

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.107 of 2016

Arising Out of PS. Case No.-95 Year-2014 Thana- DIGHA District- Patna

SURENDRA SINGH @ SURENDRA KUMAR @ SURENDAR SINGH @
SURENDAR KUMAR, Son of Late Lallan Singh, Resident of village-
Baruna, Police Station – Narayanpur, District – Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 140 of 2016

Arising Out of PS. Case No.-95 Year-2014 Thana- DIGHA District- Patna

1. Kameshwar Singh Son of Sri Kapil Manu Singh Resident of Village-
Bahadurpur Tola Paharpur, P.S.- Garhani, District- Bhojpur.
2. Upendra Singh, Son of Sri Ramanyan Singh Resident of Village- Lasadhi,
P.S.- Garahani, District- Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 326 of 2016

Arising Out of PS. Case No.-95 Year-2014 Thana- DIGHA District- Patna

Binod Kumar @ Vinod Prasad Son of Jwala Prasad, resident of Village-
Lakhan Tola, Police Station- Bihta in the district of Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 107 of 2016)

For the Appellant/s : None
For the Respondent/s : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Paras Nath, Adv.

(In CRIMINAL APPEAL (DB) No. 140 of 2016)

For the Appellant/s : Mr.Aaruni Singh
For the Respondent/s : Mr.Bipin Kumar, APP



For the Informant : Mr. Paras Nath, Adv.
(In CRIMINAL APPEAL (DB) No. 326 of 2016)
For the Appellant/s : Mr. Sunil Kumar, Adv.
For the Respondent/s : Mr. Abhimanyu Sharma, app
For the Informant : Mr. Paras Nath, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-08-2024

1. All the three appeals have been heard together and are being disposed of by this common judgment.
2. There was no appearance on behalf of the appellant/Surendra Singh @ Surendra Kumar @ Surendar Singh @ Surendar Kumar in Cr. Appeal (DB) No. 107 of 2016.
3. Mr. Sunil Kumar, the learned Advocate has appeared for appellant/Binod Kumar @ Vinod Prasad in Cr. Appeal (DB) No. 326 of 2016. Mr. Aruni Singh, the learned Advocate has appeared for the appellants/ Kameshwar Singh and Upendra Singh in Cr. Appeal (DB) No. 140 of 2016.
4. At our request, both Mr. Sunil Kumar and Mr.



Aruni Singh have assisted us in the appeal of appellant / Surendra Singh @ Surendra Kumar (Cr. Appeal (DB) No. 107 of 2016).

5. The State has been represented by Mr. Abhimanyu Sharma and Mr. Bipin Kumar, the learned Additional Public Prosecutors in all the three appeals.

6. Mr. Paras Nath, the learned Advocate has appeared on behalf of the informant in all the three appeals.

7. By Judgment dated 08.12.2015 passed by the learned Additional Sessions Judge-XI, Patna in Sessions Trial No. 840 of 2014, all the four appellants have been convicted under Sections 364A/34, 120B, 302 and 201 of the Indian Penal Code and 27 of the Arms Act. By order dated 09.12.2015, they have been sentenced to undergo imprisonment for remainder of their lives under Section 302 of the Indian Penal Code, to pay a fine of Rs.30,000/- which would be given to the family of



the victim. For the offence under Section 201 of the Indian Penal Code, the appellants have been sentenced to undergo R.I. for three years, to pay a fine of Rs.5000/- which amount shall also be given to the aggrieved family. For the offence under Section 120B and 364A/34 of the Indian Penal Code, the appellants have been saddled with imprisonment for life under each of the counts and to pay a fine of Rs.25,000/- to the aggrieved family. For the offence under Section 27 of the Arms Act, each of the appellants have been sentenced to undergo R.I. for four years. The sentences have been ordered to run concurrently.

