

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.742 of 2017

Arising Out of PS. Case No.-87 Year-2014 Thana- CHIRAIYA District- East Champaran

1. Ramvinay Rai @ Vinay Rai, son of Pundeo Rai,
2. Binod Rai, son of Pundeo Rai, Both resident of Village- Mohadipur, P.S.- Chiraiya, District- East Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Sheo Jee Mishra, Advocate.
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP.
For the Informant	:	Mr. Jai Prakash Verma, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-12-2023

1. We have heard Mr. Sheo Jee Mishra, learned Advocate for the appellants, Mr. Jai Prakash Verma, learned Advocate for the informant and Mr. Dilip Kumar Sinha, learned APP for the State.

2. The appellants, who are brothers amongst themselves, have been convicted under Sections 302, 120B and 201 of the Indian Penal Code *vide* judgment dated 04.05.2017 passed by the learned Additional Sessions Judge-XIII, East Champaran, Motihari, in



Sessions Trial No. 166 of 2015, arising out of Chiraiya P.S. Case No. 87 of 2014. By order dated 09.05.2017, they have been sentenced to undergo imprisonment for life for the offence under Sections 302/120B. They have been saddled with a fine of Rs.10,000/- in default of payment of which, the appellants have been directed to undergo S.I. for six months. With respect to offence under Section 201 of IPC, the appellants have been sentenced to undergo R.I. for three years, to pay a fine of Rs.5,000/- and in default of payment of fine to further suffer S.I. for three months.

3. The sentences have been ordered to run concurrently.

4. Kamlesh Kumar, a student studying in a Coaching Institute, was found dead in the field of one Bishwanath Rai. According to the medical evidence, he was bludgeoned to death. Somebody had killed him in the night intervening between 28.04.2014 and 29.04.2014. Shortly before his death, he had his dinner



with his father/ Yogi Rai (P.W. 7), who is the informant of this case.

5. The FIR was lodged on 29.04.2014 by him alleging that he had learnt in the morning on 29.04.2014 that his son is lying dead in the field of Bishwanath Rai.

6. He had no clue about the killers or the reason for his son to be killed.

7. The FIR, thus, was registered as Chiraiya P.S. Case No. 87 of 2014, dated 29.04.2014, under Sections 302, 201 of the IPC against unknown.

8. The evidence reveals that the deceased was having an affair with a co-student in the coaching institute, whom we refrain from naming in the judgment. The appellants are the uncle and the father of the aforementioned friend of the deceased.

9. The prosecution story hinges on the insistence of the deceased and his friend to marry,



which was not to the liking of the family of the girl.

10. Hence, the murder.

11. However, there are certain missing links in the story. The first and foremost is the complete silence of P.W. 7 about the complicity of the appellants when he had lodged the FIR. This, therefore, presupposes that the relationship between the family of the appellants and the family of the deceased had not soured and possibly the parents of the deceased were not aware of the affair of the deceased or that they had reconciled with it.

12. Had there been any dispute with respect to the deceased carrying on an affair with his friend, that would have had been the first cause of concern and doubt. If P.W. 7 was not sure about the accusation, he was expected to at least raise doubts about the family members of the girl. Not saying a word against the appellants, who are the uncle and father of the girl then means a lot.



13. Later, it appears that the prosecution has attempted to garner evidence through the mouth of the friends of the deceased, who belong to the same village and were studying along with the deceased and his friend.

14. Raja Kumar and Vikash Kumar, two of the students and friends of the deceased, have been examined as P.Ws. 1 and 2, who have disclosed before the Trial Court that the deceased was in love with a co-student at the Academy and there was a possibility of the relationship culminating to marriage. According to them, there was reluctance of the family of the girl even though the boy and the girl were of the same caste. However, both the witnesses were told later that the family of the girl had agreed to have the marriage solemnized.

15. However, from the tenor of their deposition, it appears that such statement by the family members of the girl was only a ruse to have the



deceased called outside his house and then killed for ending the affair for all times to come. In their effort and unnecessary exuberance, they have even stated before the Trial Court that in the night before the dead body was found, they had seen the deceased talking on telephone to appellant/Ramvinay Rai (uncle of the girl).

