

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.98 of 2019

Arising Out of PS. Case No.-214 Year-2016 Thana- BIBHUTIPUR District- Samastipur

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Ravindra Singh @ Ravindra Kumar @ Lalo Bindeshwar Mahto Resident of
Village - Dhaniya, Pakahi, P.S. Bibhutipur, District Samastipur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 1480 of 2018

Arising Out of PS. Case No.-214 Year-2016 Thana- BIBHUTIPUR District- Samastipur

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Bipin Prasad Singh @ Bipin Singh Son of Bindeshwar Mahto Resident of
Village - Dhaniya, Pakahi, P.S.- Bibhutipur, District- Samastipur

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 291 of 2019

Arising Out of PS. Case No.-214 Year-2016 Thana- BIBHUTIPUR District- Samastipur

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Kanchan Kumari D/o Ramashray Singh Resident of Village- Dhania Pakahi,
Police Station-Bibhutipur, District-Samastipur.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 98 of 2019)

For the Appellant : Mr. Ram Pravesh Sharma, Advocate
Mr. Mrityunjay Kumar, Advocate

For the State : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (DB) No. 1480 of 2018)

For the Appellant : Mr. Vijay Kumar, Advocate
Mr. Raj Kumar, Advocate

For the State : Mr. Ajay Mishra, APP



(In CRIMINAL APPEAL (DB) No. 291 of 2019)

For the Appellant : Mr. Abhimanyu Sharma, Advocate
For the State : Km. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 19-04-2024

These appeals are filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') wherein the three appellants-convicts have assailed the common judgment of conviction and order of sentence dated 22.11.2018, rendered by learned Additional Sessions Judge, Rosera (Samastipur) in Sessions Trial No.09/2017, arising out of Bibhutipur P.S. Case No.214/2016, whereby appellants Ravindra Kumar @ Lalo and Kanchan Kumari have been convicted for the offences punishable under Sections 302/34 and 302/120B of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, appellants Ravindra Kumar @ Lalo and Kanchan Kumari have to undergo RI for four months. Further, appellants, namely, Ravindra Kumar @ Lalo, Kanchan Kumari and Bipin Prasad Singh @ Bipin Singh have been convicted for the offences punishable under Sections 201/34 of the Indian Penal Code and sentenced



to undergo RI for four years and to pay a fine of Rs.2000/- each and in default of payment of fine, the appellants have to undergo RI for one month. All the sentences are directed to run concurrently.

2. As these appeals arise out of a common judgment of conviction and order of sentence passed by the concerned Trial Court, the same have been heard together for the sake of convenience.

3. Brief facts, leading to filing of the present appeals, are as under:-

Informant Binod Kumar gave his written complaint to the SHO of Bibhutipur P.S. stating therein that Manoj Kumar (younger brother of the informant) and Mukesh Kumar (brother-in-law of Manoj Kumar) had been living at his house since long. On 17.09.2016 at 11:30 P.M., Mukesh Kumar (deceased) received a phone call and went outside. As a dance programme was organized on the occasion of Vishwakarma Puja at Basauna Chowk, the informant did not pay attention as to where he had gone. At 06:00 A.M., the informant got information through phone that dead body of Mukesh Kumar is lying in the water beside the road ahead of Utkramit Madhya Vidyalaya, Pakahi. The dead body was brought to Shahpur



Chowk.

3.1. On the basis of the written complaint, Bibhutipur P.S. Case No.214/2016 was registered and thereafter the Investigating Officer commenced investigation. After investigation, the Investigating Officer found the FIR named accused innocent and submitted charge-sheet against non-FIR accused, namely, Ravindra Kumar @ Lalo, Bipin Prasad Singh, Kanchan Kumari, Renu Kumari and Ram Pyari Devi.

3.2. As the case was exclusively triable by court of sessions, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.09/2017.

