

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.265 of 2024

Arising Out of PS. Case No.-145 Year-2014 Thana- BHAGWANPUR District- Kaimur
(Bhabua)

Rajendra Yadav @ Rajendra Singh Yadav S/o Raghunath Yadav @ Raghunath
Singh Yadav R/v Ramgarh, P.S. - Bhagwanpur, Dist. - Kaimur

... .. Appellant

Versus

1. The State of Bihar
2. Santosh Yadav S/o Shiv Yadav R/v Ramgarh, P.S. - Bhagwanpur, Dist. - Kaimur
3. Suresh Yadav S/o Shiv Yadav R/v Ramgarh, P.S. - Bhagwanpur, Dist. - Kaimur
4. Subash Yadav S/o Shiv Yadav R/v Ramgarh, P.S. - Bhagwanpur, Dist. - Kaimur
5. Ashok Yadav S/o Shiv Yadav R/v Ramgarh, P.S. - Bhagwanpur, Dist. - Kaimur
6. Chandrawati Devi W/o Shiv Yadav R/v Ramgarh, P.S. - Bhagwanpur, Dist. - Kaimur

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Ravi Shankar Sahay, Advocate Mr. Rakesh Kumar Mishra, Advocate Mr. Chandra Mohan Jha, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 27-06-2024

Heard learned counsel for the appellant and Ms. Shashi
Bala Verma, learned Additional P.P., for the State.

2. The present appeal has been preferred for setting
aside the judgment of acquittal dated 18.12.2023 passed by learned
Additional Sessions Judge-III, Kaimur at Bhabua in Sessions Trial



No. 130 of 2016, arising out of Bhagwanpur P.S. Case No. 145 of 2014 (State vs. Santosh Yadav & Ors.) whereby and whereunder the learned trial court has been pleased to conclude that the prosecution has miserably failed to prove its case beyond reasonable doubt. Having said so, the learned trial court has acquitted the accused persons-respondents by giving them benefit of doubt from the charges under Sections 302/34, 201/34 and 120B/34 Indian Penal Code (in short 'IPC').

Prosecution Story

3. As per the prosecution story, on 18.09.2014 the nephew of the informant went to Mundeshwari temple but did not return till 05.10.2014. After 17-18 days, the informant received an information that a half dead body has been found at the bank of Suwara river and thereafter he went for verification of the same and identified the dead body as of his nephew Dinesh Yadav by the cloths of the deceased. The informant alleged that the accused persons, namely, Santosh Yadav, Suresh Yadav, Subash Yadav, Ashok Yadav and Chandrawati Devi killed his nephew due to prior enmity and disposed the dead body into the river.

4. On the basis of the written report submitted on 05.10.2014, Bhagwanpur PS Case No. 145 of 2014 was registered for the offences punishable under Sections 302, 201 and 120B/34



IPC against the accused persons namely (i) Santosh Yadav; (ii) Suresh Yadav; (iii) Subash Yadav; (iv) Ashok Yadav; and (v) Chandrawati Devi. After investigation, Police submitted a charge-sheet under Sections 302, 201 and 120B/34 IPC against all the accused persons. The learned Magistrate took cognizance of the offences and committed the records to the court of Sessions for trial. The charges were framed against the accused persons for the offences under Sections 302/34, 201/34 and 120B/34 IPC. The accused persons pleaded not guilty and claimed to be tried.

5. On behalf of the prosecution, altogether ten witnesses were examined and eight documents were exhibited in course of trial which are being shown hereunder in a tabular form:-

PW-1	Vijay Kumar Yadav (uncle of the deceased)
PW-2	Bechan Singh Yadav
PW-3	Chhabinath Singh Yadav
PW-4	Radhe Yadav
PW-5	Chinta Devi (mother of the deceased)
PW-6	Manoj Yadav (uncle of the deceased)
PW-7	Rajendra Yadav (informant)
PW-8	Sudama Kumar Singh (I.O. of the case)
PW-9	Dhananjay Kumar Singh
PW-10	Arund Kumar Singh (Doctor)

List of Exhibits:-

Ext-1	The signature of Vijay Kr. Yadav on the	Prosecution	03.06.2016	Without objection	Sessions Judge 03.06.2016
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	inquest report				
Ext-1/1	The signature of Bechan Singh Yadav on the inquest report	do	17.08.2016	do	Sessions Judge 17.08.2016
Ext-2	<i>Fardbeyan</i>	do	08.06.2017	do	Sessions Judge 08.06.2017
Ext-2/1	Endorsement on the <i>fardbeyan</i>	do	27.07.2017	do	do
Ext-3	<i>Fardbeyan</i>	do	27.07.2017	do	do
Ext-4	Formal FIR	do	27.07.2017	do	do
Ext-5	Inquest report	do	do	do	do
Ext-6	Bone examination report	prosecution	05.02.2019	Without objection	Sessions Judge 05.02.2019

