

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.713 of 2017**

Arising Out of PS. Case No.-71 Year-2014 Thana- LAKHISARAI District- Lakhisarai

Shambhu Ram Son of Late Satya Narayan Ram, Resident of Village- Bhola
Tola, English Ward No.2, Police Station- and District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Adv.
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 08-09-2023

We have heard Mr. Sunil Kumar Singh, learned
advocate for the appellant and Mr. Dilip Kr. Sinha,
learned A.P.P. for the State.

2. The appellant stands convicted under Section
302/201 I.P.C vide judgment dated 22.04.2017 passed
by the learned Sessions Judge, Lakhisarai in Sessions
Trial No. 110 of 2015 and vide order dated 26.04
2017, he has been sentenced to undergo imprisonment
for life, to pay a fine of Rs. 10,000/- and in default of



payment of fine, simple imprisonment for three months for the offence under Section 302 I.P.C. and Simple Imprisonment for two years, fine of Rs. 1,000/- and in default of payment of fine, to further suffer simple imprisonment for one month for the offence under Section 201 I.P.C. The sentences have been ordered to run concurrently.

3. The deceased, a cook in a line hotel is alleged to have been killed and his dead body was thrown in a ditch near a brick kiln in a village. The matter was reported by the wife of the deceased/Sony Devi who, in a F.I.R lodged on 01.02.2014, disclosed that the appellant and four others had come to her house and had taken away the deceased for the purposes of cooking. The husband of the P.W.4 did not return till the next day. However, during the afternoon of 01.02.2014, she learnt that a dead body was floating in a ditch near the BBM brick kiln. She and others went there and identified the dead body to be of her husband. She



therefore suspected that the five persons including the appellant who had come to her house for taking away the deceased for the purposes of cooking had actually killed the deceased.

4. On the basis of the aforementioned written report lodged by P.W.4, Lakhisarai P.S. Case No. 71 of 2014 dated 01.02.2014 was instituted for offences under section 302, 201 and 34 of the I.P.C.

5. The police after investigation submitted charge-sheet against the appellant and another viz. Kauwal Khatri @ Raj Kumar Khatri, who was shown as an absconder.

6. The allegation against three other named accused persons who allegedly had come to the house of P.W.4 along with the appellant and another were not sent up for trial.

7. The Trial court, after examining eight witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.



8. None of the witnesses have seen the act of killing the deceased nor had they any clue about the manner of occurrence.

9. One of the uncles of the deceased viz. Maheshwar Yadav (P.W.1) has only stated before the Trial court that when he went to the brick kiln on the information that a dead body was lying there, the police had already taken out the dead body. The dead body was of his nephew. He was bleeding from his ears. According to him, there had been a partition in the family and the deceased worked in the line hotel of his own brother/Ganga Yadav (P.W.2). They had no dispute amongst them. The appellant belonged to the same village whose house was situated only nearby.

10. Similar statement has been made by brother of the deceased/Ganga Yadav (P.W.2) who too saw the dead body at the brick kiln. He was told by the P.W.4 that two persons who were ultimately charge-sheeted including the appellant had come to the house and with



them, the deceased had gone away. They had come to call the deceased for cooking.

11. Another brother of the deceased viz. Ranjeet Yadav has also narrated the same story.

12. What is however noticeable is that the P.W.4, the wife of the deceased, has made a statement which reflects that the written report lodged by her was actually not what she wanted to say. Though she had signed on the written report but in the cross-examination, she has stated that she did not remember what she had written in the written report. She was not in her senses also. She signed the document only when she regained her consciousness. However, she makes amends later and says that only two persons had come to her house and not five as was narrated in the F.I.R. The appellant and another were identified by her as they were regular visitors to her house. She expressed no suspicion on the brothers of her husband as there was partition in the family and there existed no dispute. The



P.W.4, therefore, has admitted during the trial that the written report was prepared by somebody else, the contents of which was made known to her. She had been unconscious at the time when the written report was prepared by someone about whom nothing is known. She signed the document only after regaining her consciousness. Precisely for in this reason, the P.W.4 has not supported the earliest version of five persons having come to her house for calling the deceased for the purposes of cooking.

13. Was it then an afterthought?

14. Who was the person who introduced the names of three others whose complicity could not be found during the course of investigation?

15. Was it one of the brothers of the deceased or someone else who had to avenge some enmity?

16. During the course of trial, however, it came to light through the evidence of the mother of the deceased that in 2010, the deceased had lodged a case



against the appellant. Since then, the visits of the appellant in her house had reduced.