3.3. During course of trial, the prosecution had examined 9 witnesses, namely, P.W.-1, Ram Uchit Mahto, P.W.-2, Sunil Kumar Das, P.W.-3, Laddo Lal Mahto, P.W.-4, Sanjay Kumar, P.W.-5, Binod Kumar, P.W.-6, Dr. Jaykant Paswan, P.W.-7, Vijay Kumar Singh, P.W.-8, Chaturvedi Sudhir Kumar and P.W.-9, Manoj Kumar. Documentary evidence was also produced before the Trial Court. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the present appellants for the aforesaid offences as stated



hereinabove.

4. Heard Mr. Ram Pravesh Sharma, learned counsel for the appellants and Mr. Binod Bihari Singh, Mr. Ajay Mishra and Km. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

5. Learned counsel for the appellants at the outset submits that in the written complaint given by the informant, he had given the names of four accused and also pointed out the motive for committing murder of deceased Mukesh Kumar. However, surprisingly the investigating agency after preliminary investigation exonerated the said four persons who were named in the FIR and only on the basis of secret information given by the informer, all the present appellants have been implicated. It is submitted that the Investigating Officer has admitted while giving his deposition before the Court that there is no eye witness to the occurrence in question and the case of the prosecution rests on circumstantial evidence. It is further submitted that none of the prosecution witnesses has deposed against the appellants-accused except the Investigating Officer. None of the prosecution witnesses has seen the appellants lastly in company with the deceased. Even the weapon, i.e., the knife, which was recovered from the house



of one of the appellants, was not sent for necessary analysis to FSL. The said aspect is admitted by the Investigating Officer. Even the medical evidence does not support the case put forward by the prosecution. Learned counsel thereafter submits that the Trial Court has convicted the appellants only relying upon the deposition given by the Investigating Officer. It is also contended that the prosecution has failed to complete the chain of circumstance from which it can be established that the appellants have killed the deceased despite which the Trial Court has passed the impugned judgment of conviction and order of sentence. At this stage, it is also contended that it is the case of the prosecution that as the deceased Mukesh Kumar was having love affair with one of the appellant Kanchan Kumari, with the help of the other two co-accused the deceased Mukesh Kumar has been killed. However, the prosecution has failed to prove by leading cogent evidence before the Court that appellant Kanchan Kumari was having relation with the deceased. The said aspect has been admitted by the Investigating Officer.

5.1. Learned counsel for the appellants, therefore, urged that these appeals be allowed and the impugned judgment of conviction and order of sentence be quashed and set aside.



6. On the other hand, learned Additional Public Prosecutors have vehemently opposed the present appeals. It has been contended that on the basis of confessional statement of the accused, it is duly proved that appellants have committed the alleged offences. It is submitted that CDR of the mobile phones of the deceased as well as the accused were obtained by the Investigating Officer and the same were produced before the Court. It is further submitted that a blood stained knife was recovered from the house of one of the appellants. It is contended that though there is no eye witness to the occurrence in question, from the evidence led by the prosecution before the Trial Court, it is duly proved that the appellants have committed the alleged offences and, therefore, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence. Learned Additional Public Prosecutors, therefore, urged that these appeals be dismissed.

7. Having heard the learned counsel for the parties and having gone through the materials placed on record, it would emerge that the prosecution had examined 9 witnesses with a view to prove the case against the appellants. However, out of 9 prosecution witnesses, P.W.-3, Laddo Lal Mahto has been declared hostile.



8. P.W.-1, Ram Uchit Mahto has stated in his examination-in-chief that Daroga Ji had recovered mobile phones from the houses of Bipin Prasad Singh, Ravindra Kumar, Ram Pyari Devi and Vinita. The police has also recovered a blade and blood stained knife kept under the bed of Kanchan Kumari. This witness also put his signature on the seizure list and arrest memo.

