

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.433 of 2018

Arising Out of PS. Case No.-186 Year-2015 Thana- SALAKHUA District- Saharsa

Mithun Sharma S/o Mangal Sharma, R/o Vill.- Ghourdhor, P.S.- Salkhua O.P.
Banma Itahari, Distt.- Saharsa. Appellant/s

Versus

The State of Bihar. Respondent/s

with

CRIMINAL APPEAL (DB) No. 391 of 2018

Arising Out of PS. Case No.-186 Year-2015 Thana- SALAKHUA District- Saharsa

1. Pawan Sharma son of Sita Ram Sharma
 2. Bideshi Sharma son of Bhaju Sharma,
both are resident of village - Ghourdhor, P.S. Salkhua, Dist. Saharsa.
- Appellant/s

Versus

The State of Bihar Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 433 of 2018)

For the Appellant/s : Mr. Pramod Mishra, Advocate
Mr. Suraj Kumar, Advocate

For the Respondent/s : Mr. Ajay Kumar, APP

(In CRIMINAL APPEAL (DB) No. 391 of 2018)

For the Appellant/s : Mr. Pramod Mishra, Advocate
Mr. Suraj Kumar, Advocate

For the Respondent/s : Mr. Ajay Kumar, 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 : 22-09-2023

The appellants have preferred these appeals under
Section 374(2) of the Code of Criminal Procedure against the
judgment of conviction dated 12.02.2018 and order of sentence
dated 19.02.2018 passed by learned 1st Additional District and
Sessions Judge, Saharsa in Sessions Trial No. 20 of 2016,



arising out of Salkhua P.S. Case No. 186 of 2015, whereby and whereunder the appellants have been convicted and sentenced as under:-

Cr. Appeal (D.B.) No. 433 of 2018				
Appellant Name	Convicted under section(s)	Sentence		
Mithun Sharma		Imprisonment	Fine (Rs.)	in default of fine
	302 of the IPC	R.I for life	5,000/-	S.I. for two months
	149 of the IPC	R.I for life	5,000/-	S.I. for two months
	201 of the IPC	R.I. for three years	1,000/-	S.I. for one month
Cr. Appeal (D.B.) No. 391 of 2018				
Appellant Name	Convicted under section(s)	Sentence		
Pawan Sharma		Imprisonment	Fine (Rs.)	in default of fine
	302 of the IPC	R.I for life	5,000/-	S.I. for two months
	149 of the IPC	R.I for life	5,000/-	S.I. for two months
	201 of the IPC	R.I. for three years	1,000/-	S.I. for one month
Bideshi Sharma		Sentence		
		Imprisonment	Fine (Rs.)	in default of fine
	302 of the IPC	R.I for life	5,000/-	S.I. for two months
	149 of the IPC	R.I for life	5,000/-	S.I. for two months
	201 of the IPC	R.I. for three years	1,000/-	S.I. for one month

2. All the sentences have been ordered to run concurrently.

3. The mother of the deceased, Saraswati Devi (PW 4), is informant of the case, whose *Fardbeyan* recorded by the Sub-Inspector of Police, Jitendra Sahani (PW 6) at 2:00 P.M. on



04.09.2015 is the basis for registration of the concerned Salkhua P.S. Case No. 186 of 2015 at 6:00 P.M on the said date. The FIR came to be registered for the offences punishable under Sections 302/149/201/120B of the IPC and Section 3(2)(v) of the SC/ST Act. According to her *Fardbeyan*, on the last evening at about 5:00 P.M., the appellant Mithun Sharma had come to her house and asked the deceased Pankaj Kumar to accompany him to some place. She noticed the appellant and the deceased going in the southern direction where near a small bridge (culvert), the appellants Pawan Sharma and Bideshi Sharma were already there. They sat together till late in the evening. Since the deceased did not return till late in the night, the informant and others started searching for him. The fact that the deceased had not returned, was disclosed to her brothers, Lal Paswan (PW 2) and Babulal Paswan (PW 1). They went to the house of the appellant Mithun Sharma to inquire whereabouts of the deceased. They were told by the father of the appellant Mithun Sharma that Mithun Sharma was not there in the house. They went to the houses of the appellants Pawan Sharma and Bideshi Sharma also, but none of them were found. In the morning, she learnt that the appellant was found sitting on a road near Primary School, Baghmara. They and the villagers