8. One Ved Prakash, a student of Intermediate at B.S. College, Danapur is alleged to have been killed at the hands of the appellants. The sister of the deceased viz, Punam Devi (PW-3) had lodged a typed written report addressed to the Officer-in-charge of Digha Police Station on 01.05.2014 alleging that the appellants/ Surendra and Vinod



along with their friends had come to her house on 21.04.2014 and persuaded the deceased to go along with them for him to meet the mother of Surendra. Incidentally, the mother of Surendra is the own aunt of the deceased. Permission was granted to the deceased by his sister (PW-3) and her husband/Jai Prakash Kumar (PW-2) who were assured that after a couple of days, the deceased would be sent back home. They left the house on 21.04.2014, in the evening of which PW-3 had a telephonic talk with the deceased. Appellant/ Surendra had also talked to PW-3 and had convinced her that she ought not to worry as the deceased would be sent back home on the truck of appellant/Vinod. Later, when the deceased did not arrive home, PW-3 frantically called the deceased as also Surendra but their telephones were out of reach. After about 2 to 3 days i.e. on 25.04.2014, appellant / Surendra responded to the telephone call and expressed his ignorance about the deceased. He told PW-3 that the deceased had



already left for home along with appellant/Vinod. Becoming suspicious, PW-3 informed her father, who is also the father of the deceased, namely, Ashok Kumar Singh (PW-1), an employee in a private firm who came back from his place of work at Orrisa and tried to find out his son. In this process, appellant /Surendra was questioned intensively when he expressed that perhaps the deceased could be recovered, if rupees ten lakhs is arranged for, as the victim has been kidnapped by appellant /Vinod. On the family of the deceased becoming sanguine that the appellants had kidnapped the victim, the written report was lodged by the sister of the deceased on 01.05.2014.

9. Pursuant to the afore-noted written report, a case vide Digha P.S. Case No. 95 of 2014 dated 01.05.2014 was registered for investigation under Sections 364A/34 of the Indian Penal Code initially. However, with the recovery of the dead body, Sections 302 and 120B of the Indian Penal Code as



also Section 27 of the Arms Act were added in the investigation.

10. It appears from the records that by around 04.05.2014, the Investigator got a lead about Surendra and Vinod being present at some place. Since a suspicion had already been raised on them and they were in fact last seen with the deceased, the Investigator/Mohan Prasad Singh (PW-4) arrested both of them on 04.05.2014 and recorded their confession. Pursuant to their confession, the dead body of the deceased was recovered on 05.05.2014 at 6.30 A.M. An inquest was prepared, whereafter the dead body was sent for postmortem examination at about 8:00 A.M. on the same day. The postmortem examination was conducted on 05.05.2014 at 4:20 pm.

11. The police submitted charge-sheet against the appellants, relying solely on their confession and the resultant discovery of dead body as also on the suspicion raised by the family members of the



deceased.

12. At the trial, six witnesses were examined on behalf of the prosecution which included the father of the deceased (PW-1), Jai Prakash Kumar (PW2)/ (brother-in-law of the deceased), Punam Devi (PW3)/(informant and sister of the deceased), Mohan Prasad Singh and Akhilesh Kumar Singh (PWs-4 and 5 respectively)/the Investigators and Dr. Shiv Ranjan Kumar (PW6) who had conducted the postmortem examination.
13. Few stark facts appear to be very misleading which have not been carefully taken into account by the learned Trial Court while recording the judgment of conviction.
14. There is no arrest memo on record.
15. There is also no discovery *panchnama*.
16. The absence of these two documents on record makes the arrest and their confession and the discovery of the dead body to be absolutely doubtful.
17. We say so not only for the reason of the



Investigators having forgotten to bring those documents on record but for other ancillary reasons as well which have made us doubt the entire prosecution case.

18. Even the postmortem examination report and the opinion of the doctor (PW-6) do not appear to be trustworthy so far as the identification of the dead body and the cause of death is concerned. The other factor which has made us suspicious about the entire fabric of prosecution version is the relationship of the parties and complete absence of any motive of the appellants to kill the deceased. An element of motive was introduced, though not directly, by the prosecution but the same could not be proved.

19. We are conscious of the position of the law that motive may not assume great importance in a murder case as only the perpetrator of the crime can explain about his motive but in a case of circumstantial evidence, motive provides an additional link in coming to a cogent conclusion about



the guilt of the suspects.