17. If this is to be believed then perhaps the name of the appellant or for that matter others was provided in the written report.

18. Lachho Devi, who is the mother of the deceased, has been examined as P.W.7. She has also been examined as a court witness. She knew about the deceased having gone out of his house along with the appellant and another. She had also learnt that a dead body was found floating in a ditch near the brick kiln. She also claims to have gone to the place where the dead body of her son was found. However, as noted above, she has admitted about a case having been filed by the deceased against the appellant.

19. The I.O. of this case viz. Vishram Bhagat (P.W.5) has clearly stated that the brother of the deceased viz. Ganga Yadav (P.W.2) had not stated before him during the course of investigation that he



had seen the appellant accompanying the deceased. He had only learnt about it.

20. A clerk at the brick kiln, near which the dead body of the deceased was found, has been examined as P.W.6 before the trial. He only knew about the fact of a dead body having been found near the brick kiln. Because he denied that before him, the inquest report was prepared, he has been declared hostile.

21. This takes us to deposition of Dr. Ramprit Singh, who had conducted the postmortem examination on the deceased on 02.02.2014. He had found rigor mortis present in the upper and the lower limbs of the deceased. Froth was found coming out of nose. The larynx and trachea were also found to be congested with froth. The stomach was full of water. However apart from the indications of death by drowning and resultant asphyxia, P.W.8 also found one lacerated wound behind the pinna of the left ear, which was but only skin deep and another lacerated wound over the outer eyebrow.



The other injuries, apart from the gagging because of froth in larynx and trachea, was opined to have been caused by hard and blunt substance. The time fixed for death was 24 hours from the postmortem examination. The medical report, therefore, clearly confirms that the deceased died of drowning.

22. The viscera does not appear to have been sent for any forensic/chemical examination. Had it been done, it could have been deciphered whether the deceased was intoxicated shortly before he got drowned.

23. The occurrence took place sometimes between 31.01.2014 and 01.02.2014. Nobody of the village or of the brick kiln saw the deceased in the company of the appellant or for that matter any person.

24. Under such situation, there is no circumstance which would accusingly point towards the appellant. Even the story of the appellant having gone to the house of the deceased to call him for the purposes of cooking has been rendered doubtful.



25. As has been noted above, the written report does not appear to be on the dictation of P.W.4. She was unconscious when the same was being prepared and signed it only after regaining consciousness. She denies during trial that five persons had come to her house. This is a clear indication that the prosecution has not come with any clean story.

26. The fact that the appellant was an accused in a case lodged by the deceased sometimes in the year 2010 further makes the prosecution story doubtful that on the asking of the appellant, the deceased would accompany him for cooking food. In fact, the mother of the deceased has also admitted that after her son (deceased) had lodged the case against the appellant, his visits had been reduced since 2010. It appears therefore that for sure, the name of the appellant was provided by somebody else.

27. Even if the appellant would have actually come to the house of the deceased to call him for the



purposes of cooking, the other links in the chain were required to be found out and established before jumping to the conclusion that the deceased was killed by appellant and nobody else.

28. Merely counting one incident as a circumstance for convicting an appellant would amount to expressing complete naivete at appreciating the evidence. Circumstantial evidences are taken into account only when the circumstances are such which would exclude any other hypothesis except the guilt of the accused.

29. In the absence of any other evidence suggesting that the appellant ever accompanied the deceased or their having been spotted by anyone in the village, the chain does not get formed even a bit.

30. Thus, the prosecution has relied upon practically no evidence for prosecuting the appellant.

31. The injuries on the deceased also appears to be superficial which may have been caused during the



fall of the deceased in the ditch.

32. As noted above, since the viscera was not preserved, there is no confirmation of the fact that deceased was intoxicated.

33. Be that as it may, there was no immediate flash point for the appellant to have eliminated the deceased. What was the nature of the case lodged by the deceased against the appellant also remains unknown to us.

34. In such background, it is difficult for us to fathom that because of the enmity, the deceased was killed at the hands of the appellant.

35. We find no substance in the opinion delivered by the Trial Court which would justify the conviction and sentence of the appellant.

36. Perforce, we set aside the judgment and order of conviction and acquit the appellant of the charges levelled against him.

37. The appellant is in custody. He is directed to



be released from the jail forthwith if not detained or required in any other case.

38. The appeal stands allowed.

39. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

40. The records of this case be also returned to the Trial Court forthwith.

41. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2023
Transmission Date	12.09.2023

