Kumar and Bhola.

8. It further transpires that subsequently charge sheet was submitted against co-accused Sultan Miya and Meraj Kamal also on 18.07.2003. Their trial came to be separated by an order of the trial court dated 16.07.2005. After taking cognizance, the case was committed for trial. Charges were framed against these appellants for the commission of offence under Section 302 read



with 34 of the IPC and Section 120-B of the IPC. The appellants denied the charge and claimed to be tried.

9. At the trial, the prosecution got examined altogether 10 witnesses in support of the prosecution's case including the father of the informant Mahabir Prasad Kamalia (PW 4), wife of the deceased Rita Kamalia (PW 5), a cousin of the deceased Rajesh Kumar Kamalia (PW 2), elder brother of the deceased Kishore Kumar Kamalia (PW 6). The Sub-Divisional Judicial Magistrate, who had recorded the statement of appellant Suraj Kumar under Section 164 of CrPC deposed as PW-10 at the trial. The Investigating Officer was not examined at the trial. The Doctor, who had conducted the postmortem examination, was also not examined nor the postmortem report came to be brought on record, even otherwise.

10. The prosecution also exhibited four documents by way of evidence to establish the charge, namely, *fard-beyan*(exhibit-1), the inquest report (exhibit-2), the seizure list (exhibit-3) and the statement of appellant Suraj Kumar under Section 164 of the CrPC (exhibit-4).

11. After the closure of the evidence of the prosecution's witnesses, the trial court questioned these appellants under Section 313 of the CrPC to give them the opportunity to explain the



circumstances emerging against them based on the evidence adduced at the trial. In response to the said question, the appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum, while answering them in negative, stated that she had neither entered into any conspiracy nor had got anyone killed. Appellant Suraj Kumar also answered the questions, put to him under Section 313 of the CrPC, negatively. He denied his involvement in the commission of the offences.

12. The trial court, after having appreciated the evidence adduced at the trial, recorded the acquittal of co-accused Kaisar Javed and conviction of these appellants for the commission of the offences punishable under Section 302 read with Section 34 and, Section 120-B of the IPC and has sentenced the appellants to undergo imprisonment with fine, as has been noted at the outset.

13. Mr Bindhayanchal Singh learned Senior Counsel appearing on behalf of the appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum in Cr. Appeal (DB) 806/2015, has submitted that in the present case, the conviction is based mainly on the so-called confessional statement of the appellant Suraj Kumar of Cr. Appeal (DB) 973 of 2015 recorded under Section 164 of CrPC. He has submitted that there is no evidence to suggest any motive behind this appellant's conspiring to kill the deceased.



He has argued that as far as this appellant is concerned, the statement of co-convict Suraj Kumar is of no use for the reason that this appellant did not have any occasion to contradict or cross-examine the said statement of co-convict Suraj Kumar. He has further argued that the appellant Suraj Kumar claimed to be innocent at the trial and, thus, retracted from the so-called confessional statement recorded under Section 164 of the CrPC. He has submitted that the retracted confession of an accused, recorded under Section 164 of the CrPC, has no evidentiary value and ought not to have been the sole basis for convicting this appellant. In support of his contention, he has relied on the Supreme Court's decision in the case of *Aloke Nath Dutta v. State of W.B.*, reported in (2007) 12 SCC 230. He has argued, referring to the said statement of appellant Suraj Kumar, recorded in Section 164 of the CrPC, that the learned Magistrate, while recording the statement, has not duly followed the mandatory requirements under the said Section. He contends that it does not appear from the statement of appellant Suraj Kumar, recorded under Section 164 of the CrPC, that the learned Magistrate, before recording the confession, had explained to the appellant Suraj Kumar, that he was not bound to confess and that, if he did so, it might be used as evidence against him. Further, the Magistrate ought to have



recorded his satisfaction that the said appellant Suraj Kumar was making the confessional statement voluntarily. He contends that the manner of recording of statement under Section 164 of the CrPC is contrary to the mandatory requirements, the same cannot be looked into as evidence. He has placed reliance on the Supreme Court's decision in the case of ***Babubhai Udesinh Parmar v. State of Gujarat***(AIR 2007 SC 420). He has further submitted that in the present case, there is no due compliance of the requirement under Section 313 of the CrPC also inasmuch as the trial court has relied upon such circumstances also, while recording the conviction of the appellant, apropos which the appellant was not questioned. He has submitted that such circumstances, which were not explained to the appellant, while recording under statement Section 313 of the CrPC, ought to have been excluded by the trial court from consideration while recording its findings.