went there and overpowered the appellant Mithun Sharma. After they told the appellant Mithun Sharma that he was seen by Dilip Sharma returning late in the night and mounted pressure on him, the appellant Mithun Sharma confessed before the villagers that he and appellants Pawan Sharma and Bideshi Sharma and other co-accused persons, named in the FIR, had killed the deceased after hatching up a conspiracy. He is also said to have disclosed to them the place where the dead body was concealed in watercresses. The dead body was thereafter found from the place disclosed by the appellant Mithun Sharma and taken out from the watercresses. It is pertinent to mention that there is nothing in the *Fardbeyan* of the informant (PW 4), which can, in any manner, suggest that the dead body of the deceased was recovered after arrival of the police or based on any disclosure made to the police.

4. The police submitted charge-sheet upon completion of investigation for the offences punishable under Sections 302, 201, 120B of the IPC and Section 3(2)(v) of the SC/ST Act, whereupon cognizance was taken and later, charge-sheet came to be submitted on 13.01.2016 against these appellants and after taking cognizance of the aforesaid offences, charge came to be framed against these appellants for the offences punishable



under Section 302 read with 149, 201 and 120B of the IPC and Section 3(2)(v) of the SC/ST Act on 22.02.2016. The appellants denied the charge and claimed to be tried. They were accordingly put to trial.

5. At the trial, six witnesses came to be examined, including the I.O. (PW 6), the doctor, who had conducted the post-mortem examination (PW 5), the informant (PW 4) and two brothers of the informant, namely, Babulal Paswan and Lal Paswan (PW 1 and PW 2) respectively. Dilip Sharma, who, according to *Fardbeyan*, had seen the appellant with Mithun Sharma in the night was examined as PW 3, came to be declared hostile at the instance of the prosecution as he did not support the prosecution's case. Apart from the oral evidence of aforesaid witnesses, the prosecution brought on record following documentary evidence at the trial by way of exhibits:-

Exhibit-1	Seizure list
Exhibit-2	Postmortem report
Exhibit-3	Fardbeyan
Exhibit-4	Confessional statement of the appellant
Exhibit-5	Signature of the I.O. over the seizure list prepared at the place of occurrence
Exhibit-6	Inquest report
Exhibit-7	Charge-sheet

6. After closure of the prosecution's evidence, the appellants were questioned under Section 313 of the CrPC so as



to give them an opportunity to explain the incriminating circumstances emerging against them, based on the evidence adduced at the trial. They denied the circumstances. Further, two defence witnesses, namely, Bechan Sharma (DW 1) and Kamleshwari Sharma (DW 2) were also examined.

7. The trial court, after having considered the evidence adduced at the trial, has concluded that the prosecution could not establish the charge of commission of offence punishable under Section 3(2)(v) of the SC/ST Act, based on the evidence adduced at the trial and accordingly recorded their acquittal of the said charge. The trial court further reached a conclusion that the prosecution failed to establish the charge of commission of offence punishable under Section 120B of the IPC as it could not prove any meeting of mind amongst the persons put on trial before commission of the offence. However, the trial court has concluded that the prosecution was able to establish against these appellants charge of commission of offence punishable under Section 302 read with 149 of the IPC beyond all reasonable doubts. For reaching this conclusion, the trial court opined that the prosecution could prove the chain of circumstances, which was complete, pointing towards the guilt of these appellants as the sole hypothesis. The trial court



has held that the dead body of the deceased was recovered by the police, which was found concealed in the watercresses and, therefore, the charge of commission of offence punishable under Section 201 of the IPC also stood proved. After having held the appellants guilty of the offences punishable under Section 302 read with 149 and Section 201 of the IPC, the trial court has sentenced them to undergo imprisonment and pay fine, as has been noted-above.

