

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1415 of 2018

Arising Out of PS. Case No.-447 Year-2016 Thana- KHAGARIA District- Khagaria

Sanjeevan Yadav S/o Surendra Yadav R/o-Village-Kumharchakki, P.S.-
Khagaria Muffasil Dist.-Khagaria

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1445 of 2018

Arising Out of PS. Case No.-447 Year-2016 Thana- KHAGARIA District- Khagaria

Tunish Yadav Son of Late Nirdhan Yadav, Resident of Village-Kumhar
Chakki, P.S. Muffasil, District-Khagaria.

... .. Appellant/s

Versus

The State Of Bihar Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 9 of 2019

Arising Out of PS. Case No.-447 Year-2016 Thana- KHAGARIA District- Khagaria

Sanju Devi W/O Late Tilo Yadav, resident of village- Kumhar Chakki, P.S.-
Mufassil, Distt. Khagaria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1415 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 1445 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP
(In CRIMINAL APPEAL (DB) No. 9 of 2019)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 28-07-2023

Nobody has appeared on behalf of appellant/Sanjeevan Yadav in Criminal Appeal (DB) No.1415 of 2018.

2. Mr. Ajay Thakur, learned Advocate has appeared for appellants Tunish Yadav and Sanju Devi in Criminal Appeal (DB) Nos.1445 of 2018 and 9 of 2019 respectively.

3. Mr. Thakur has acceded to the request of the Bench to be an *Amicus* for appellant/Sanjeevan Yadav.

4. We have heard Mr. Thakur for all the three appellants and Ms. Shashi Bala Verma, learned APP for the State.

5. All the appellants have been convicted under Sections 302/120B and 302/34 of the Indian Penal Code *vide* judgment of conviction and order of sentence dated 29.09.2018 and 01.10.2018 respectively, passed by the learned Fast Track Court-I, Khagaria in connection with Sessions Case No. 404 of 2016/225 of 2018 and by order dated 01.10.2018 all of them have been sentenced to



undergo R.I. for life, to pay a fine of Rs. 20,000/- each and in default of payment of fine to further suffer S.I. for the two years for both the offences under Sections 302/120B and 302/34 of the Indian Penal Code.

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

7. The deceased of this case is Tilo Yadav, who is the husband of appellant/Sanju Devi. Sanju Devi had lodged an FIR *vide* Khagaria (Mufassil) P.S. Case No. 447 of 2016 dated 16.07.2016 alleging that on 15.07.2016, her husband had left his home at 8:00 O' clock in the morning for undertaking daily-wage labourers' work at Khagaria Bazar. In the evening, one Chandan Yadav, who has not been examined at the trial, informed her that her husband has been shot at and his dead body is lying on the highway near a temple.

8. On such information, appellant/Sanju Devi went to the place indicated to her and found that her husband had been shot dead. Near the dead body, an



empty bullet also was found. She suspected the hands of such of her agnates, who had convened a *Panchayati* against an insinuation and charge against Sanju Devi that she was having an illicit affair with appellant/Tunish Yadav. Thus, Sanju Devi had named Ranvir, Prakash, Rudal, Jai Jai Ram, Manish, Kiran Devi and one Ajay Yadav; some of whom were directly related to Sanju and some were her agnates.

9. On the basis of such statement by appellant/Sanju Devi, the aforementioned case was registered for investigation.

10. It appears that the gaze of investigation turned on appellant/Sanju only.

11. We find from the deposition of Shiv Shankar Manjhi, P.W./12, the first Investigating Officer of the case that after recording an entry in the station diary *vide* SD Entry No. 394 of 2016, he proceeded to the place where the dead body was lying where he prepared the inquest report. Near the dead body, he found a cycle and an



empty cartridge. The cycle and the cartridge were seized. Thereafter he recorded the statement of one Manju Devi and also learnt about the mobile telephone numbers of aforementioned Manju, Tunish and of Sanju Devi. He proceeded to investigate on the lines of his assessment, which he arrived at after analyzing the CDR of all the three telephone numbers. From his analysis of the CDR of all the telephone numbers, which CDR he had obtained from CDR Cafe, he *prima facie* came to the opinion that Manju Devi, appellant/Tunish Yadav, Overseer Yadav and Sanjeevan Yadav could have had their hands in the occurrence. This appears to be the starting point of the investigation against appellant Tunish Yadav.

12. We find some justification for it as according to the *fardbeyan* by the appellant/Sanju, because of her suspected illicit relationship with Tunish, a *Panchayati* had been convened in the village. The Investigating Officer may have jumped to the conclusion that the murder may have been committed at the instance of the unchaste wife



and her paramour with the help of others. Otherwise there would have been no reason, at that point of time, to proceed for investigating the conduct of appellant/Tunish Yadav.

13. It further appears from the deposition of P.W./12 that Tunish was arrested, who gave his confessional statement, on the basis of which a pistol and four live cartridges and a motorcycle were recovered which were seized and promptly a seizure list was prepared.

14. We fail to understand as to how such statement made by appellant/Tunish in his confession could have been admitted in evidence even though it led to recovery of weapon.

15. The formalities of accepting a statement under Section 27 of the Evidence Act to be admissible has not at all been fulfilled. The part of the statement made by Tunish before P.W./12 was not stated by P.W./12 during the trial, which could have convinced us that he had disclosed that the weapon which he would get recovered



was the weapon of assault. This confession was not recorded before any witness.

16. It further appears that believing the confessional statement of Tunish, P.W./12 came to the conclusion that appellant/Sanjeevan Yadav and appellant/Sanju Devi were also involved in the occurrence and the deceased was shot dead by them.

17. It further appears from the deposition of P.W./12 that after the arrest of Sanju, she also made a confessional statement accepting her guilt.