8.1. P.W.-1 has stated in his cross-examination that he put his signature on papers on the recommendation of Bara Babu (Investigating Officer) but he did not know the contents of those papers. This witness also stated in his cross-examination that nothing has been recovered in his presence.

9. P.W.-2, Sunil Kumar Das deposed in his examination-in-chief that the police has recovered mobile phone from Bipin Prasad Singh and he put his signature on the seizure list and arrest memo.

9.1. This witness has stated in his cross-examination that he put his signature on blank paper at the time of receiving cloth and nothing has been recovered in his presence. P.W.-2 also stated in his cross-examination that he does not know anything about the occurrence.

10. P.W.-4, Sanjay Kumar has stated in his



examination-in-chief that the SHO of Bibhutipur P.S. had recovered a mobile phone from appellant Ravindra Kumar @ Lalo and he put his signature on the seizure list. The police has also recovered mobile phone from the house of Ram Pyari Devi. Blade and blood stained knife were also recovered which were kept under the bed of Kanchan Kumari. The police prepared the seizure list and he put his signature on it.

10.1. P.W.-4 has stated in his cross-examination that he put his signature on a blank paper. He lives in Haryana. It is also stated by this witness in his cross-examination that he put his signature 4-5 days after the occurrence. This witness also stated that nothing has been recovered in his presence. The police did not inquire anything from him about the occurrence. This witness also stated that he does not know anything about the occurrence.

11. P.W.-5, Binod Kumar is the informant of this case and he has deposed in his examination-in-chief that Mukesh Kumar (deceased) was brother-in-law of his brother Manoj Kumar who resided in his house. The occurrence took place in the year 2016 on Vishwakarma Puja. A dance programme was organized at Basauna Chowk. Mukesh Kumar had received a call at 11:00 P.M. and went outside and at 06:00 A.M., he



received information through phone that dead body of Mukesh Kumar is lying in a ditch near Pakahi school. It is further deposed by this witness that before the incident, Shivdani Singh, Ranjeet Kumar and Niranjana Kumar threatened Mukesh Kumar. The said persons threatened the deceased before Manikant Ji Sir, Basath Mahto, Sobha Das Maharaj Ji, Jitan Isar and Ranjeet Kumar Isar at Basauna Chowk. Thereafter the police brought the dead body to Samastipur for post-mortem. The informant further deposed that he does not know the accused.

11.1. P.W.-5 has stated in her cross-examination that he has not seen the occurrence he later received the information.

12. P.W.-6, Dr. Jaykant Paswan is the doctor who conducted post-mortem on the dead body of the deceased and found following injuries:

- 1) Sharp cut wound on face right side
3"x½"x½" Transverse from upper lip to cheek.
- 2) Sharp cut wound Maxillary region Rt side
face 3½"x¼"x¼" transverse.
- 3) Sharp cut wound Lt. Side face transverse
4"x½"x½" with blood clot
- 4) Lacerated wound below lower lip



1"x½"x1/3"

5) Sharp cut wound neck below thyroid cartilage 3"x1"x½" with blood clot

6) Sharp cut wound Nape of the neck vertical 2"x½"x½"

7) Sharp cut wound from Lt. Scapula to sacral region 30"x3"x½" muscle exposed.

On internal examination :- All viscerae pale.

Time elapsed since death : Within 36 hours.

12.1. P.W.-6, the doctor has stated in his cross-examination that if the knife blow is given, there would be a penetrating wound and he did not find any penetrating wound on the dead body of the deceased.