20. For the felicity of exposition of the case, we would first deal with the admissibility of the statements made by the appellants which has led to the recovery of the so called dead body of the deceased. But before that, we need to refer to Section 27 of the Indian Evidence Act which provides as to how much information received from an accused could be proved. Breaking the section into intelligible parts, we find that any fact which is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer; only so much of such information whether confessional or not, as relates distinctly to the fact thereby discovered, could be proved.

21. The conditions necessary for the applicability of Section 27 of the Evidence Act can thus be broadly listed as;

(i) discovery of fact in consequence of an



information received from the accused;

(ii) discovery of such fact to be deposed to;

(iii) the accused must be in police custody
when he gave information;

(iv) and so much of information as relates
distinctly to the facts thereby discovery is
admissible. (***Mohd. Inayatullah vs. State***

of Maharashtra (1976) 1 SCC 828)

22. Two conditions for application of the Section is
that (i) the information must be such as has caused
discovery of the fact; (ii) and information must relate
distinctly to the fact discovered

23. In the case at hand, as noted above, there is
no arrest memo on record. Assuming the assertion of
the police to be correct that appellants/Vinod and
Surendra whose confessions led to the recovery were
arrested, it was most important for the Investigator
to have prepared the dead body and challan or the
discovery *panchnama*.

24. No independent persons certifying the recovery



of the dead body on the confession of the afore-noted two appellants has been examined at the Trial.

25. The assertions of the Investigators is that on the confession by the appellants, especially Vinod and Surendra, a police team was constituted and both the appellants were taken, in the police custody to the place indicated by them from where the dead body was recovered. There was no dearth of independent persons or member of the police party apart from the Investigators to aid the prosecution in proving recovery. It is of utmost importance that discovery *panchanama* be proved.

26. The reason why we are not ready or rather reluctant to accept the evidence of discovery is that the Investigating Officer in his oral evidence has not said anything which would prove the contents of the discovery *panchnama*. In fact, no *panchnama* is on record. The second reason for us to discard the evidence is that even if the entire oral evidence of Investigating Officers is accepted as it is, what is



lacking is the authorship of concealment. It is also to be noted that the discovery is from an open space. The discovered body was found to be absolutely mutilated with brain liquefied and sutures of brain not found to be fused. It was difficult to identify a dead body with such decomposition. Curiously, the Investigators found two wounds of gunshot which were later interpreted to be the wounds of entry and exit, but about which the Doctor conducting postmortem examination was absolutely uncertain of.

27. There is no evidence on record about the identification of the dead body to be that of the Ved Prakash, the deceased of this case. Who had identified and on what basis is the question which makes us very wary of accepting this evidence.

28. The evidence of discovery is further shrouded in suspicion for the efforts of the Investigators to locate for the weapon of offence. Somehow or the other, it was found by the Investigators that the deceased had died of gunshot and, therefore, the



necessity of finding the weapon of assault especially when the discovery was made on the basis of confession of the appellants. Pursuant to the confession of appellant / Vinod, his house was searched and two weapons wrapped in a plastic sheet were recovered.

29. We have no idea whether those weapons were sent to the ballistic and forensic experts for coming to the conclusion that either of the weapons recovered was used in the offence. Incidentally, the Doctor has opined that there was no bullet found stuck in the dead body because the soft tissues had completely decomposed. The skin also had peeled off at many places.

30. The recovery of the fire arm weapons therefore appears to be an overdrive of the Investigators in an attempt to make the prosecution case succeed and to give an impression that the dead body as also the weapon of assault have been recovered on the basis of confession of appellants.



31. These aspects, in our estimation, renders the entire evidence put forth by the prosecution to smithereens and not worthy of any reliance.

32. In this context, we find it to be more appropriate to discuss the evidence of the Doctor (PW6). The doctor has observed in the postmortem report that the soft tissues and hairs were completely peeled off from most part of the skull. The sutures of the same were not fused. Most of the molars had protruded out. The soft tissues of the neck was decomposed and almost absent. There was a ligature around the neck, which was removed by cutting it. The same was handed over to the I.O. The trachea was decomposed and the cartilages were separated. The mucosa of the trachea was absent.