6. After completion of the prosecution evidence, the statement of the accused under Section 313 CrPC was recorded in which they pleaded total denial of the case and false implication by the informant. The defence neither examined any witness nor any documentary evidence was produced. In the aforementioned circumstances, the learned trial court has discussed the evidences brought before the court and after a critical examination of the evidences, the learned trial court has concluded that:-



(i) On the point of “last seen” while PW-1 has stated that he saw Dinesh Yadav going towards Mundeshwari Temple at 8 or 9 o’clock in the morning, PW-2 has stated that he had seen him at 1:00 pm at a shop near Mundeshwari Mandir but PW-3 has stated that the victim had left his village for Mundeshwari Temple at 4.30 pm. PW-4 has not stated anything on this point but PW-5 (mother) has stated that the deceased went to Mundeshwari at 10 o’clock in the morning. The learned trial court has, therefore, found that there is no consistency on this point in the testimony of the witnesses;

(ii) The learned trial court further found that as regards the motive, while the prosecution has submitted that there was a quarrel between the parties on the issue of *saaree* theft but according to the trial court, it was not so acute in the nature so as to attract the commission of such ghastly offence that too after a gap of some days. The learned trial court has, therefore, concluded that the motive is also not proved;

(iii) Referring to the testimony of the uncle of the deceased, who has been examined as PW-1, the learned trial court has recorded that the information regarding the missing of the deceased did not mention any doubt upon the accused persons and the FIR might have been a result of afterthought;



(iv) No DNA test was conducted to establish the identity of the deceased.

Submissions on behalf of the Appellant

7. Mr. Ravi Shankar Sahay, learned counsel for the appellant, submits that prosecution witnesses have stated about the motive behind the occurrence and in this regard, they are consistent, therefore, the learned trial court is not justified in rejecting the prosecution case saying that the motive has not been proved.

8. Learned counsel further submits that PW-1, namely, Vijay Kumar Yadav has stated that while he was at home in the morning in between 8-9 am, he was sitting in the temple next to his house and he had seen the deceased going towards Mundeshwari Temple. This witness has further stated that he had seen Santosh Yadav, Suresh Yadav, Ashok Yadav, Chandrawati Devi following the deceased. It is, thus, submitted that the prosecution had brought on record sufficient materials to demonstrate the circumstances and the criminological chain of the circumstance is complete in this case, therefore, the learned trial court is not justified in acquitting the accused persons giving them benefit of doubt.



Submissions on behalf of the State

9. On the other hand, learned Additional P.P. for the State has defended the impugned judgment of the learned trial court. It is submitted that the prosecution witnesses are highly inconsistent and are contradicting themselves in material particulars. The learned trial court has rightly recorded that the different prosecution witnesses have given different time at which the deceased is said to have been seen going to Mundeshwari Temple.

10. Learned APP further submits that PW-1 claims to have seen the accused persons following the deceased but his conduct in not informing the family members of the deceased even as he was well aware that there was an enmity between the deceased and the accused persons speaks of his doubtful conduct and this witness cannot be said to be a wholly reliable witness.

11. Learned counsel further points out from the evidence of PW-2 that in his cross-examination, he has categorically stated that there was no case lodged in the issue of *saree* theft and the said issue was resolved. He has further stated that the upper part of the body was not available and it was only found from the trouser/pant of the deceased his dead body was identified. He has stated in his cross-examination that no case of kidnapping was



lodged and he is not aware as to who had kidnapped the deceased and killed him.

12. Learned counsel further points out that similarly the PW-3, who is maternal grandfather of the deceased, has stated that there was no other dispute between the accused and the family of the deceased except that *saree* issue.

13. Learned APP further submits that the learned trial court has thoroughly, critically and carefully examined the entire prosecution evidence on the record and has rightly reached to a conclusion that the prosecution is not able to prove the guilt of the accused beyond all reasonable doubts.

Consideration

14. Besides hearing learned counsel for the appellant and learned APP for the State, we have carefully perused the entire trial court records. We agree with the finding of the learned trial court as regards material inconsistencies in the evidence of the prosecution witnesses and the conduct of the prosecution witnesses. PW-1 Vijay Kumar Yadav is said to be uncle of the deceased who claims that he had seen the accused persons going behind the deceased but it is highly surprising that this fact was not brought to the notice of the Police even as he claims that he had



informed this fact to the father of the deceased but his father had not told him to go to Police Station.

15. This Court further finds that PW-2 is a witness to the inquest report and he is not a witness to the facts and circumstances of the case. He is not aware of the fact as to who kidnapped the deceased and killed him.

16. So far as Chhabinath Singh Yadav (PW-3) is concerned, he happens to be the maternal grandfather of the deceased. He has given a different time of about 4:30 pm when he was present in the village and in his presence, the deceased had left his house for Mundeshwari Temple. This time provided by PW-3 materially differs from the time disclosed by PW-1, PW-4 and PW-5.

