

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.450 of 2023

Arising Out of PS. Case No.-27 Year-2000 Thana- PALIGANJ District- Patna

MAHAVEER PRASAD Son of Late Madan Sah Resident of village - Dihpali,
P.S. - Paliganj, Dist. - Patna

... .. Appellant/s

Versus

1. THE STATE OF BIHAR Bihar
2. Sanjay Kumar Keshari Son of Laxman Prasad Keshari Bihar
3. Rameshwar Prasad Keshari Son of Gopal Saw Bihar
4. Pappu Kumar Keshari Son of Late Kameshwar Keshari Bihar
5. Raj Kumar Keshari Son of Late Kameshwar Keshari Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ansual, Adv.
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP
for respondent nos. 2 to 5	:	Ms. Meena Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 28-03-2024

1. Heard Mr. Ansul, the learned advocate for the appellant, who is the father of the deceased as also the informant of the case and Ms. Meena Singh, the learned advocate for the respondent Nos. 2 to 5. The State has been represented by Mr. Abhimanyu Sharma, the learned Additional Public Prosecutor.
2. This appeal is directed against the judgment dated 20.02.2023 passed by the learned A.D.J.-1,



Danapur in Sessions Trial No. 483 of 2003 arising out of Paliganj P.S. Case No. 27/2000 whereby the respondent nos. 2 to 5 have been acquitted of the charge of the murder of the son of the appellant/informant.

3. The son of the appellant had gone out of his house to ease himself but did not return till late in the night. This raised alarm in the minds of the family members. In the night, search was made, but to no avail. On the next day, i.e., on 01-03-2000, during the course of search, a water pot was found near the local pond. The pot perhaps belonged to the deceased. This further gave some idea to the appellant that the deceased might have fallen in the water body. With the help of local persons, a search operation was conducted and the dead body of the son of the appellant was recovered from the pond. It appeared that he had been strangled by using a muffler. The appellant suspected the hands of respondents Nos. 2 to 5 as he had enmity with them.



4. Hence the case was registered against the respondents as accused persons of the case.
5. During the course of investigation, nothing concrete could be collected against the respondents but still, since suspicion was cast on them and it was also found that sometimes prior to the death of the deceased, the respondents had assaulted him because of a dispute over water, the respondents were charge-sheeted and put on trial.
6. At the trial, twelve prosecution witnesses were examined, including the doctor and the investigator.
7. That the deceased died of homicidal death is beyond question.
8. The postmortem report reveals that the deceased was strangled to death, which injury was ante-mortem. Asphyxia could have been caused because of drowning, but in this case, the deceased had been strangled and then thrown in the water body.
9. The Trial Court was beset with the task of finding out whether the respondents had committed



the crime.

10. None of the witnesses claimed to have seen the deceased in the company of the respondents or the respondents committing the crime. No circumstance was listed during the course of investigation and during the trial to justify the suspicion of the appellant against the respondents. The appellant, as a prosecution witness, only stated before the Trial Court that in the past, there had been some dispute with the respondents with respect to water. For the same dispute, the deceased had been assaulted by the respondents sometimes prior to the occurrence.
11. Assuming that this statement were a statement of fact, then also, it would be no evidence in the eyes of law to come to a definite and an inescapable conclusion that the respondents had committed the offence.
12. On the contrary, one of the witnesses who though supported the suspicion against the respondents has deposed before the Trial Court that



the deceased was in the habit of visiting the local brewery and was also having some illicit affair with some one which perhaps could have been the reason for his being killed and thrown in the well.

13. The prosecution, in our considered view, has completely failed to prove the case against the respondents.
14. The Trial Court has rightly acquitted the respondents as suspicion cannot ever take the place of proof; that also unfounded suspicion.
15. There is no reason for us to interfere with the judgment of acquittal of the respondents.
16. Finding the appeal to be completely merit less, we dismiss the same.

(Ashutosh Kumar, J)

(Khatim Reza, J)

sunilkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