33. In this mutilated and decomposed body, the doctor had found penetrating wound of the 3' diameter with margin which was blakened at the right side of the chest just below the maxilla and another penetrating wound on the front of the right



side of the chest just below the nipple. Both the wounds communicated to the chest cavity. Heart and both lungs were found missing from the cavity.

34. We are at a loss to understand as to how, with this decomposed body on the postmortem table, the doctor had found communicating wounds of entry and exit. We repeat here that no cartridge was found stuck in the body. Even the ribs were found to be detached. The abdominal cavity was devoid of any soft tissues and, therefore, even the viscera could not be preserved. The second lumbar vertebra was found to be fractured at the right side. The soft tissues of the limb were loosely attached to their ends.

35. The Doctor has but came to the opinion that the death may have been caused because of fire arm injury on the chest and the abdomen which may have taken place five to seven days before the holding of the postmortem examination.

36. We are surprised at such precision in



observation in such a decomposed body. We have real doubts whether there was anything left in the body to be identified by even the close relatives as the dead body of the deceased of this case.

37. Even more interesting than the observation made in the postmortem report, is his response in the cross-examination. On a specific query, he went on a defensive and stated before the Court that he had not formed any definite opinion about the fire arm injury and for that reason, he had not given the measurement of the wound. Those injuries which were observed by him to be the gunshot wounds, could have been caused by sharp pointed weapon as well. In order to be on the safer side, he has further disclosed that while he was looking at the postmortem report in Court, there was no inquest report attached to it.

38. There is a reason for such question having been asked to him by the defense. The inquest about which we shall comment later, disclosed the opinion



of the Investigator that the death perhaps was because of gunshot wound. He could not speak about cause of death or the time of death conclusively, though in the postmortem report, he has assessed it to be about six to seven days before the postmortem examination. It could be more.

39. No trust can be put on such a report especially for saddling the appellants with such a grave crime of killing of a young boy without any motive or purpose.

40. We have already noted that there is no discovery challan of the dead body; therefore, it is difficult for us to say with certainty that the discovery was made pursuant to the confession. Be that as it may, we have found the challan of the dead body used when the same is sent for postmortem examination. This is dated 05.05.2014 and the time of dispatch is shown to be 8.A.M. The other details are absolutely missing. Somewhat before that, the inquest was prepared at the site of discovery in



which Investigator has clearly stated that the dead body was totally mutilated and it appeared that the deceased had been killed by gunshot and the dead body buried under sand for screening the offence.

41. Perhaps this was the reason why the Doctor unwittingly spoke about two communicating gunshot wounds.

42. The only person who appears to have identified the dead body is the father, namely, Ashok Kumar Singh (PW1), who claims to have identified him with the size of the foot fingers and a pair of torn jeans. Had there been a discovery *Panchnama* on record, we would have given some credence to his version, he being the father, believing that there was a discovery of wearing apparel also along with the dead body.

43. We are really unhappy to note that without there being any reference of a *Gamcha*, referred to as ligature in the inquest or in the discovery challan which is non-existent, the doctor found that ligature



to be tied around the neck of the deceased which was allegedly cut and given to the I.O. If that were true then why was that not sent for forensic examination ?

44. This is not the ideal synergy between the Investigator and the Doctor in a criminal case. If either of them were speaking the truth, the evidence would have been worthwhile accepting and believing.

45. With this bleak evidence then, we have analyzed the evidence of the relatives of the deceased, namely, PWs 1, 2 and 3 who have very vaguely referred to a motive for killing the deceased.

46. The motive suggested is so bleak that it is difficult to even spell it out. The deceased had another elder brother, who had married somebody against the wishes of his family. That marriage had the approval of appellants/Kameshwar and Upendra, leading to a strained relationship between them and Ashok (PW1).

