

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.1375 of 2018**

Arising Out of PS. Case No.-151 Year-2016 Thana- BIHTA District- Patna

Ajay Kumar Son of Late Chandeshwar Ray, Resident of Village- Puraniya, Goriya Dera, Makhdumpur, Police Station- Bihta (Neora O.P.), District- Patna.

... .. Appellant

Versus

1. The State of Bihar
2. Ram Kumar Ram, Son of Baleshwar Ram, Resident of Village- Goriyadera, Police Station- Bihta (Neora O.P.), District- Patna.
3. Nitu Devi, Wife of Ajay Kumar, C/o Rajendra Rai, Resident of Mohalla- Yogipur, Police Station- Patrakar Nagar, District- Patna.

... .. Respondents

**Appearance :**

|                    |   |                                                                                                              |
|--------------------|---|--------------------------------------------------------------------------------------------------------------|
| For the Appellant  | : | Mr. Bindhyachal Singh, Senior Advocate<br>Mr. Vipin Kumar Singh, Advocate<br>Mr. Janmejay Giridhar, Advocate |
| For the Respondent | : | Ms. Shashi Bala Verma, A.P.P.                                                                                |

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**and**

**HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

**Date : 23-08-2023**

This appeal under the *proviso* to Section 372 of the CrPC has been filed putting to challenge a judgment and order dated 05.09.2018 passed by the learned Additional Sessions Judge-II, Danapur, in S.T. No. 679 of 2016 (arising out of Bihta P.S. Case No. 151 of 2016), whereby the respondents No. 2 and 3 have been acquitted of the charge of commission of the offence punishable under Section 302/34, 120B and 324/34 of the IPC.



2. We have heard Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the appellant, who was the informant of the concerned Bihta P.S. Case No. 151 of 2016, which was registered against unknown. Briefly narrated, it is the prosecution's case that the informant, an employee in a private company, had gone to Patna in connection with his duty on 15.02.2016. He received an information on his mobile phone at 2 PM on 25.02.2016 from a mobile number 07369950289 that his brother Ashok Kumar @ Gunga, the deceased, had been murdered by slitting his neck with a sharp edged weapon, in one of the rooms of his house. He reached Bihta at 2.45 PM when he saw the dead body of the deceased with his neck slit by a sharp-edged weapon. He also noticed a plastic bottle of McDowell's rum containing remnant alcohol. It appeared to him that he was murdered after getting him intoxicated by making him consume alcohol.

3. A charge-sheet was submitted upon completion of investigation by the IO on 21.05.2016 against these appellants, whereafter cognizance was taken of the offence punishable under Section 324/302/120B/34 of the IPC. The case was committed to the court of Sessions subsequently and charges were framed.



4. At the trial, altogether six witnesses came to be examined including the IO Akshaywar Singh (PW 5). From his evidence, it transpires that based on suspicion, the respondents No. 2 and 3 were apprehended, whose confessional statements were recorded by the police when they were in police custody.

5. Respondent No. 2, in his confessional statement before the police, is said to have disclosed that he was working as a mason in the house of respondent No.3, whose husband used to work somewhere in Patna and would come home once a week. In the meanwhile, respondents No. 2 and 3 developed illicit relationship. The deceased used to protest against the said illicit relationship between the private respondents, which made them chalk out a plan to kill the deceased. Accordingly, as per plan, they made the deceased consume alcohol in the night and respondent No.3 slit the neck of the deceased in the presence of respondent No.2 Ram Kumar Ram. Similar confessional statement was made by respondent No.3 also. Further, respondent No.2 disclosed in her confessional statement that the dagger, which was used for killing the victim was thrown by her in a well belonging to one Deepa Rai nearly 100 yards away from her house. Based on the disclosures made in their confessional statements, the dagger used was recovered from the said well and seizure list was prepared. The



dagger was produced before the court at the trial as material Exhibit-M-1.

6. On careful perusal of the evidence adduced at the trial, it is manifest that recovery of the weapon by the police said to have been used for killing the deceased on the basis of confessional statements made by respondents No. 2 and 3 before the police when they were in the custody was the sheet anchor for the prosecution to prove the charge against the said private respondents.

7. Mr. Bindhyachal Singh, learned Senior Counsel appearing on behalf of the appellant has submitted that the prosecution was able to establish at the trial that there was illicit relationship between the respondents No. 2 and 3, which was being objected to by the deceased. The confessional statements made by the respondents before the police while in custody leading to recovery of the weapon used for commission of the crime is a strong circumstance pointing towards the culpability of the said respondents. He submits that the trial court has wrongly acquitted the said respondents by giving them benefit of doubt. He has submitted that since the confessional statements of the respondents led to recovery of the weapon used for commission of



crime, the same is admissible under Section 26 of the Evidence Act.

8. It is noted that a supplementary affidavit has been filed in this case on behalf of the appellant bringing on record the depositions of all the witnesses. It is evident on perusal of the evidence of the prosecution's witnesses that PW 1, PW 2, PW 3 and PW4 are not the eyewitnesses to the occurrence. PW 1, in her evidence, deposed that the respondents No. 2 and 3 had illicit relationship and the deceased had learnt about it which was the reason why both the persons had killed him. In her cross-examination, PW 1 further deposed that she had seen respondent No.3 coming out from the house of respondent No.2 at 4 AM. She further deposed that she had given the name of respondent No.3 only on the basis of suspicion. Similarly, PWs 2, 3 and 4 are hearsay witnesses. The husband of respondent No.2 in his evidence deposed, *inter alia*, that no one had ever complained against the conduct of his wife. It is also noted that according to the prosecution's case, the deceased was first intoxicated and then killed. No sign of intoxication was found by the Doctor, who had conducted the postmortem examination.

9. Section 27 of the Evidence Act lays down the rule as to how much of the information received from a person accused of



any office in the custody of police can be proved. Section 27 of the Evidence Act has been dealt with in various decisions on the point as to the part of statement of an accused in custody of police can be taken in evidence, if confessional statement leads to discovery of relevant facts. Reference in this regard may be made to ***Pulukuri Kotayya and Others vs. King Emperor* (Vol. LXXIV) Indian Appeals page 65**. In case of ***State of MP vs. Kriparam*** reported in **(2003) 12 SCC 675**, it has been clearly laid down that recovery consequent upon confessional statement would not take the prosecution's case any further where the evidence of eyewitnesses is not acceptable.

10. If, according to the prosecution, confessional statements of respondents No. 2 and 3 led to recovery of a weapon from a place indicated by them, only the fact that it was within the knowledge of the said respondents that the weapon was lying there at the place from where the same was recovered could be taken in evidence. The culpability of the respondents, based on their confessional statements said to have been made before the police while in custody, would not be taken in evidence in the absence of any other cogent and concrete evidence.

11. Situated thus, we are of the opinion that the view, which has been taken by the trial court in acquitting respondents



No. 2 and 3, is a reasonably possible view. In our opinion, this appeal has no merit, which is accordingly dismissed.

**(Chakradhari Sharan Singh, J)**

**(Nawneet Kumar Pandey, J)**

Pawan/-

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| AFR/NAFR          | NAFR        |
| CAV DATE          | N/A         |
| Uploading Date    | 04.09.2023. |
| Transmission Date | 04.09.2023. |

