

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.519 of 2018

Arising Out of PS. Case No.-136 Year-2014 Thana- KUDRA District- Kaimur (Bhabua)

Aslam @ Munna son of Kalamudin Sheikh, R/o Village Sahi Saray,
Fakarabad, P.S. Kudra, District Kaimur at Bhabua.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 514 of 2018

Arising Out of PS. Case No.-136 Year-2014 Thana- KUDRA District- Kaimur (Bhabua)

Avinash Kumar, S/o Rambali Singh, R/o Vill.- Kudra, P.S.- Kudra, District-
Kaimur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 519 of 2018)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Prakash Mahto, Advocate
Mr. Jawed Ahmad, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 514 of 2018)

For the Appellant/s : Mr. Sanjay Singh, Sr. Advocate
Mr. Rudrank Shivam Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-07-2023

Both the appeals have been heard together and
are being disposed of by this common judgment.

2. We have heard Sri Yogesh Chandra Verma for
the appellant Aslam @ Munna in Cr. App (DB) 519 of



2018 and Sri Sanjay Singh, learned Senior Advocate for the appellant Avinash Kumar in Cr. App (DB) 514 of 2018.

3. Both of them have been convicted under Sections 364A, 302, 201 and 34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life for the offence under Section 364A/34 of the IPC; rigorous imprisonment for life for offence under Section 302/34 of the IPC and rigorous imprisonment for seven years for the offence under Section 201/34 of the IPC and for each of the offences a fine of Rs. 10,000/- vide Judgment and order dated 16.03.2018/19.03.2018 respectively, passed by the learned 4th Additional Sessions Judge, Bhabhua at Kaimur in Sessions Trial No. 431/2014/275/2014.

4. The sentences, however, have been ordered to run concurrently.

5. Two other persons were charge-sheeted along with the appellants, whose cases were sent to Juvenile



Justice Board for determination of the charges against them.

6. Nitesh Kumar, aged about 17 years, is alleged to have been strangled to death and buried beneath a tree in the compound of a school. He was found to be missing from his house since 20.07.2014. On the same day, he had gone to some place on a bicycle but had not returned. On 21.07.2014, his uncle Deepak Singh (P.W. 19) had received a telephone call on his mobile telephone phone no. 9934046953 when had heard a child cry in a noisy background. He could also hear the blaring sound of the vehicles. The uncle (P.W. 19) waited for two more days and then lodged a written report regarding Nitesh (deceased) having gone missing, giving details of his physiognomy and the dress that he wore on that day when he had left the house on a bicycle.

7. This information was the basis for registration of Kudra P.S. 136 of 2014 dated 23.07.2014 which was instituted for the offence under Section 364 of the Indian



Penal Code against unknown. He had also specifically stated that Nitesh did not have his right ear. Perhaps this information was given for the police to easily identify him if a search was made to recover him.

8. It appears that on 01.08.2014, the police could obtain some evidence in the nature of suspicion against appellant/Avinash Kumar, who was taken into custody and his confession was allegedly recorded. On his pointing, a dead body of a young male is said to have been recovered. The dead body was completely decomposed and was not identifiable. Nonetheless it was identified by the family members of the deceased viz. Deepak Singh (P.W. 19), Sobran Singh (P.W. 18), Nawneet Singh/the maternal uncle of the deceased (P.W. 9) and others viz. Jitendra Yadav and Satyendra Singh who have been examined as P.Ws. 8 and 7 respectively.

9. This is the sole basis for prosecuting appellant/Avinash Kumar, who at the time of his arrest, was also in his teens. After he had been taken into



custody, he was brought on remand by the police where he is said to have made another confession in which he has named his other accomplices, one being the appellant *viz.* Aslam @ Munna.

10. With this narrative, the police proceeded to investigate the case and ultimately charge-sheeted four persons, two out of whom *viz.* the appellants faced trial. The Trial Court, after examining twenty-four witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellants as aforesaid.

