

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.564 of 2021

Arising Out of PS. Case No.-257 Year-2018 Thana- NOKHA District- Rohtas

=====

Tilak Yadav @ Navnit Kumar Singh, Son of Jag Narayan Singh Resident of
Village- Shivpur, P.S.- Nokha, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 588 of 2021

Arising Out of PS. Case No.-257 Year-2018 Thana- NOKHA District- Rohtas

=====

Rakesh Pandey @ Rakesh Choubey, Son of Dharbharan Pandey @
Manbharan Choubey R/o Village- Ghosiyan, P.S.- Nokha, District- Rohtas at
Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 564 of 2021)

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Adv.
Mr. Brajesh Prasad Gupta, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 588 of 2021)

For the Appellant/s : Mr. Rajiv Ranjan Kr. Pandey, Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

=====

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR and
HONOURABLE MR. JUSTICE KHATIM REZA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-10-2024

Both the appeals have been heard together and
are being disposed of by this common judgment.



2. We have heard Sri Bakshi S.R.P. Sinha, learned Senior Advocate for appellant/Tilak Yadav @ Navnit Kumar Singh [in Cr. App (DB) No. 564 of 2021] and Sri Rajiv Ranjan Kumar Pandey, learned Advocate for the appellant/Rakesh Pandey @ Rakesh Choubey [in Cr. App (DB) No. 588 of 2021].

3. Both the appellants have been convicted under Sections 302, 201/34 of the IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 vide order dated 29.06.2021 passed by the learned 1st Additional District & Sessions Judge-cum-Special Judge, Rohtas at Sasaram in connection with CIS No. 281 of 2018, arising out of Nokha P.S. Case No. 257 of 2018. By order dated 03.07.2021 they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine to further suffer R.I. for six months under Section 302 r/w Section 34 of the IPC and to undergo R.I. for seven years, to pay a fine of Rs. 5000/- each and in



default of payment of fine to further suffer R.I. for three months under Sections 201 r/w Section 34 of the IPC.

4. One Chhote Lal Ram is said to have been killed by the appellants and his dead body was thrown in a village pond. The evidence against the appellants is that they had accompanied the deceased to village Ghosiyan to drop appellant/Rakesh Pandey @ Rakesh Choubey, who had come to the village as a priest for performing Vishwakarma Puja.

5. A written report was lodged by father of the deceased, viz., Baban Ram (PW-4) on 18.09.2018 alleging that on the insistence of appellant/Tilak Yadav @ Navnit Kumar Singh, the deceased went along with him and the priest/Rakesh Pandey @ Rakesh Choubey to village Goshiyan on a motorcycle. When the deceased did not return home for a long time, PW-4 tried to contact him on his mobile telephone, but the same remained unattended. He could, however, hear the shrieks on the telephone. Later, PW-4 along with his family members went in search



of the deceased. On reaching village Goshiyan, they found the motorcycle of the deceased parked near a pond. The keys of the motorcycle were still in the ignition point. The motorcycle was brought back home but no clue could be found about the son of PW-4. Later the dead body of the deceased was recovered from the pond. Since there was a monetary dispute of the family with appellant/Tilak Yadav @ Navnit Kumar Singh, PW-4 suspected the hands of both the appellants; appellant/Rakesh Pandey @ Rakesh Choubey having come to the village on the asking of appellant/Tilak Yadav @ Navnit Kumar Singh for performing Vishwakarma Puja.

6. On the basis of the aforementioned written report by PW-4, a case *vide* Nokha P.S. Case No. 257 of 2018 dated 18.09.2018 was registered for investigation under Sections 302, 201 and 34 of the IPC and Section 3(2) (v) of the SC/ST Prevention of Atrocities Act.

7. The police after investigation submitted charge-sheet against the appellants, whereupon they were tried.



8. The learned Trial Court after having examined seven witnesses on behalf of the prosecution including the doctor and the investigator, viz., PWs-6 and PW-7 convicted and sentenced the appellants as aforesaid.

9. While assailing the Trial Court judgment, Mr. Sinha, learned senior Advocate and Mr. Pandey learned Advocate have pointed out that the accusation against the appellants is based on unfounded suspicion. The investigation of the case was absolutely shoddy and no effort was made by the investigator (PW-7) to find out about the real cause of death.

