

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.156 of 2024

Arising Out of PS. Case No.-58 Year-2020 Thana- NADI District- West Champaran

Mohan Baitha, S/O Late Banha Baitha, R/O Village- Dhabelwa Gadiyani,
PS.- Jagopatti, Dist.- Bettiah, West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Madan Mukhiya, S/O Late Sahdeo Mukhiya, R/O Village- Dhabelawa, PS.-
Yogapatti, Dist.- Bettiah, West Champaran.
3. Bhola Mukhiya, S/O Madan Mukhiya, R/O Village- Dhabelawa, PS.-
Yogapatti, Dist.- Bettiah, West Champaran.
4. Babloo Mukhiya, S/O Mohan Mukhiya, R/O Village- Dhabelawa, PS.-
Yogapatti, Dist.- Bettiah, West Champaran.

... .. Respondents

Appearance :

For the Appellant/s : Ms. Preeti Kumari, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-04-2024

The informant has preferred the present appeal under proviso to Section 372 of the Code of Criminal Procedure (in short ‘CrPC’) for setting aside the judgment dated 02.11.2023 passed by learned Additional District and Sessions Judge 1st cum Special SC/ST Judge, Bettiah, West Champaran in Tr. No. 193 of 2021/CIS No. 373 of 2020 arising out of Nadi P.S. Case No. 58 of 2020 by which the learned court has been pleased to acquit



the accused persons (respondent nos. 2 to 4) of the charges under Sections 302, 201 and 34 of the Indian Penal Code (in short 'IPC') read with Section 3 (ii) (v) (a) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (in short 'SC/ST Act').

Prosecution Case

2. The prosecution case as per the written report of the informant Mohan Baitha (PW-1) is that his uncle Keshwar Baitha was residing at '*basa*' and cultivating the land of Madan Mukhiya (respondent no.2). The informant alleged that Madan Mukhiya had got transferred total land of Keshwar Baitha (deceased) in his own name. He claimed that his uncle was not returning home for 8-9 days then he went in search of his uncle and asked the whereabouts of him from Madan Mukhiya whereupon Madan Mukhiya informed the informant that his uncle had gone in some relationship.

3. The informant claimed that he started searching his uncle at the river side and in course of search on 07.12.2020, the dead body of his uncle Keshwar Baitha was found concealed in a ditch. It was buried under the soil on the bank of a drain. The informant claimed that he has a belief that Madan Mukhiya, Bhola Mukhiya and Babloo Mukhiya together strangled his



uncle Keshwar Baitha to death and buried his body under the soil with an intention of hiding it. The written report of the informant has been marked as Exhibit '1' in course of trial.

4. After investigation, police submitted a report under Section 173 CrPC in which Madan Mukhiya, Babloo Mukhiya and Bhola Mukhiya were chargesheeted. Since the accused persons were chargesheeted in sessions triable Sections of the IPC, the records were transferred to the learned Special Judge, SC/ST where charges were framed against respondent nos. 2 to 4 under Sections 302, 201/34 of the IPC and Section 3(ii)(v)(a) of the SC/ST Act.

5. On behalf of the prosecution, nine witnesses were examined and six documents were exhibited. They are as follows:-

- (1) Mohan Baitha (PW-1)
- (2) Bhutali Baitha (PW-2)
- (3) Ram Naresh Baitha @ Naresh Baitha (PW-3)
- (4) Dr. A.K. Tiwari (PW-4)
- (5) Sharda Baitha (PW-5)
- (6) Gouri Yadav (PW-6)
- (7) Rajeev Kumar Sinha (PW-7)
- (8) Pramod Kumar (PW-8)
- (9) Prabhat Sumir (PW-9)



6. The exhibits marked on behalf of the prosecution are as under:-

Exhibit '1' written report of the informant.

Exhibit '1/a' thumb impression of the informant on written report.

Exhibit '2' Post mortem report.

Exhibit '2/a' Signature of doctor on Post mortem report.

Exhibit '3' Inquest report (photocopy of original)

Exhibit '4' Challan of dead body.

Exhibit '5' Formal FIR

Exhibit '5/1' Signature of SHO on formal FIR

Exhibit '6' Paging on formal FIR.

7. On behalf of the defence, Madan Mukhiya (respondent no. 2) who happened to be the accused of this case entered in the dock as a defence witness under Section 315 CrPC and in support of defence, a document has been marked as Exhibit 'K'.

Findings of the Learned Trial Court

8. The learned trial court has dealt with the depositions of all the prosecution witnesses in detail. On perusal of the evidences, the learned trial court concluded that there is no direct evidence of murder against the accused persons. The I.O. (PW-7)



has stated in his cross-examination that in course of his whole investigation, no independent witness had come to say that anybody had seen the killing of Keshwar Baitha. None of the witnesses who deposed in the case stated so.