11. Mr. Verma and Singh, learned senior Advocates appearing for the appellants have assailed the judgment and order of conviction as being a hurried piece of decision making, without taking any care to analyse and appreciate the evidence in the manner as it should have been. They have commented upon the correctness of the decision on several grounds, the primary ones being that there was no connecting link between the appellants and



the offence; the deposition of the witnesses, to say the least, was mendacious; and the procedure for recovery/exhumation of dead body had not been followed. They have further gone on to state that from the evidence on record, it can very well be demonstrated that there had been no recovery of any dead body and that every such process of recovery shown in the records is a sham.

12. A short-cut approach was adopted by the police in framing Avinash Kumar and thereafter, Aslam @ Munna on the basis of inputs provided by the father of the deceased, who had been consulting priests and fortune-tellers and was trying to gather the impression of the person who could have kidnapped the victim. Appellant Avinash Kumar fitted in that scheme and therefore evidence was fabricated to make the case look like an open and shut case.

13. Had it not been the case, many imaginary facts which have been brought to the fore by the prosecution, which are absolutely inadmissible in evidence,



would not have been pressed by the prosecution to prove its case.

14. The case, according to the learned advocates has not been proved in any measure whatsoever.

15. We have examined the entire evidence on record and we find force in the submission of the appellants.

16. Rajdeep Choudhary (P.W. 23) had investigated the case but had not submitted the charge-sheet, which formality was done by one Avinash Kumar Singh (P.W. 15). P.W. 23 has stated at the trial that he had received two copies of the written report from P.W. 19 on 20.07.2014, while he was posted as officer in-charge of Kudra police station in the district of Kaimur at Bhabua. However, the FIR was registered on 23.07.2014 (Ex. 6). He himself took over the investigation of the case. On the next day of the registration of the FIR *i.e.* 24.07.2014, he recorded the statement of the father of the deceased *viz.* Sobran Singh (P.W. 18). The maternal uncle of the victim



was also examined on the same day. Both of them told P.W. 23 that they had received a call from mobile telephone no. 8409930117 and they were told to arrange Rs. Eighty lakhs for the release of the victim. P.W. 23 thus asserts that on such information, he got the CDR print-out of telephone no. 84099301117, which was found to be registered in the name of one Guddi Devi wife of Mithu Sharma. Guddi Devi had no clue about any occurrence of any kind but she disclosed before him that her mobile telephone was kept by her brother-in-law who had lost it sometime before but had not reported about it to the police.

17. The further statement of the informant (P.W. 19) was recorded by P.W. 23 when he gave the crucial information that he had received a telephone call from mobile telephone no. 9525807573 seeking the whereabouts of his brother/Sobran Singh/ P.W. 18 (the father of the victim). On 29.07.2014, Sobran Singh (P.W. 18) informed P.W. 23 that he had again received a call



from two telephone numbers (one being the number which was registered in the name of Guddi Devi referred to above) asking him to pay up Rs. 5 lakhs for the release of his son. Sobran Singh/P.W. 18 also handed over a notebook containing 16 pages in which there was something scribbled which related to the payment of ransom. The notebook was seized by him (Ext. 2).

18. On investigation, mobile no. 9525807573 from which number the information was sought about Sobran Singh from his brother Deepak Singh/P.W. 19 and Sobran Singh had also received a call asking him to pay Rs. 5 lakhs, was found to be registered in the name of one Ram Narayan Ram, who has been examined as P.W. 13. When Ram Narayan Ram was contacted, he was very specific in his reply that he had paid money for obtaining a SIM card from one Dimple Pandey/P.W. 2, who had failed to deliver any SIM card and had been vacillating in giving a specific answer to him. This led the investigator to interrogate Dimple Pandey, who informed that



appellant/Avinash Kumar had come to his shop and had forcibly taken away one SIM card kept in his shop. Similar statement has been made by aforementioned Dimple Pandey during trial as P.W. 2.