13. P.W.-7, Vijay Kumar Singh is a formal witness who had produced two plastic bags before the Court.

13.1. P.W.-7 in his cross-examination has stated that he is not having any knowledge with regard to the instant case.

14. P.W.-8, Chaturvedi Sudhir Kumar is the Investigating Officer of the case who had carried out the investigation. This witness has deposed in his examination-in-chief that he has seized certain articles from the place of occurrence. He has prepared the seizure list. It is also deposed



that he has sent the dead body for post-mortem and collected post-mortem report. This witness has recorded the statements of the witnesses. Thereafter he seized the mobile phone of the deceased as well as the accused. He has also collected the CDR of the concerned mobile phones. Thereafter he has arrested the accused persons and their confessional statement was recorded. Blood stained knife mobile phone were also recovered by this witness from the house of Kanchan Kumar. P.W.-8 has also recovered blood stained broken blade from the room of Vinita. This witness further deposed in his examination-in-chief that from perusal of the CDR, it is found that from the mobile phone of Ravindra Kumar, Kanchan Kumari called the deceased and the tower location of the mobile phone was also found near the place of occurrence.

14.1. P.W.-8 has stated in his cross-examination that he has exonerated the FIR named accused persons after inquiry. He had not seized blood from the place of occurrence. He had not sent the blood stained knife to the FSL for necessary analysis. It is further stated by this witness in his cross-examination that there is no eye witness to the occurrence in question. Statement of the accused under Section 164 Cr.P.C. was not recorded. It was told by the informer that appellants are



involved in committing the murder of the deceased.

15. P.W.-9, Manoj Kumar has deposed in his examination-in-chief that deceased Mukesh Kumar was his brother-in-law and lived in Basauna with him in his house. It is further deposed that the incident took place on 17.09.2016 at about 10:30-11:00 at night. Both of us were in the house. That day on the occasion of Vishwakarma Puja, his deceased brother-in-law Mukesh Kumar had gone to Basauna chowk on his red coloured bicycle to watch dance programme. He was having his mobile phone but the number of mobile phone is not known to the witness. However, it ended with 17, he adds himself. When he did not return after watching the dance, the witness dialed to him which could not materialize. It is also deposed that next morning at about 06:00 A.M., he received a phone call informing that the dead body of his brother-in-law is lying in a field (Chour) which was a ditch with water. When this witness reached the place and saw the dead body, he realized that his brother-in-law has been done to death. The red coloured bicycle, slippers, cap, small knife were there and his neck was slit and there were several other injuries on his dead body. This witness in his examination-in-chief has further stated that accused Shivdani Singh, Ranjeet Kumar, Niranjana Kumar etc.



had threatened to do away with him, if he wins the election. He alleges that the aforesaid persons only, hatching a conspiracy, have killed his brother-in-law. Police had inspected the place of occurrence and had prepared the inquest report on which the witness had put his signature. He had also signed the seizure list of the articles seized from the place of occurrence with dead body, which he identifies and the same is marked as Ext.6/1.

15.1. P.W.-9 has stated in his cross-examination that the police had not recorded his statement. He has denied the suggestion that in his statement before the police, he had not taken the names of Ravindra Kumar @ Lalo, Bipin Prasad Singh, Kanchan Kumari, Renu Kumari and Most. Ram Pyari Devi. It is further stated that he had not given any complaint or information in police about any threats. He has denied the suggestion to have falsely deposed as the deceased was his brother-in-law.

16. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. It would emerge from the record that there is no eye witness to the occurrence in question and case of the prosecution rests on circumstantial evidence. In the written complaint, the informant had given names of four persons. However, surprisingly the investigating



agency, after making preliminary investigation exonerated the four persons who were named in the FIR. It is relevant to note that as per the deposition given by the Investigating Officer, on the basis of secret information given by the informer of the police, it was revealed that the deceased Mukesh Kumar was having love affair with one of the appellants, i.e., Kanchan Kumari and all the appellants in connivance with each other killed the deceased. On the basis of the said information, these appellants were arrested and their confessional statements were recorded. It would further emerge from the record that one broken blood stained knife was recovered from the house of one of the appellants. However, it is admitted by the Investigating Officer that he had not sent the said knife for necessary analysis to the FSL. It transpires from the evidence led by the prosecution that the prosecution has failed to examine the witness with a view to prove that deceased Mukesh Kumar was having love affair with one of the appellants, i.e., Kanchan Kumari. Thus, the prosecution has failed to prove the motive on the part of the accused to commit the alleged offences. Admittedly the present is a case of circumstantial evidence and it is well settled that in case of circumstantial evidence, it is the duty of the prosecution to complete the chain of circumstance



from which it can be established before the Court that the appellants/accused have committed the alleged offences.