8. Learned counsel, appearing on behalf of the appellants, has submitted that as is evident from the depositions of the witnesses, no witness had seen the occurrence. The entire case of the prosecution is based on the disclosures said to have been made by the appellant Mithun Sharma to the villagers after he was overpowered by them, which allegedly led to recovery of the dead body of the deceased. He has submitted that none of the villagers came to depose at the trial to support the prosecution's case. Out of four non-official witnesses, one has been declared hostile. The informant (PW 4), her brothers (PW 1 and PW 2) have supported the prosecution's case. PW 3 has been declared hostile. He has argued that the depositions of the prosecution's witnesses read with the evidence of the Investigating Officer (PW 6) are full of inconsistencies and their



depositions materially different from the contents of the *Fardbeyan*, which is the foremost version of the prosecution's case. He has also argued that it is not clear from the evidence of the witnesses as to what was communicated to the police and by whom which had made the police arrive at the place of occurrence, whereafter inquest report was prepared and *Fardbeyan* of the informant was recorded. This amounts to concealment of the initial version of the prosecution, which casts serious doubt on the prosecution's story. He has further argued that the so-called confessional statement of the appellant Mithun Sharma, said to have been recorded by PW 6, has no evidentiary value in view of Section 25 of the Evidence Act. The confession, said to have been made by the appellant, has not led to discovery of any fact, which was not known prior to recording of such statement. He has accordingly submitted that the conviction of these appellants is not at all justifiable and the finding of conviction recorded by the trial court requires interference by this Court.

9. Learned Additional Public Prosecutor, representing the State, has defended the finding of conviction. He has submitted that the deceased was last seen with the appellants by the informant herself, as is evident from the



depositions of the prosecution's witnesses. The dead body of the deceased was subsequently recovered, based on the disclosure made by the appellant Mithun Sharma to the villagers, when he was in police custody. He further submits that medical evidence goes to suggest that the deceased was done to death. Taking into account cumulative effect of the oral evidence of the prosecution's witnesses and the documentary evidence adduced at the trial, complicity of these appellants in commission of the offence has been rightly held to have been proved at the trial by the trial court. The finding of conviction does not require any interference.

10. We have carefully perused the impugned judgment and 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, as noted-above.

11. We must, at the outset, mention that it cannot be deduced either from the *Fardbeyan* of the informant (PW 4) or from the evidence of the prosecution's witnesses as to what information was received by the police, whereupon the police had reached the village where the occurrence had taken place. There is a vague reference in the examination-in-chief of PW 4 that she had caught hold of the appellant Mithun Sharma in the



night itself and had called the Sub-Inspector of Police (*Daroga*). Firstly, what information was given to the police, is not clear from her deposition. When was the said information given, has also not been disclosed. The Investigating Officer (PW 6) has not mentioned anything about any call having been made by the informant (PW 4). In his deposition, he has not been able to state as to when had he arrived at the place of occurrence. There is no reference in the *Fardbeyan* of any information having been given to the police, whereafter the I.O. (PW 6) had arrived.

12. We are, thus, of the view that the prosecution has concealed in the present case, the initial version of the occurrence, as was communicated to the police by the informant or any other person. Secondly, we must also notice at this stage the fact that the distance of the place of occurrence from the police station, as mentioned in the formal FIR, is 6 kilometers. In such circumstance, failure on the part of the I.O. to state as to when had he arrived at the place of occurrence and the place where the dead body was lying, assumes significance.

13. It is worthwhile mentioning that the inquest report was prepared at 1:15 PM at *Barki Daabar* (Khasiyahi). It does not appear from the inquest report that the dead body was found concealed in the watercresses. Further, from the



deposition of Investigating Officer, it appears that the Investigating Officer could not state as to whether there were watercresses in the said *Daabar* or not. From the evidence of the Investigating Officer, it is evident that the dead body was not recovered on the basis of any disclosure made by the appellant Mithun Sharma before the police either before or after recording of his confessional statement.