19. Now comes the turn of the investigator to direct his gaze towards appellant/Avinash Kumar. According to P.W. 23, Avinash, when searched on 01.08.2014, was found to be in possession of two mobile telephones with provision for double SIMs having two different IMEI numbers. The SIM cards were dysfunctional. Avinash Kumar thereafter is said to have confessed before P.W. 23 that the dead body of the victim has been buried within the boundary of Kudra High School. P.W. 23 thereafter informed the Sub-Divisional Officer, who nominated Md. Allauddin Ansari, the Circle Officer, Kudra (P.W. 20) as the Magistrate to oversee the recovery/exhumation process.

20. In the night of 01.08.2014, the dead body was recovered which process was videographed. According



to P.W. 23, at the time of recovery, the appellant/Avinash, Deepak (informant) and Sobran (father of the deceased) and other persons were present. The dead body did not have the right ear. The dead body was otherwise also identified by the family members. According to P.W. 23, a *panchnama* of the dead body was prepared which was signed by P.W. 20 (Ext. 3/2).

21. The confession of Avinash Kumar was written by Rajiv Ranjan, a police officer (not examined) (Ext. 7). Avinash had confessed before him that in order to bury the dead body, he had borrowed a spade from Kalawati Devi (P.W. 1) which was used for digging a pit where the dead body was concealed.

22. Kalawati Devi/P.W. 1 during the trial has affirmed that she is a neighbour of the deceased and the appellant and that she had given a spade to appellant/Avinash which he has till date not returned.

23. The appellant/Avinash is then said to have been remanded to custody. Another confession was



extracted from him (Ext. 7/1). In the second confession, Avinash is stated to have named his other associates; two of whom were juveniles and the other was Aslam @ Munna.

24. The Appellant/Aslam @ Munna also had given his inculpatory confession affirming about his participation in the occurrence.

25. On behalf of the appellants, it has been argued that the entire prosecution case is redolent with doubt and suspicion. The reasons for their saying so are that P.W. 23 has admitted before the Trial Court that he had not obtained the CDR of the telephone numbers through the concerned telephony company. No CDR was exhibited. He has also stated in his cross-examination that he never sealed the mobile telephones (two of them) which were found in possession of Avinash. The IMEI numbers about which reference was given by him in the case diary was also not confirmed nor any evidence in that regard was brought on record. It was thus the imagination of P.W.



23 or his self-acquired knowledge that the two telephone numbers *viz.* 9525807573 and 8409930117 were used by two of the mobile sets belonging to Avinash for seeking information about Sobran Singh from Deepak Singh and asking Sobran Singh and one Nawneet Singh (P.W. 9) for making arrangements for Rs. 5 lakhs for the release of the victim.

26. There is no evidence that mobile telephones with particular IMEI numbers were used with SIM cards having such telephone number or that the mobile telephones with such IMEI numbers were registered in the name of the appellant/Avinash Kumar or Aslam @ Munna.

27. With proper certification, the CDRs could have been admitted in evidence under Section 65(B) of the Evidence Act. Not doing so, completely demolishes the tall claims of the prosecution that it was on the basis of the CDR reports and its analysis that the police got a lead to interrogate and ultimately prosecute the appellants.



28. It has further been pointed out that one of the telephone numbers (9525807573) was found to be registered in the name of one Ram Narayan Ram, who never got to get any SIM card from Dimple Pandey/P.W. 2. Dimple Pandey/P.W. 2, during the course of trial though has admitted that Avinash took away one SIM card forcibly but does not specify that the aforementioned SIM card was numbered 9525807573 and that it had already been registered in the name of Ram Narayan Ram.

29. Thus, even if the statement of Dimple Pandey/P.W. 2 is accepted to be true, we have no evidence before us to link either of the appellants with telephone no. 9525807573.

30. Similarly, there is no trace of the person who got in possession of telephone no. 8409930117, which during investigation was found to be registered in the name of one Guddi Devi/P.W. 3 which she had given to her brother-in-law, who had lost it.



31. Thus, it has rightly been pointed out by the appellants that there is no connection of the appellants with the aforementioned telephone numbers for the prosecution to rely on the report of the CDR and the deposition of Sobran and Deepak that reconnaissance was done and ransom call was made from such telephone numbers to them.