14. Mr Rajesh Ranjan, learned counsel appearing on behalf of the appellant Suraj Kumar of Cr. Appeal (DB) No. 973 of 2015, while broadly adopting the submissions advanced by Mr Bindhyachal Singh, has placed reliance on the Supreme Court's decision in the case of ***Kashmira Singh v. State of M.P.*** (AIR 1952 SC 159), to contend that confession of an accused is no evidence in the ordinary sense of term as defined in Section 3 of



the Evidence Act and cannot be made the foundation of the conviction and can only be in support of other evidence.

15. Mr Sujeet Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State, defending the finding of conviction recorded by the trial court, has submitted that the appellant Suraj Kumar, in his statement under Section 164 of the CrPC, gave a vivid description of the manner in which the conspiracy was hatched up and the offence was committed. He has submitted that evidence of other witnesses pointed towards the involvement of the appellant (Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum) read with the statement of Suraj Kumar recorded under Section 164 of the CrPC and her guilt in the commission of the offences as she has been found to be the person behind hatching up a conspiracy. He submits that it emerges from the evidence of prosecution's witnesses that the deceased and appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum were known to each other and out of the certain difference between them, she wanted the deceased to be eliminated. To achieve that objective, she conspired with other accused persons including appellant Suraj Kumar by hiring them as hitmen for killing the deceased. He has further submitted that appellant Suraj Kumar cannot be said to have subsequently retracted his



confessional statement recorded under Section 164 of the CrPC. He submits that the trial court, upon the due appreciation of the evidence adduced at the trial and taking into account the evidence in entirety, has rightly held appellants guilty of the offences.

16. We have perused the impugned judgment and the order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. In the wake of submissions which have been advanced on behalf of the parties as noted above we need to examine the evidence of the prosecution's witnesses first.

17. The evidence of Hanuman Jha (PW 1) is of no significance for the reason that he is a hearsay witness and he, in his cross-examination, has deposed that he did not know anything about the occurrence. It is to be noted that PW 1, in his evidence, deposed that he was working as a salesman at the shop of Vidyapati Divedi (PW 3).

18. PW 2, a cousin of the deceased, is also a hearsay witness. At the time of occurrence, he was in his house and 10-15 minutes thereafter, he is said to have learnt about the killing of the deceased. After having received the information, he, the father of the deceased, Mahabir Prasad Kamalia (PW 4) and wife of the



deceased Rita Kamalia (PW 5) proceeded towards the place of occurrence from their house, whereafter they learnt that the deceased was taken to Dr Rajeshwar Thakur Nursing Home. Accordingly, they went there and found the dead body of the deceased kept at the gate of the nursing home. From the evidence of PW 2, it is apparent that not only he, other witnesses, i.e., PW 4 and PW 5 are hearsay witnesses about the commission of the offences. As a matter of fact, PW 2 has not mentioned even the name of these appellants as perpetrators of the crime.

19. PW 3 has also not supported the prosecution's case of the killing of the deceased by these appellants. He has been declared hostile at the instance of the prosecution. On careful reading of the evidence of PW 3, we do not find any material supporting the prosecution's case against these appellants.

20. PW 4, in his examination-in-chief, did not mention the name of these appellants in any manner for any purpose. It is manifest in reading paragraph 6 of the evidence of PW 4, that he had learnt from the police, 6-8 months after the occurrence, that a woman had a role in causing the crime. According to him, the police had told to him that the said woman is a Sales Tax Officer in Patna Circle. It is evident from the evidence of the informant, who is the father of the deceased, that his statement, referring to the



role of a woman behind the occurrence, who was posted as a Sales Tax Officer in Patna, was based on some vague information given to him by the police, 6-8 months after the occurrence. We do not find any material worth evidence in the deposition of PW 4 in support of the charges against these appellants.