17. In the present case, P.W.-1 is a witness of the seizure list as well as the arrest memo of the two accused. However, the said witness during cross-examination has specifically admitted that he was asked by Bara Babu (Investigating Officer) to sign the documents and, therefore, he had signed those documents and what were the contents of the documents, he was not aware. He has also stated during cross-examination that in his presence none of the items was seized. Similarly, P.W.-2 is also witness of the seizure list and arrest memo of one of the accused. He has also admitted during cross-examination that he has signed on the blank paper as Daroga Ji asked him to sign and none of the articles was seized in his presence. P.W.-3 has not supported the case of the prosecution and he has turned hostile. P.W.-4 is also witness of the seizure list but has stated during during cross-examination that he had signed the blank paper and and none of the articles was seized in his presence. P.W.-5 is the informant who had given the written complaint to the police against four other persons and not against the present appellants. He did not identify the present appellants-accused in the Court. He has admitted that he



is not an eye witness to the occurrence. P.W.-6 is the doctor who had conducted post-mortem on the dead body of the deceased and he found seven injuries out of which six are sharp cut wound. He has specifically opined that death was due to hemorrhage and shock caused by above mentioned injuries produced by heavy sharp weapon. During cross-examination, the said witness has specifically stated that if the knife blow is given, there would be a penetrating wound and he did not find any penetrating wound on the dead body of the deceased. P.W.-7 is a formal witness who had produced two plastic bags before the Court. However, he was not having any knowledge with regard to the instant case. P.W.-9 is also not an eye witness to the occurrence in question. Thus, the case of the prosecution rests only on the deposition given by P.W.-8, the Investigating Officer.

18. It is relevant to note that though the Investigating Officer collected the CDR of the concerned mobile phones and produced before the Court, the certification under Section 65B of Evidence Act was not produced before the Court. It is also relevant to observe at this stage that none of the prosecution witnesses has stated or deposed before the Court that the deceased was lastly seen in company with the appellants. The



Investigating Officer though recovered blood stained knife from the house of one of the appellants, he had not sent the same to the FSL for necessary analysis. Further, in the case of circumstantial evidence, motive assumes importance. In the present case, as discussed hereinabove, the prosecution has failed to prove the motive on the part of the appellants to kill the deceased by leading cogent evidence before the Trial Court. The medical evidence also does not support the case of the prosecution. Thus, from the aforesaid evidence, it can be said that only on the basis of the confessional statement of the accused and the CDR of the mobile phones, the appellants have been convicted by the Trial Court.

19. Thus, in view of the aforesaid facts and circumstances of the case, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt despite which the Trial Court has passed the impugned judgment of conviction and order of sentence against the appellants. Hence, the same is required to be quashed and set aside.

20. Accordingly, All the three appeals stand allowed. The impugned common judgment of conviction and order of sentence dated 22.11.2018 passed by learned Additional



Sessions Judge, Rosera (Samastipur) in connection with Sessions Trial No.09/2017, arising out of Bibhutipur P.S. Case No. 214/2016 is quashed and set aside.

20.1. Appellant, namely, Bipin Prasad Singh @ Bipin Singh in Criminal Appeal (DB) No.1480 of 2018 is on bail. He is discharged from the liabilities of his bail bonds.

20.2. Since appellants, namely, Ravindra Singh @ Ravindra Kumar @ Lalo and Kanchan Kumari in Criminal Appeal (DB) No.98 of 2019 and Criminal Appeal (DB) No.291 of 2019 respectively are in jail, they are directed to be released from custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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