9. The learned trial court proceeded to consider the circumstantial evidence which had come on the record. It has been noticed in paragraph '11' of the judgment under appeal that in absence of there being any direct evidence, the motive of the accused behind the occurrence becomes important but in course of trial, neither the informant nor any of the prosecution witnesses have stated about the motive behind the occurrence. It has been observed that the informant has lodged the present case on mere suspicion and an attempt has been made to show that Madan Mukhiya had got the entire land of the deceased transferred in his name. But from the original document of sale deed, it has been found that the deceased had executed a sale deed with respect to 4 kathas and 6 dhurs of land in favour of Madan Mukhiya as back as on 30.11.2015 i.e. at least 5 years back to the date of occurrence, therefore, the trial court did not find any reason as to why after 5 years, the accused persons would kill Keshwar Baitha.

10. The learned trial court further found that Keshwar Baitha was unmarried. There was a partition among the three



brothers, namely, Banhu Baitha, Keshwar Baitha and Jagarnath Baitha. They had 6 kathas of land in their respective share and about 2 kathas of land were still there with the deceased which would have gone to his co-sharers in case of his death.

11. The prosecution witnesses have also stated that the deceased was connected to Madan Mukhiya for 15-20 years, therefore, what may be the reason of killing of Keshwar Baitha by Madan Mukhiya could not be proved by the prosecution beyond all reasonable doubts.

12. The learned trial court has further noticed that the prosecution has taken an attempt to prove the case on the basis of the theory of 'last seen' but after carefully examining the evidence of PW-2, PW-3 and PW-7, the learned trial court observed that the story as propounded by the prosecution in course of trial that on the day of *puja* in the house of the informant, the deceased had come to his house from where the accused persons had taken him with them, becomes doubtful.

13. The learned trial court found from the evidence of PW-1 that his statement that Madan Mukhiya, Bhola Mukhiya and Babloo Mukhiya all the three had killed his uncle and then destroyed his face by burning him after pouring petrol and then filled his stomach with salt had no basis to stand. The evidence of the Doctor (PW-4)



suggested that the cause of death was “bimannual throttling leading to asphyxia. Body was burnt thereafter and buried later on”. In course of his cross-examination, PW-4 has stated that the dead body was of between 7-14 days from the date of death, his thoracic, abdominal, hands and legs were burnt. The head and neck portion were decomposed. The Doctor could not say as to how the dead body was burnt.

14. In ultimate analysis, the learned trial court held that the prosecution was unable to bring home the guilt of the accused persons beyond all reasonable doubts.

Submissions on behalf of the Appellant

15. Ms. Preeti Kumari, learned counsel for the appellant submits that almost all the prosecution witnesses have consistently supported the prosecution case. It is submitted that the learned trial court could not appreciate the inquest report as well as the *post mortem* report and on this ground alone, the judgment is fit to be set aside. Learned counsel further submits that the learned court below failed to consider the evidence of PW-2 and PW-3 who are the eye witnesses of the occurrence and they have stated that the accused persons took away the deceased on their motorcycle in the evening. Similarly, it is submitted that the learned trial court could



not consider the evidence of PW-4 who is the Doctor and had conducted the *post mortem* of the deceased.

Submissions on behalf of the State

16. On the other hand, Mr. Parmeshwar Mehta, learned Additional Public Prosecutor for the State has opposed this appeal. It is submitted that the learned trial court has rightly appreciated the evidences available on the record. It is submitted that in the written report (Exhibit '1'), PW-1 has not come out with a case of last seen but in course of trial, he tried to prove the guilt of the accused persons by making a statement that the accused persons had come to his house on the day of *puja* and had taken away his uncle Keshwar Baitha (the deceased).

17. Learned Additional Public Prosecutor for the State submits that in case of circumstantial evidence, the five cardinal principles, which are also known as "Panchsheel", are required to be proved. In this connection, judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda versus State of Maharashtra** reported in **(1984) 4 SCC 116** has been relied upon.

18. Learned counsel further submits that since the accused persons have been acquitted by the learned trial court, there is a double presumption of innocence and the acquittal need



not be interfered with only on mere asking unless some perversity is shown in the judgment of the learned trial court.