21. PW 6 is the elder brother of the deceased. His evidence is also to the effect that he had learnt about the killing of the deceased near Hitaishi Pustakalaya. He deposed that he had learnt that the deceased had some relationship with the appellant, Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum, and some dispute had arisen between them. He suspected that appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum and PW 3, Vidyapati Divedi, had conspired leading to his brother's murder. PW 6 was cross-examined on behalf of the appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum. In his cross-examination, he deposed that he had not stated before the police, during the investigation that there was any relationship between the deceased and Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum, Sales Tax Officer, and that there was any dispute between his deceased brother and the appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum. He had learnt about the relationship from his father (PW 4). It is noteworthy, at this



juncture, to recollect that PW 4 has deposed in his evidence that he had learnt about the role of a woman posted as Sales Tax Officer in the occurrence from the police, that too 6-8 months after the date of occurrence.

22. The evidence of PW 7 is also of no significance for the reason that he is said to have learnt about the killing of the deceased and had seen someone fleeing away in a motorcycle from the place of occurrence. In his cross-examination, he admitted that he was a hearsay witness and, at the time of occurrence, he was in T.O.P..

23. PW 8 has not supported the prosecution's case and has been declared hostile.

24. PW 9 is a witness to the inquest report.

25. PW 10 proved the recording of the statement of the appellant Suraj Kumar under Section 164 of the CrPC.

26. We have mentioned the statement of appellant Suraj Kumar, recorded under Section 164 of the CrPC, in detail in the background of the submissions advanced on behalf of the appellants, particularly the stand that the appellants' conviction could not have been founded only on a confessional statement recorded under Section 164 of the CrPC. It is also the submission advanced on behalf of the appellants that in the present facts and



circumstances of the case, non-examination of IO has seriously prejudiced the case of the appellants and for the said reason also, the finding of conviction is unsustainable.

27. It is noted that the appellants denied the charges, which were framed against them and, thus, appellant Suraj Kumar retracted from the confessional statement said to have been recorded under Section 164 of the CrPC. Before going into the question of placing reliance on the confessional statement of the appellant Suraj Kumar, recorded under Section 164 of the CrPC, we deem it proper, in the facts and circumstances of the case, to examine the correctness of the manner in which the said statement was recorded in the present case.

28. Sub-section (2) of Section 4 of CrPC provides for certain safeguards before a Magistrate records the confession of a person, which reads as under: -

“(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.”

29. It is manifest on a plain reading of Section 164(2) of the CrPC that it is obligatory on the part of the Magistrate to



explain to the person, 'before' recording any such confession that he is not bound to make a confession and that, if he does so, it may be used as evidence against him. It further requires that the Magistrate shall not require any confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily. In the present case, the learned Magistrate has recorded the confessional statement of the appellant Suraj Kumar first. The statement, so recorded, is followed by the signature of the learned Magistrate recording the statement. Thereafter, it is written by appellant Suraj Kumar that he had made the statement without any pressure, voluntarily, which was read over to him. After the signature of the appellant Suraj Kumar, it has been written by the Magistrate that before the confessional statement of the appellant Suraj Kumar was recorded under Section 164 of the CrPC, he was asked as to whether he wanted to make such a statement or not. Thereafter, he is said to have expressed his willingness to make his statement. Learned Magistrate has recorded that the appellant gave his statement voluntarily after having understood the consequences. The facts recorded by the learned Magistrate that appellant Suraj Kumar was explained the requirements for recording statement under Section



164 of the CrPC, as prescribed under sub-section (2) thereof, is not followed by any signature of the appellant.

30. In our considered view, upon reading the said confessional statement under Section 164 of the CrPC, we find it difficult to infer that the appellant Suraj Kumar was explained the requirements, as prescribed under sub-section (2) of Section 164 of the CrPC for recording a confessional statement by a person before a Magistrate. Further, one of the mandatory requirements for recording the confessional statement of a person under sub-section (2) of Section 164 of the CrPC is that he is required to be told by the Magistrate that he is not bound to make a confession. Even if, what has been mentioned by the learned Magistrate, after the signature of appellant Suraj Kumar was already taken under his statement recorded under Section 164 of the CrPC, it is manifest that he was not told by the learned Magistrate that he was not bound to make a confession. In the facts and circumstances of the case, we do not approve of the manner in which the statement under Section 164 of the CrPC (exhibit-4) has been recorded by the learned Magistrate. It has been held in clear terms in the case of ***Babubhai Udesinh Parmar***(supra) that Section 164 of the CrPC provided safeguards for an accused and the provisions contained thereunder are required to be strictly complied with. It



does not envisage compliance with the statutory provisions in a routine or mechanical manner. The Court further held that before recording a statement under Section 164 of the CrPC, the Magistrate must give sufficient time to an accused to ponder over whether he would make a confession or not. Paragraph 16 of the said decision, being relevant, is reproduced hereinbelow: -