10. Mr. Abhimanyu Sharma, learned APP, on the other hand, has submitted that there is a strong circumstance at least against appellant/Tilak Yadav @ Navnit Kumar Singh because he insisted the deceased to come along with him for dropping appellant/Rakesh Pandey @ Rakesh Choubey at his village home. Later, appellant/Tilak Yadav @ Navnit Kumar Singh came back



home but did not inform anything to the family of the deceased.

11. After having gone through the Trial Court records, we have found that almost all the witnesses are related to the deceased that would not have made much of a difference but their deposition is based solely on suspicion.

12. It has also come during the evidence that initially the police was reluctant to register the case, thinking it to be an expression of wild suspicion against the appellants but it appears that the villagers threatened to blockade the road. Sensing the retaliation of the irate villagers, the case was registered.

13. The postmortem report as also the evidence of the doctor Rajeev Ranjan (PW-6) reveals that there was only one ante-mortem injury on the body the deceased.

14. The postmortem examination was held on 18.09.2018. There was a swelling of the size of 1" x $\frac{1}{4}$ " over the left side of temporal bone with bleeding through



both the nostrils. The left side of the temporal bone was found to have been fractured. Meninges and brain substances were lacerated. A huge amount of blood was found subdural over the fractured part of the skull. There were no other injuries. The laryngs and trachea were normal. There was no froth found in the bony cage of the chest.

15. The cause of the death was assessed to be sub-dural heamotoma because of the aforementioned head injury. The time of death was placed at 6 to 24 hrs approximately from the time of the postmortem examination.

16. On being questioned specifically, PW-6 (doctor) has admitted that the aforementioned injury could have been caused because of fall on the hard substance. There was no injury found on the leg. The undigested food material in the stomach was approximately only 3 hours old. At the time of postmortem examination, there was rigor mortis all over the dead body.



17. What must have happened?

18. The story unfolded by the prosecution is that Tilak Yadav @ Navnit Kumar Singh had purchased an auto-rickshaw and therefore, on the Vishwakarma Puja day, a puja was performed. Rakesh Pandey @ Rakesh Choubey of Goshiyan village was called to lead the ceremony as a priest. After the puja was over, Tilak Yadav @ Navnit Kumar Singh requested the deceased to come with his motorcycle for dropping Rakesh Pandey @ Rakesh Choubey to his village home. With initial reluctance as narrated by the father of the deceased (PW-4), the deceased went along with the appellants, never to return. Later, the motorcycle of the deceased was found near a pond. Sometimes after that, the dead body was recovered from the pond.

19. The prosecution has tried to improve upon the story by introducing that the motorcycle was left at the place of occurrence *i.e.* near the pond. When the police visited the site, the motorcycle was not there. In fact, PW-



4 has himself admitted that his son-in-law brought back the motorcycle in question to his home in the night. PW-4 was not even sure as to who was the registered owner of the motorcycle.

20. We are at a loss to understand as to why the investigator did not inquire about the motorcycle as many things would have been discovered/unearthed, if the details about such motorcycle were inquired.

21. With the absence of the motorcycle at the scene of the occurrence and no investigation having been done on that account, there would be force in the submission of the learned Advocates for the appellants that the entire story of PW-4, his family members and friends having seen the motorcycle near the pond in village Goshiyan stands unproved.

22. In that circumstance, we have also seen the effort of PW-1/Rina Devi, the Bhabhi of the deceased to fill in the gaps of the prosecution. Unfortunately, her story had no other data. She though does not claim to be eye



witness to the occurrence, but at the time of recovery of the dead body, she was present at the spot. She found that the dead body was wrapped in a banana leaf and was tied with a brick and then thrown in the pond.

23. This story perhaps was introduced only for the purposes of creating a circumstance that the appellants were in the company of the deceased, the motorcycle which was used for conveyance was not taken away, the mobile telephone of the deceased remained with him but in order to avenge some enmity about which there is no record, the deceased was done to death.