47. However, at the Trial, all the witnesses have



spoken of good relations between the families. Had it not been the case, Surendra would not have come to the home of PW3 and insisted for the deceased to visit his home to meet his mother, who is the aunt of the deceased.

48. If it were a part of any conspiracy, the prosecution was expected to pitch-in evidence of such conspiracy which would have been admissible under Section 10 of the Evidence Act.

49. Notwithstanding the so called seizure of several of telephones of the appellants and CDRs of the afore-noted telephones having been procured, there was not attempt of the prosecution to link it to any pre-concert of the appellants. Merely because the telephone of appellant /Surendra was found to be out of range for two to three days, suspecting his conduct, admissible under Section 8 of the Evidence Act, is not justified.

50. At one place, PW3 had conceded that even appellant/Surendra made efforts to search for the



deceased till the time his dead body had not been recovered.

51. Ashok (PW1) did not ever advert to strained relationship with the appellants.

52. What could have then been the reason for killing the deceased or of the prosecution for framing the appellants in this false case.

53. Was it suspicion alone. We do not think so.

54. The elder brother of the deceased had married against the wishes of the family but evidence on record indicates that he resided with his father /Ashok (PW1) at Orissa. He was not to be heard of in the entire process of investigation and search. The insinuation against him was about his desire to sell-off the family property and settle in Delhi.

55. Was his father also an accomplice?

56. These could be the myriad thoughts coming in the mind of a reader of the records of this case.

57. In any view of the matter, if it were a case of circumstantial evidence, then also, the prosecution



was required to muster the necessary requirements for conviction in such cases.

58. A three judge Bench of the Supreme Court in ***Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]*** endorsed the most fundamental and basic decision of the Supreme Court in ***Hanumant vs. State of M.P. (AIR 1952 SC 343)*** which was followed in large number of later decisions upto date, to name a few (I) ***Tufail @ Simmi vs. State of U.P. [(1969) 3 SCC 198];*** and (II). ***Ram Gopal vs. State of Maharashtra [(1972) 4 SCC 625]***

59. The primary principle is that the circumstances from which the conclusion of guilt is to be drawn should be fully established. The Supreme Court very pithily differentiated between "must" and "may be". It was explained that it was not only grammatical but a legal distinction between "may be proved" and "must be proved". Before a court can convict a person, the distance between "may be" and "must



be" is required to be blurred to avoid any vague conjectures and come to a sure conclusion.

60. The five golden principles, namely, (I) that the facts should be conclusively established.; (II) the facts so established should be consistent only with the hypothesis of the guilt to the accused, i.e. to say they should not be explainable on any other hypothesis except that the accused is guilty; (III) the circumstances should be of a conclusive nature and tendency; (IV) they should exclude every possible hypothesis except the one to be proved; and (V) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

61. We say so with sure conclusion that the prosecution in the present case, has not been able to muster these requirements necessary for conviction.

62. To tie the strings together:-



(I) There is an inordinate delay in lodging the F.I.R.

(II) The appellants had no motive to kill the deceased.

(III) The identification of the dead body as that of the deceased is absolutely doubtful.

(IV) The recovery of the dead body pursuant to the confession of two of the appellants having become doubtful and the crevices and crannies having been left wide open, the prosecution has failed miserably to bring home the charges against the appellants.

63. We have no option but to set aside the judgment and order of conviction and sentence and set the appellants at liberty forthwith.

64. All the appeals are allowed.

65. The interlocutory application/s, if any, also stands disposed of.

66. The appellant / Surendra Singh @ Surendra Kumar @ Surendar Singh @ Surendar Kumar in Cr.



Appeal (DB) No. 107/2016 is in jail. He is directed to be released forthwith unless his detention is required in connection with any other case.

67. The appellants/ Kameshwar Singh and Upendra Singh in Cr. Appeal (DB) No. 140 of 2016 and appellant /Binod Kumar @ Vinod Prasad in Cr. Appeal (DB) No. 326/2016 are on bail. They are discharged from the liabilities of their bail bonds.

68. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.

69. The records of these appeals be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-
Ravishankar

AFR/NAFR	AFR
CAV DATE	N/A
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