14. PW 4, the informant deposed in her evidence that as the deceased had not returned, she had gone to inquire from the mother of the appellants Mithun Sharma and Pawan Sharma. They had told her that the deceased had not come to their houses. She had thereafter discussed the entire event with her brother, Babulal (PW 1). While searching for the deceased, she had reached near the house of Bhikhan Sharma. When she heard the appellant Mithun Sharma talking, she immediately went there and caught hold of him. Other persons who were sitting with the appellant Mithun Sharma fled away. Till next morning, she kept Mithun Sharma under her clutches and informed the Officer Incharge of the police station. When the police officer came and gave the appellant two *danda*-blows, he admitted his guilt and disclosed the place where the dead body was lying. Evidence of PW 4 is manifestly and substantially different from



what was mentioned in the *Fardbeyan* and also from the deposition of the I.O. (PW 6). At the cost of reiteration, we need to mention that I.O. has not deposed that the recovery of the dead body of the deceased was made from the watercresses after any disclosure made by the appellant Mithun Sharma before the police.

15. PW 2, in his deposition, has also claimed to be witness of having seen the deceased with these appellants last. According to his deposition, the appellants Mithun Sharma, Pawan Sharma and Bideshi Sharma had come to his house, whereafter the deceased accompanied them to some place. It is worthwhile mentioning that it was not the case of the informant in her *Fardbeyan* that all the four persons had come to the house of the informant to take the deceased to some place, rather, according to her, only Mithun Sharma (appellant) had come with whom the deceased had gone southwards. About the appellants Pawan Sharma and Bideshi Sharma, she had stated that they were sitting on a culvert from before and thereafter they were together for quite some time at the culvert. Contrary to the deposition of PW 4, PW 1 deposed that when he had gone to search for the deceased, he had seen all the three appellants sleeping in the house of Bhikhan Sharma. Upon enquiry, they



had disclosed that the deceased would reach by morning. As we have noted-above, PW 4, in her deposition, testified that after seeing her, other accused persons in the house of Bhikhan Sharma had fled away and she had captured the appellant Mithun Sharma only. The appellant Mithun Sharma was in her clutches till the next morning, when the police had arrived.

16. PW 1, the informant's brother, on the other hand, deposed that in the morning, he had seen all the three appellants sitting near a primary school. The depositions of PW 1 and PW 4 are materially distinct and irreconcilable. It is note-worthy that PW 1 also deposed that PW 3, Dilip Sharma had told him that all these appellants and the deceased were seen somewhere at 7:30 in the evening. Subsequently, the appellants Bideshi Sharma and Pawan Sharma escaped from there and Mithun Sharma disclosed that all the three appellants, after having killed the deceased, concealed his dead body in the outskirts of the village, whereafter the dead body was recovered. Apparently thus, according to PW 4, she had captured the appellant in the night itself and other accused persons had fled away. According to PW 1, these appellants were seen sitting in the morning by him and they were asked about the deceased by him, whereafter the appellants Pawan Sharma and Bideshi Sharma escaped and



Mithun Sharma disclosed about involvement of all the three appellants in killing of the deceased and the place where the dead body was kept concealed.

17. We have already noted-above, PW 4, in her deposition, has mentioned that Mithun Sharma disclosed that after the police officer gave him *Danda* blows, under fear, he confessed his guilt. According to PW 1, the police had not arrived before the appellant Mithun Sharma had disclosed about the involvement of the appellants in the occurrence, which had led to recovery of the dead body of the deceased. PW 2 is another brother of the informant. According to him, they were searching for the deceased in the night, in course of which, he had noticed some people talking in the house of Bhikhan Sharma about the deceased having been killed and his dead body got disappeared. Subsequently, Pawan Sharma and others fled away and Mithun Sharma was apprehended by them. Next day, at 12:00, the appellant Mithun Sharma disclosed that he would disclose about Pankaj Kumar on the condition that he (Mithun Sharma) was not tortured further, whereafter police came and before the police, the appellant Mithun Sharma disclosed how the deceased was killed by these three appellants. Thereafter, they went in the police jeep with Mithun Sharma to