24. This whole idea got busted with the postmortem examination when no injury was found on the leg. In fact, the investigator has also admitted that except for PW-1 nobody talked about the dead body having been tied in a banana leaf and for attaching weight to it, a brick was tied to the legs of the deceased and then the dead body was thrown in the pond.



25. The entire story, therefore, becomes very doubtful.

26. While allowing the deceased to accompany the appellants, knowing fully well that appellant/ Tilak Yadav @ Navnit Kumar Singh had some monetary dispute, PW-4 never talked about the purpose of the visit of appellant/Rakesh Pandey @ Rakesh Choubey.

27. The deceased according to the records is a tempo driver who does not own his own vehicle. PW-4 did not state about appellant/Tilak Yadav @ Navnit Kumar Singh having purchased an auto-rickshaw.

28. The only reference of monetary dispute with clarity is by PW-1, viz., that Tilak Yadav @ Navnit Kumar Singh had borrowed Rs. 50,000/- from the deceased for purchase of the aforementioned auto-rickshaw and on such demand of the money, Tilak Yadav @ Navnit Kumar Singh became angry and was in a look out for harming the deceased.



29. This story has been narrated only by PW-1 and none else. This also does not appear to be probable for the reason that perhaps the deceased also drove the auto-rickshaw of Tilak Yadav @ Navnit Kumar Singh.

30. One of the uncles of the deceased, viz., Shiv Dayal Ram (PW-2) has categorically stated that both the deceased and the appellant/ Tilak Yadav @ Navnit Kumar Singh were on good terms and that he had never heard about any bad blood between them or between the appellants and the family of the deceased. Likewise, Ram Ji Ram another uncle of the deceased (PW-5) only told the Court what was told to him by PW-4, the father of the deceased. The mother of the deceased, viz., Shiv Kumari Devi (PW-3) has also narrated the same story about the deceased being accompanied by the appellants, whereafter, his dead body was recovered.

31. It appears that all attempts have been made to make it look like a case of circumstantial evidence where the appellants were last seen with the deceased and



the motorcycle belonging to the deceased was recovered from near the pond from where the dead body was recovered.

32. Had it only been this, perhaps the prosecution would have succeeded in making out a case of a very strong circumstantial evidence against the appellants.

33. However, with no record of the motorcycle having been found at the scene of occurrence and the deceased sieved out from the pond presents a different picture altogether. The deceased may have fallen down and drowned himself while returning from Goshiyan village. The deceased may have been waylaid and thrown in the pond.

34. This possibility does not appear to be true for the reason that the personal belongings of the deceased remained with him. There was no evidence of anybody purloining anything from the person of the deceased.

35. We have serious doubts about the motorcycle being found by the witnesses near the pond.



36. Thus, for all practical purposes except for suspicion and that also a wild one, there is no other evidence to connect the appellants with the offence.

37. So far as appellant Rakesh Pandey @ Rakesh Choubey is concerned, he is a person of a different village and had come to the village of the deceased only for performing the puja as a priest. He had no connection with the family of the deceased. There is no reason why he ought to have been made accused in this case.

38. The facts of this case presents a typical example of the investigator completely abandoning his responsibilities and duties.

39. Times without number the Supreme Court as well as this Court has clarified that there is a huge gap between the "*may have*" and "*must have*". A conviction cannot be recorded on mere suspicion. Circumstantial evidence can be taken into consideration, but it can only be relied upon for convicting an accused, if the postulates admit of no other possibility.



40. In the present case, there are all loose ends in the investigation without unerringly pointing towards the only hypothesis of the guilt of the appellants. The prosecution has failed to prove the case beyond all reasonable doubts.

41. We do not concur with the opinion of the Trial Court.

42. The same is rejected.

43. Appellant/Tilak @ Navneet Kumar Singh [Cr. Appeal (DB) No. 564 of 2021] is in jail for the last 12½ years. He is directed to be released from jail forthwith, if not required or detained in any other case.

44. Appellant/Rakesh Pandey @ Rakesh Choubey [Cr. Appeal (DB) No. 588 of 2021] is on bail. He is discharged from the liabilities of his bail bonds.

45. Both the appeals are allowed.

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



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

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

(Ashutosh Kumar, J)

(Khatim Reza, J)

prabhat/krishna

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2024
Transmission Date	04.10.2024