18. During the course of trial, P.W./12 has further clarified that on the basis of CDR of a telephone number 7808776800 belonging to Sanju, appellant/Tunish was arrested whereafter Sanju too was arrested. No effort was made by P.W./12 to get their statements recorded under Section 164 Cr.P.C.

19. The learned counsel for the appellants at this juncture submitted that the entire investigation was premised on an analysis of the CDR of the telephone



numbers of Tunish and Sanju, which led to a half baked conclusion of P.W./12 that some other persons also might have taken part in the crime and in the process, appellant/Sanjeevan Yadav was also apprehended. Even if from the CDR analysis of these telephone numbers, it is found that they had talked to each other immediately prior to the occurrence, then also such would not be any evidence under Section 10 of the Evidence Act to justify conviction under Section 120B of the Indian Penal Code which is a substantive offence for committing the murder of the deceased.

20. Apart from this, none of the CDR reports have been exhibited after its appropriate certification to form part of the secondary evidence, which could have been admissible in evidence.

21. Thus, we have nothing on record to fall back upon to test the correctness of the hypothesis put forth by the investigator (P.W. 12) to come to the conclusion that such hypothesis was correct and not absolutely off-line.



22. As we had indicated earlier, such investigation proceeded only on the basis of the motive suggested by Sanju in her *fardbeyan* statement.

23. Rest of the witnesses during trial *viz.*, Avinash Kumar, Manju Devi, Ambuj Kumar and Sentun Yadav (P.Ws. 1 to 4 respectively) have only suggested to the Trial Court that they as villagers learnt that Tunish was carrying on an illicit relationship with Sanju and the murder of Tilo was an outcome of Tilo's opposition to such unholy alliance between Sanju and Tunish.

24. All the aforementioned witnesses have categorically stated that such was only the hearsay information and nothing had happened before them to have made any statement against the appellants.

25. One prosecution witness *viz.*, Naval Kishore Yadav (P.W. 6), whose statement was recorded about one and half months after the registration of the case by the police, came forward during trial to say that Tunish in conspiracy with all the three appellants killed the deceased.



He is a resident of a different village and is not associated with either of the appellants or the agnates of Sanju.

26. During his examination-in-chief, P.W. -6 has stated that on 15.07.2016 at about 08.00 p.m., he saw that Tilo Yadav was shot dead by Tunish and Sanjeevan along with another person whom he did not identify and after the occurrence, all of them fled away on a red coloured motorcycle.

27. The cause of murder also has been stated by him *viz.*, the amorous relationship between Tilo and Sanju. However, during cross-examination, he has admitted, as noted above, that his statement was recorded by the police after one and half months of the occurrence and he had information that after his statement those accused persons whose names were suggested by Sanju were saved from being investigated.

28. In this context, it would be profitable to refer to the deposition of P.W.11/Kishori Paswan, who is the second Investigating Officer of this case and who had



submitted the charge sheet against the appellants. With respect to such statement by P.W. 6 before the police, P.W. 11 has categorically denied that P.W. 6 ever stated before the police that he had seen the deceased being shot dead though P.W. 6 asserts in his cross-examination that he had said so before the police.

29. As rightly argued by the learned Advocate for the appellants, the deposition of P.W. 6 appears to be totally mendacious. We say so for the reason (a) that he is a complete outsider and not even a resident of the village of the appellants; (b) his statement was recorded by the police after one and half months of the occurrence, when perhaps the second Investigating Officer had taken over the investigation and; (c) before his statement confirming his having seen the deceased being killed at the hands of the appellant, the investigation had already turned its gaze towards the appellants and, therefore, the possibility of him having been set up by the prosecution to lend credence to this hypothesis that the appellants have killed



the deceased would have been strengthened; and that P.W. 11 completely denies that P.W. 6 ever made a statement about his being a witness to the killing of the deceased.

30. Thus, for all practical purposes, there is no evidence on record, either direct or remote, to justify the prosecution of the appellants.

31. Even at the cost of repetition we state that for the first time that the investigation proceeded in a particular direction only after the *fardebayan* of Sanju was recorded.

32. Taking clue from the disturbed marital relationship of Sanju and the deceased and an earlier incident of *Panchayati*, P.W. 12 collected the mobile telephones of Tunish and Sanju and one Manju and this was the starting point of investigation.

33. That Sanju and Tunish had been on talking terms is no reason or evidence strong enough to suspect that they had conspired and killed the deceased. The name



of Sanjeevan did not figure in the *fardbeyan* of Sanju. There could be a possibility of Sanjeevan being known to Tunish and, therefore, the evidence of their having talked to each other prior to the occurrence is of no consequence.

34. All this cannot be collated to support the hypothesis that there was a conspiracy to eliminate the deceased. When had the *Panchayati* taken place or whether it had taken place at all has not been investigated.

35. Thus, we find that it was a very easy way out for the police to put the blame on the wife along with her paramour for killing the deceased as it would have taken the least efforts in investigation. The so called recovery of a firearm weapon is absolutely inadmissible for the reasons which we have indicated above. Even otherwise, there is no evidence of such weapon having been used in the assault.

36. The identity of the deceased is not in question. The homicidal death is also established. The doctor certifies that the death was because of the gun shot



injury but who killed him is what the prosecution has failed to prove.

37. For these reasons, we set aside the judgment and order of conviction against the appellants and acquit them of all the charges levelled against them.

38. As all the appellants are in custody, they are directed to be released forthwith from jail if not required or detained in any other case.

39. A copy of the judgment shall be transmitted to the Superintendent of Police of the concerned jail for record and compliance.

40. The records of this case also be sent back to the Trial Court.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

krishna/sanjay

AFR/NAFR	AFR
CAV DATE	NA
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