the place where the dead body was lying, whereupon the dead body was recovered. From the place of occurrence, a piece of wood used for killing of the deceased and 400 ml bottle of country-made liquor were found. A cap and one hanky, belonging to the appellant Bideshi Sharma and pairs of slippers and a hanky belonging to Pawan Sharma were also recovered from the said place. Evidence of PW 2 is however, not supported by the I.O.. Even from the confessional statement of appellant Mithun Sharma said to have been recorded by the police, it cannot be inferred that it is the prosecution's case that the dead body of the deceased was recovered, based on any disclosure made by the appellant Mithun Sharma to the police. Dilip Sharma, who is said to have seen the deceased last with these appellants, has not supported the prosecution's case and has been declared hostile.

18. We have already discussed the evidence of the informant (PW 4), as noted-above. The doctor, who had conducted the postmortem examination (PW 5), proved following *ante-mortem* injuries on the dead body of the deceased:-

“Postmortem examination was performed on the dead body of Pankaj Kumar aged 16 Yr, male son of Kamleshwari Paswan of vill.-Ghaurdaur, PS-Salkhua,



Distt.-Saharsa on 4.9.15 and found the following findings and injuries on her (sic) person. On external examination- eyes were closed, mouth was partially closed, blood was seen excreting from the nostrils. Sand and mud was found over the whole body. Palm and sole skin was shrivelled. There was a bruise measuring 2"x1/4" over the anterior chest. There was a diffuse bruise measuring 1½"x1" over(L) temporal region. On internal examination - on opening the abdomen-all the viscera were normal and intact. Stomach contained digested food material. On opening the chest-thoracic viscera were normal. (L) side of the heart was full of blood and (R) chambers were empty. On opening the head and neck, trachea was empty. Above scalp findings were confirmed (temporal region bruise). Skull was opened. Large intracranial hemorrhage was found. Time elapse since dead at the time of Pm Exam-12-24 hrs. Cause of death:- In my opinion is due to injury to the brain as a result of antemortem above mentioned injury followed by drowning post mortally. After the Pm Exam. the dead body along with its belongings were handed over to the accompanying chowkidar, named Bhuneshwar Paswan No. 618. The chalan and inquest are cancelled and signed by me and is attached herewith the Pm Exam. Report."

19. In the cross-examination, the doctor deposed that such injury could be caused by falling from the bridge over stone and the bruises found on the body of the deceased could be caused by assault with hard and blunt substance and



laceration may also be caused. Further, the doctor did not find any lacerated wound on the whole body except the head.

20. Considering the manifest contradictions in the evidence of the prosecution's witnesses on the point of recovery of the dead body of the deceased based on disclosure made the appellant Mithun Sharma after having been apprehended by the informant and his brother, in the evidence of the informant, PW 1, PW 2 and the Investigating Officer (PW 6), in our opinion, the prosecution cannot be said to have proved the charge against these appellants beyond all reasonable doubts. The benefit of these material contradictions shall essentially go to these appellants. Further, from the evidence of the prosecution's witnesses, we do not find any motive behind the appellants committing such offence of killing the deceased. The prosecution has miserably failed to prove its case on the basis of last seen theory, PW 3 having not supported the case, who has been declared hostile.

21. Situated thus, we do not consider it safe to uphold the conviction of the appellants, as recorded by the trial court by giving them benefit of doubt.

22. Accordingly, the impugned judgment of conviction dated 12.02.2018 and order of sentence dated



19.02.2018 passed by learned 1st Additional District and Sessions Judge, Saharsa in Sessions Trial No. 20 of 2016, arising out of Salkhua P.S. Case No. 186 of 2015 are set-aside.

23. These appeals are allowed.

24. The appellants, namely, Pawan Sharma and Bideshi Sharma of Criminal Appeal (DB) No. 391 of 2018 are on bail. They are discharged from the liability of the bail bonds and sureties, if any.

25. The appellant Mithun Sharma of Criminal Appeal (DB) No. 433 of 2018 is in custody. Let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Kundan/Mahesh

AFR/NAFR	NAFR
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