16. However, the Investigating Officer of this case, *viz.*, Sikandar Kumar (P.W. 10) has totally denied that P.Ws. 1 and 2 had made such statement namely of their having seen the deceased talking to appellant/Ramvinay Rai in the night of the occurrence.

17. Manoj Rai, who is one of the uncles of the deceased, has been examined as P.W. 3. He has the same story to narrate. However, from his deposition also, it does not appear very clearly that the family members of the girl were so opposed to the affair that they had become blood-thirsty. In fact, everybody of the family of the deceased was given the impression that the parents of the girl have acquiesced and are



ready to accept the relationship.

18. What then had gone wrong, is a question which confounds us.

19. Had the prosecution left it at that, there would have been a serious doubt that a young student prosecuting his studies and in the process having developed a liaison with a co-student, having enmity with none, would have been killed at the hands of the family members of the girl.

20. The positive efforts of the prosecution through the mouth of the witnesses in an attempt to anyhow implicate the father and the uncle of the girl, makes the prosecution case doubtful and therefore, unacceptable.

21. One of the cousins of the deceased, viz., Nandu Rai (P.W. 4) gave out the mobile telephone number of the deceased to the Investigator (P.W. 10). On inquiry by the Investigator, the aforementioned mobile



telephone number was found to be registered in the name of the grand-father of the girl.

22. How could that have been possible?

23. Does it not indicate that the family members of the girl had agreed to accept the deceased in their family. The countervailing argument would be equally true. Was he given the mobile telephone so as to record the conversation or to beguile him into falling in their trap?

24. However, the investigations reveal some other story.

25. Three telephone numbers were provided by the prosecution to the Investigator, the CDR of which reflected talk amongst the holders of such telephone. Later, all the three telephone numbers were found to be registered in the names of the family members of the girl.

26. In that event, any conversation on



such telephones cannot be said to be between the deceased and anyone of the family members including the appellants for setting up a trap for the deceased to come over to their place, where he would be killed.

27. Testing the case from another angle also, it appears that the story of the deceased having been killed at the hands of the appellants and then thrown in the field is not correct. (i) It leaves us in doubt as to the place where the deceased was murdered; (ii) nobody had seen the occurrence or throwing of the dead body in the field; (iii) the dead body was covered in a sack, though the sack and the soiled earth were seized by the police but never sent for any forensic examination, and (iv) the place where the dead body found lay in between the houses of the appellants and the deceased.

28. Had the appellants killed the deceased, they would have taken utmost care to dispose off the dead body at some other place, rather than going in the



direction of the house of the deceased.

29. Seen in this context the statement of the mother of the deceased, viz., Brihaspatiya Devi (P.W. 5) would again make the case absolutely doubtful.

30. For the first time, P.W. 5 has stated before the Trial Court that she had seen the deceased talking to the appellant/Ramvinay in the night of the occurrence.

31. How could that be possible?

32. If it were so, the father of the deceased would surely have raised suspicion against the appellants. The mother of the deceased, therefore, had resorted to complete falsehood while deposing before the Trial Court. Similar is the statement of the other witnesses.

33. One of the witnesses has further stated that the girl has not yet been married. The



learned Advocate for the appellants would then be justified in presuming that the family of the girl had not fixed her marriage with anybody else for the reason that they had accepted the relationship with the deceased.

34. Thus, P.W. 7 was absolutely correct when he had lodged the FIR that he had no clue about the murder and no suspicion either on the family of the girl.

35. In such an event, the conviction of the appellants can only be seen as an inference of guilt because of the association of the deceased with a co-student, of whom the appellants are the uncle and father.

36. We thus, find the conviction to be based on no evidence.

37. Per force, we set aside the judgment and order of conviction and sentence and acquit the



appellants of the charge giving them the benefit of doubt.

38. The appellants are on bail, they are discharged of their liabilities under the bail bonds.

39. The appeal stands allowed.

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

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

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/krishna-

AFR/NAFR	NAFR
CAV DATE	NA
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