32. This leaves us in a quandary as to the circumstance which led the police to interrogate the appellants.

33. Mr. Sanjay Singh, learned senior Advocate appearing for Avinash Kumar has drawn our attention to the detailed statement made by Sobran and Deepak as P.Ws. 18 and 19 respectively and the deposition of defence witnesses viz. Surendra Singh and Bhole Shankar Paswan (D.Ws. 1 and 2 respectively).

34. Sobran, the father of the deceased, appears to have received many telephone calls demanding ransom money of different amounts. If he is to be believed then



many persons were making telephone calls to him for the release of his son. The other telephone numbers through which he had got a call for paying up Rs. 80 lakhs has not been the subject of the investigation at any point of time even though those telephone numbers were noted by him and given to the police.

35. In the notebook containing 16 pages with some writings relating to ransom amount was also never investigated. Perhaps it was not an admissible piece of evidence as such note-book was handed over to Sobran by his mother who has not been examined at the trial.

36. Be that as it may, the two of the telephone numbers, which are not registered in the name of both the appellants and, as noted above, no link with those telephone numbers could be established vis-a-vis the appellants, was used in the investigation as the starting point of investigation to reach the appellants for making them accused in this case.



37. Apart from this, it has also been urged that according to P.W. 23, Avinash gave the lead about the presence of the dead body in the campus of Kudra High school. It was otherwise a very vague information to be admissible under Section 27 of the Indian Evidence Act. Even otherwise, that statement could not have been admissible even with respect to such information under Section 27 of the Indian Evidence Act for the simple reason that according to the records of this case, Avinash was not in police custody.

38. Even by giving an extended interpretation to the word 'custody', the veracity of such information provided by Avinash is absolutely doubtful.

39. The reason for contending this is that P.W. 23 was very specific in his statement that after the lead was taken from Avinash, he was arrested and was taken to police station by another police officer, perhaps the Superintendent of Police, who had constituted a police team to arrest and search Avinash on the basis of the



analysis of the CDR of two telephone numbers said to have been used in making ransom calls to Sobran.

40. P.W. 23, the appellants contend, had been speaking lies all through for the reason that he, in his cross-examination, has stated that at the time of recovery of the dead body, Avinash was present. In the same breath, he had admitted that Avinash was taken to police station whereas he along with the police team and the Magistrate/P.W. 20 who had been deputed had gone to the school campus where the dead body was exhumed.

41. Thus, all parts of the prosecution case through the mouth of P.W. 23 falls to the ground. None of the statements made by P.W. 23 is borne out by the records.

42. The issue gets further gets confounded when the person before whom the recovery process was undertaken and videographed viz. P.W. 20, told the Trial court clearly that when he had reached the place, excavation process had already begun and the recovery



memo was brought to him at his residence on the next day, when he had put his signature over it.

43. This therefore, demonstrates that the recovery process was not in his presence or else he would have signed the recovery memo at the place of recovery. The facts stated by the P.W. 23 that at the time of recovery, Avinash and other relatives and the Magistrate were present, therefore is rendered absolutely false.

44. This was not without a purpose. The purpose obviously was to anyhow collect and collate the evidence in such a way so as to support the hypothesis of the prosecution that it was the appellant/Avinash in association with appellant/Aslam @ Munna and two others that the deceased was kidnapped, killed and buried underground.

45. The evidence collected does not fit in this story spun by the prosecution.

46. If these set of facts are examined in the context of the deposition of Sobran that he had been meeting priests and clairvoyant people to ascertain the



identity of the kidnappers, it becomes explicable as to why Avinash was suspected in the first instance and chosen then to be framed as an accused.