Consideration

19. We have heard learned counsel for the appellant as well as learned Additional Public Prosecutor for the State.

20. On perusal of the written report (Exhibit '1') of PW-1, it appears that in his written report, he had nowhere claimed that his uncle Keshwar Baitha had come to his house to attend *puja* and from there, the accused persons had taken him away on motorcycle. The prosecution case based on last seen theory seems to have been developed only in course of trial. In the written report, the case of PW-1 is that his uncle Keshwar Baitha was not coming to his house for 8-9 days. He has stated that his uncle was living at the '*basa*' of Madan Mukhiya and was looking after his agriculture work. It is the case of PW-1 that in course of search of his uncle, when he asked Madan Mukhiya about the whereabouts of his uncle, he told that his uncle had gone in some relationship but then PW-1 started searching his uncle and went to the side of river and drainages. In course of his evidence, he has stated that his uncle was living at a distance of three kilometers from the place of occurrence and he was engaged in looking after the agricultural field. PW-1 has also



stated that his uncle used to stay continuously for 2-4 days in the agriculture field itself and he seldom come to his house. He has stated that his uncle had come to his house about 10 days back on the occasion of *Bhagwat Katha* and on the day of *puja* itself Madan Mukhiya had taken away his uncle from his house for purpose of looking after the agriculture field. In paragraph '5' of his evidence, he has stated that Madan Mukhiya, Bhola Mukhiya and Babloo Mukhiya all the three killed his uncle and burnt him by pouring petrol and then filled salt in his stomach. In paragraph '8' of his examination-in-chief, this witness made a material departure from his statement in the written report. In paragraph '8', he has stated that in course of search of his uncle, when he asked Madan Mukhiya then Madan Mukhiya told him that his uncle had taken Rs.4,000/- as loan and had gone outside for earning. He claimed that he had a recording of this talk on his mobile but he failed to disclose the mobile number on which the recording was done and then also failed to produce the recorded talk.

21. In his cross-examination, PW-1 has stated that the deceased Keshwar Baitha was unmarried. He has stated that during night, Keshwar Baitha used to live in a hut and there were few huts here and there around the said hut. He did not



remember the date on which *Bhagwat Katha* was arranged in his house. In paragraph '18' of his cross-examination, PW-1 has stated that two days prior to his death, PW- 1 had met him and he went in search of his uncle when he was not found for about 4 days after *puja*, he has stated that his uncle was living alone in the hut and the people who were living around the hut did not tell him anything about this.

22. The I.O. of this case has been examined as PW-7. He has stated in paragraph '3' of his cross-examination that the informant (PW-1) had stated to him in course of his further statement that his uncle was connected to Madan Mukhiya for 15-20 years and he was involved in looking after the agriculture work of Madan Mukhiya and it was Madan Mukhiya who was providing him food. PW-1 disclosed to PW-7 that last time he met his uncle on 23.01.2020. In paragraph '7' of his cross-examination, PW-7 has stated that witness Sharda had told him that Keshwar Baitha had become old and it was Madan Mukhiya who was looking after him. In paragraph '8' of his cross-examination, PW-7 has stated that witness Lali Chaudhary had told him that during cold, while warming hands by fire, the hut was burnt. The I.O. had found that the hut in which Keshwar Baitha was living was in burnt condition.



23. In paragraph ‘11’ of his cross-examination, he has stated that in supervision, it has come that some persons were saying during investigation that he was not murdered.

24. We have also perused the evidence of PW-2 and PW-3. PW-3 has stated that on the information furnished by some fisherman that a dead body is lying under the sand, he had gone there. He has further stated that Keshwar Baitha was living in a hut made in the agriculture field and the house of Madan Mukhiya is situated at a distance of 10 Kilometers from the place of occurrence.

25. The Doctor who had deposed as PW-4 found that the body was decomposed, neck structure was badly damaged and remaining parts of the body were blackened due to *post mortem* burnt.

26. In a case where the prosecution depends on circumstantial evidences, the Hon’ble Supreme Court has in the case of **Sharad Birdhichand Sarda** (supra) observed in paragraph ‘152’ as under:-

“**152.** Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. State of Madhya Pradesh*¹.

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129



This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh*¹⁷ and *Ramgopal v. State of Maharashtra*¹⁸. It may be useful to extract what Mahajan, J. has laid down in *Hanumant case*¹:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.” ”

27. In the present case, on a careful perusal of the entire materials on the record, we are of the considered opinion that in this case, evidences brought on record on behalf of the prosecution are not clinching and the chain of circumstantial evidences are not complete so as to come to an irresistible conclusion that the accused persons (respondent nos. 2 to 4) are guilty of commission of the offence.

1. 1952 SCR 1091 : AIR 1952 SC 343 : 1953 Cri LJ 129
17. (1969) 3 SCC 198 : 1970 SCC (Cri) 55
18. AIR 1972 SC 656 : (1972) 4 SCC 625



28. We find no error in the judgment of the learned trial court.

29. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

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