17. Radhe Yadav (PW-4) is also not an eyewitness to the occurrence as he came to the place where the dead body was found only at a belated stage. He has stated in paragraph '3' of his cross-examination that he does not know as to whose dead body was that.

18. Chinta Devi (PW-5) is the mother of the deceased who has stated that the deceased had taken food at 10:00 am and thereafter he had left for Mundeshwari Temple but did not return in evening whereafter a search was conducted for him but he could



not be traced. After about eighteen days, a *hulla* was raised that a dead body was found near Suwara River and when the family members of this witness went there, they found that the dead body was that of her son. In paragraph '5' and '6' of her cross-examination, this witness has stated that she had not seen as to from which gate her son had left for Mundeshwari Temple and who were accompanying him. She has further stated that no case was lodged with Police after missing of the boy and before the dead body was found. She has categorically stated that in between this period, no information was given to Police and no name was disclosed to Police. She was suggested by the defence that the dead body was not that of her son and her son had died due to drowning in the river and his half of the body was eaten by the crocodiles.

19. Manoj Yadav (PW-6) is the uncle of the deceased who has also deposed on the line of PW-5 only. In paragraph '5' of his cross-examination, he has stated that a *sanha* was recorded in the Police Station regarding missing of the boy saying that he had gone missing from Mundeshwari but there was no suspicion against anyone, therefore, he has not given name of any person on suspicion.



20. Rajendra Yadav (PW-7) is the informant of the case who has stated that on 18.09.2014 when he returned home at 2:00 pm and was taking rest, some women started saying that Dinesh (the deceased) had gone to Mundeshwari but had not returned. He had gone in search of Dinesh for about two days and had got recorded the report regarding his missing but after 17-18 days he came to know that a dead body was flowing in the Suwara river whereupon he went there and found that a dead body was in the water, then it was brought out and this witness identified the dead body from the lower pant as that of the deceased. In paragraph '6' of his cross-examination, he has stated that Dinesh had left for Mundeshwari at 9-10 am, at that time he was at Siwan and he had not seen who others had gone with Dinesh Yadav to Mundeshwari. In paragraph '15' of his cross-examination, he has stated that no sample was taken from the parents of Dinesh for DNA test. In paragraph '21' of his cross-examination, he has stated that despite information given by Ashok Yadav that Dinesh Yadav had gone through the gate passing through the doors of the accused persons, in the *sanha* he had not given the name of the accused persons.

21. Sudama Singh (PW-8) is the Officer-in-Charge of Bhagwanpur Police Station and has proved the *fardbeyan* of



Rajendra Yadav which has been marked as Exhibit-3. In his cross-examination, he has stated that as regards missing of Dinesh Yadav, a Sanha bearing No. 365 of 2014 dated 20.09.2017 was registered. Regarding said *sanha* it is not recorded in the case diary that no suspicion was raised against any person. In paragraph '7' of his cross-examination, he has stated that in course of his investigation, in order to find out as to whether the dead body is that of Dinesh, he had not taken sample of the family members of Dinesh and he had not given any request to conduct DNA test of the dead body. He has stated that the dead body was in a mutilated condition. From perusal of the evidence of the I.O. (PW-8) also this Court finds that no substantive material could be found which would indicate any circumstance involving the accused persons in this case.

22. Dhananjay Kumar Singh (PW-9) is one of the I.Os. of this case but he has not recorded the statement of any witness. He had submitted charge-sheet on the instruction of the senior officers.

23. Dr. Arun Kumar (PW-10) has proved the medical report as Exhibit-6. He has stated that he had done only bone examination. In paragraph '5' he has stated that " I was required to report about the sex, age and time since death of the person whose



bone was transmitted to me and brought for forensic examination. I had examined and come to the conclusion by my scientific observation and experience and then I have prepared my report.” According to this report, the lower half of the body wearing red and blue trouser/*paijama* with well developed penis surrounded by black pubic hairs, both hip bones (not completely fused), both thigh bones with partially decomposed soft issue and muscles and devoid of skin, both tibia and fibula and ankle bones were found but no fracture was found in the bones. He had opined that the dead body was that of a male aged between 18-20 years and time since death was 3-4 weeks approximately from the date of first examination.

24. We have once again critically and carefully examined the evidence of prosecution witnesses and find that the prosecution has miserably failed to establish any of the circumstances indicating involvement of the accused persons in the commission of crime. In the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116 while dealing with the case of circumstantial evidence, the Hon’ble Supreme Court has laid down cardinal principles which is also known as principles of “Panchsheel” and has observed that in case of circumstantial evidence, the criminological chain must be



established and it should not be ‘may be’ or ‘should be’. Therefore,
we are of the considered opinion that the learned trial court has not
committed any error.

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

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/-

AFR/NAFR	
CAV DATE	
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