47. In this context, we have been shown the deposition of the D.W. 1, who is a neighbour of Sobran and Avinash. He has deposed before the Trial Court that on one day, sometimes before 01.08.2014, he saw the police party in front of the house of Rambali Singh, the father of Avinash. A police officer asked about the family background of Rambali and his son Avinash and also sought his help in informing Avinash to come to police station for some interrogation. As a responsible citizen, the aforementioned D.W. 1 obeyed the command and took Avinash along with him to the police station. He came back on the assurance of the police that Avinash would be let free after sometime. Aforenoted witness has also divulged that as a neighbour, he had visited Sobran, who had disclosed before him that he had been taking help of priests at Azamgarh and Allahabad for locating the identity of the



kidnappers. One of them had suggested the attributes of a person which according to Sobran was very similar to Avinash and therefore Sobran had almost concluded that Avinash may have had his hand in kidnapping his son. By that time, the dead body had not been recovered. There was also some kind of skirmish between Rambali and Sobran sometimes before the occurrence with respect to dumping of construction material in front of the house of Rambali (father of Avinash).

48. We are conscious of the fact that the prosecution has to stand on its own legs, which unfortunately it has not and in this scenario, some explanation can be found as to why Avinash was suspected in the first instance.

49. It is very natural for a neighbour to suspect the hands in kidnapping of a young person with whose family the relationship is not cordial and there is some indication of sooth-sayers that someone with the looks of Avinash may have the malefactor.



50. We also reckon that people do at times succumb to such gullibilities. As has been argued, the other factors especially collecting materials in support of the prosecution version which ultimately is found to be bursting at seams, also go a long way in dismantling the prosecution case.

51. Kalawati P.W.1 had given her 164 statement that a spade was lent by her to Avinash which was later used for digging the pit for burying the deceased. Similar statement has been made by her during the trial. However, she was not as wise as her tutors and in response to a question to her about the identity of Sobran, she came out with the response that she knows him as his neighbour who undertakes agricultural operation. The fact of the matter is that Sobran is a high profile businessman having commercial interests in Patna. Obviously P.W. 1 was speaking at the dictates of the prosecution.

52. If this be the reason for falsely implicating Avinash, what was the reason for putting Aslam on trial?



53. Here also, the truth is not far to seek. Avinash had already made a confession before P.W. 23 (We will come back to the issue of the custody of a person while making a confession for some part of his statement to be admissible under Section 27 of Evidence Act a bit later).

54. A situation was contrived by the prosecution for him to make another confession (Ext. 7/1) in which he names Aslam and others. But why Aslam?

55. The deposition of D.W. 2 throws some light on this issue. One of the sons of Aslam was subjected to sexual misdemeanor for which one Idris Ansari was in jail.

56. Was it at the instance of Idris Ansari that police wanted to shut down the investigation of that case or was Aslam being an irritant for the local police, which had hitherto been reluctant in investigating the case. There could be any situation. P.W. 23 has but candidly expressed that he had not learnt about any criminal dispensation of either Avinash or Aslam @ Munna. No link could be traced



to Aslam in the entire investigation or the trial with regard to his having called any person for ransom or of his having participated in burying the deceased.

57. The only material against him is the second confession of Avinash. Perhaps the second confession was extracted to justify the prosecution of Aslam @ Munna.

58. Now, the main question before us is whether even if that part of the confession of Avinash leading to the recovery of the dead body of the deceased could have been admitted in evidence under Section 27 of the Evidence Act.

59. Indian Evidence Act, 1872 forbids proving of a confession before a police officer. Section 25 provides that no confession made to a police officer shall be proved as against a person accused of any offence. Similarly Section 26 mandates that no confession made by any person while he is in custody of a police officer unless it be made in the immediate presence of a Magistrate shall be



proved as against such person. Section 27 however, carves an exception to these two general rules of confession.

60. Section 27 reads as follows:

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

61. On a plain reading of Sections 25 and 27 of the Evidence Act, it would become clear that the presence of certain conditions for Section 27 to be applicable are necessary. Those are:

(i) Discovery of fact in consequence of an information received from an accused;

(ii) Discovery of such fact to be deposed to;

(iii) The accused must be in police custody when he gave information; and

(iv) So much of information as relates distinctly to the fact thereby discovered would only be admissible.