“16. The court must give sufficient time to an accused to ponder over as to whether he would make confession or not. The appellant was produced from judicial custody but he had been in police custody for a period of 16 days. The learned Magistrate should have taken note of the said fact. It would not be substantial compliance of law. What would serve the purpose of the provisions contained in Section 164 of the Code of Criminal Procedure are compliance with spirit of the provisions and not merely the letters of it. What is necessary to be complied with, is strict compliance with the provisions of Section 164 of the Code of Criminal Procedure which would mean compliance with the statutory provisions in letter and spirit. We do not appreciate the manner in which the confession was recorded. He was produced at 11.15 a.m. The first confession was recorded in 15 minutes' time which included the questions which were required to be put to the appellant by the learned Magistrate for arriving at its satisfaction that the confession was voluntary in nature, truthful and free from threat, coercion or undue influence. It is a matter of some concern that he started recording the confession of the appellant in the second case soon thereafter. Both the cases involved serious offences. They resulted in the extreme penalty. The learned Magistrate, therefore, should have allowed some more time to the



appellant to make his statement. He should have satisfied himself as regards the voluntariness and truthfulness of the confession of the appellant.”

31. In the case of ***Kashmira Singh v. State of M.P.***(AIR 1952 SC 159), the Supreme Court has held that before a confessional statement under Section 164 of the CrPC can be acted upon, it must be shown to be voluntarily and free from influence.

32. In case of ***Parmananda Pegu v. State of Assam***, reported in (2004) 7 SCC 779, the Supreme Court has emphasized that before acting upon a confessional statement made before a Judicial Magistrate under Section 164 of the CrPC, the Court must be satisfied first that the procedural requirements, laid down in sub-sections (2) to (4) of Section 164 of the CrPC, are complied with, which are the celebratory safeguards to ensure that the confession is made voluntarily by the accused after being apprised of the implications of making such confession.

33. In our view, on a plain reading of the provisions under Section 164 of the CrPC, one of the important safeguards is the duty of the Magistrate to tell a person making such a statement that he is not bound to make such a confessional statement.

34. Situated thus, in the facts and circumstances of the case, in our opinion, the learned Magistrate cannot be said to have followed strictly the manner prescribed for recording of a



confessional statement under Section 164 of the CrPC. In our view, therefore, the said statement of appellant Suraj Kumar could not have been the sole basis for the trial court for recording the conviction of these appellants.

35. We have taken note of the evidence of the individual witnesses hereinabove. We find no evidence at all available to make out a case of conspiracy against appellant Afshan Ajeem @ Afshan Azeem @ Afsa Azim @ Anjum in Cr. Appeal (DB) No. 806 of 2015. Further, we find no adequate evidence on record, oral or documentary, for establishing the charge of commission of an offence punishable under Section 302 of the IPC, against the appellant Suraj Kumar of Cr. Appeal (DB) No. 973 of 2015.

36. In the present case, none of the prosecution's witnesses have proved the charge of commission of offences by these appellants.

37. In view of the discussions aforesaid, we are of the view that the finding of conviction recorded by the trial court cannot be sustained and requires interference. The impugned judgment of conviction dated 14.09.2015 passed by the learned Additional District and Sessions Judge-IIIrd, Patna, in Sessions Trial No. 1148 of 2005, arising out of the Chowk P.S. Case No. 69



of 2002 is accordingly set aside. The order of sentence dated 21.09.2015 is also set aside.

38. The appellants stand acquitted of the charge of commission of the offence punishable under Section 302/34 and Section 120-B of the IPC by giving them benefit of doubt.

39. These appeals are accordingly allowed.

40. The appellants are on bail. They stand discharged of the liabilities of their bail bonds and the sureties, if any.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Pawan-Sudha

AFR/NAFR	NAFR
CAV DATE	N/A
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