62. Two conditions for its application therefore are that information must be such as has caused discovery



of the fact; and the information must relate distinctly to the fact discovered.

63. It would be profitable to refer to the observations of the Supreme Court in ***Bodhraj @ Bodha vs. State of Jammu & Kashmir (2002) 8 SCC 45.***

18.It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information



given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kottaya v. Emperor [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most-quoted authority for supporting the interpretation that the "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu Gopinath Shinde [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088 : 2000 Cri LJ 2301] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.

64. Applying the law as it is to the facts of the

case in hand, it would appear that Avinash was not in



custody. P.W. 23 does not give the exact words which gave the lead to him about the presence of dead body in the school campus buried under a tree. Such disclosure was not made before anyone of the witnesses. Thus no such so-called information provided by Avinash was admissible under Section 27 of the Evidence Act.

65. With this source of information having been occluded, there would be no explanation for pointing an accusing finger towards him for relating the information given by him to the recovery of a dead body for whose death the case has been lodged.

66. We say that Avinash was not in custody for the reason that he was taken to police station after his first confession was recorded. It cannot even be called a deemed custody for the reason that Avinash was not even brought to the place where the recovery was made. He made another statement justifying prosecution of Aslam @ Munna and two others later when he is taken on remand



from judicial custody. Where was the necessity to do so unless the evidence was being fabricated.

67. These are the reasons, which make us declare that the prosecution of the appellants do not pass the muster of the requirements of law in that regard.

68. We are almost flummoxed at the identification of the deceased. How could a mass of flesh and dissolved bones have been identified by anyone even if he was the relative of the victim.

69. P.W. 23 was very candid in expressing before the Trial Court that the dead body was totally unidentifiable. Still he prepared the inquest report with a clear specification that the dead body did not have his right ear (remember the physiognomy provided by P.W. 19 in the FIR). Was that fact in the memory of P.W. 23 is what we are wondering.

70. Let us test it from the evidence of others. P.W. 23 has himself confirmed that the Doctor at Bhabhua Sadar Hospital refused to undertake any post-mortem



examination over such decomposed body. Perforce, the mass of flesh which was collected from somewhere near the Kudra High School campus was wrapped in paper and brought to PMCH, where post-mortem was done. Dr. Shiv Ranjan Kumar P.W. 21, who conducted the postmortem has told the court that the dead body was absolutely unidentifiable. The rib bones had given way. The skin of the body had worn-off. Particular damage was done to the head. There was no rigor mortis reflecting that the dead body was pretty old as rigor mortis comes and goes from a dead body. When did it leave the dead body is not known for the reason of it having been placed before P.W. 22 in a completely decomposed state. Could anyone have identified such a mass of human flesh? It was all covered with mud. We are also wondering whether within ten days, the decomposition could be of such extent.

71. The Medical treatise do not speak of such fast decomposition of young body even under water or mud



within such a short span of time. Is it being suggested that there was no recovery at all?

72. It is really a mare's nest for us.

73. Out of our own curiosity, we have gone through the entire gamut of evidence collected during the course of investigation only for the purposes of lending assurance to us that we are not proceeding on the wrong lines. In the process, we found that such story has been developed by the investigator as if Avinash and Aslam @ Munna were overpowered by a sense of *cacoethes* to commit this macabre act. It is difficult for us to believe such an accusation.

74. We therefore out-rightly reject the theory of the prosecution of the recovery of the dead body of the deceased at the instance of Avinash and the investigation as well as the evidence collected to justify his and Aslam's conviction and sentence.

75. The judgment and order of conviction is set aside.



76. The appellants are acquitted.

77. Both the appellants are in custody. They are directed to be released from jail forthwith, if not detained or required in any other case.

78. A copy of this judgment shall be sent to the Superintendent of the concerned jail for record and compliance.

79. The records of these two sets of appeals shall be dispatched to the court below.

80. Both the appeals are allowed.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.07.2023
Transmission Date	21.07.2023

