

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.642 of 2022

Arising Out of PS. Case No.-22 Year-2020 Thana- KALER District- Jehanabad

Hari Naresh Singh Yadav, S/o Late Kauleshwar Singh Yadav, Resident of Village- Hichhan Bigha, P.S.- Daudnagar, Dist.- Aurangabad.

... .. Appellant/s

Versus

1. The State of Bihar
2. Janamjay Kumar @ Rudal Yadav, S/o Sanjay Singh, Resident of Village- Hichan Bigha, P.S.- Daudnagar, Dist- Aurangabad.
3. Uma Shankar Sao, S/o Late Bhuneshwar Singh, Resident of Village- Aganoor, P.s.- Kaler, Dist- Arwal

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.K. Lal, Advocate Mr. Upendra Kumar, Advocate
For the State	:	Mr. Bipin Kumar, APP
For the Respondent No.2 to 3:		Mr. Madhumay Madhup, Advocate

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

Date : 20-06-2024

We have heard Mr. S.K. Lal, the learned Advocate for the appellant/informant, who is the father of the deceased and Mr. Madhumay Madhup, the learned Advocate for the respondent Nos. 2 and 3.

2. The present appeal is against the judgment of acquittal dated 25.02.2022 of the respondent Nos. 2 and 3, passed by the learned



Additional District & Sessions Judge-II, Jehanabad in connection with Sessions Trial No. 115 of 2020/ 57 of 2022, arising out of Kaler P.S. Case No. 22 of 2020.

3. The son of the appellant/informant had met with an accident.

4. The prosecution story though was initiated on suspicion against one Abhishek, a juvenile, who had given a telephonic call to the deceased/Munmun (son of the appellant) at an odd hour to accompany him to some place. The appellant and his family members were surprised at such a request, but Munmun (deceased) left his home to go with Abhishek. The appellant had tried to contact Munmun in the evening, when Munmun (deceased) had picked up the call and had assured the appellant that he shall come back soon. Later, the telephone calls to Munmun were not responded by him. The appellant later got an information that his son has met with an accident. On that information, he went to the place where his son was



found injured and lying dead on the ground with his head crushed. The motorcycle belonging to Abhishek was also lying there. For some reason or the other, may be for the nature of injuries on the person of the deceased as noticed by the appellant, the FIR was lodged that perhaps the deceased had been killed at the behest of Abhishek.

5. The case initially was registered against Abhishek. However, while the investigation was still continuing, the appellant learnt from two of his villagers that the death was not on account of any accident, but the deceased had been murdered at the instance of one Satish Kumar, who has not even been charge-sheeted ultimately. The sister of Satish Kumar, viz., Madhuri Kumari (not examined) was having an affair with the deceased, much to his chagrin. Satish had, therefore, hired the respondents to kill the deceased.

6. The police took it as a smoking gun and proceeded to investigate the matter. Ultimately, the



police could make an attempt to connect the respondents on the basis of tower location of their mobile telephone as deciphered from the CDR of their respective telephone numbers. The other material in the hand of the police was the confession of the respondents.

7. Seven witnesses were examined during the Trial, including the parents and the brother of the deceased. None of those witnesses had ever made any statement under Section 161 Cr.P.C. that they had suspicion over Satish and the respondents, who were hired by Satish. The only explanation that they gave was that such information came very late.

8. Based on these materials, the Trial Court found that the evidence of CDR was not admissible as such piece of evidence was not preceded by any certification as mandated under Section 65 B of the Indian Evident Act and that the prosecution failed to connect the dots with respect to the respondents.

9. Relying fully on the *locus classicus* on



the issue of circumstantial evidence in ***Sharad Biradhichand Sarda vs. State of Maharashtra, AIR 1984 SC 1622***, the Trial Court tested the case on the grounds whether the circumstances from which the conclusion of guilt was to be drawn was fully established; whether the fact to be established would have been consistent only with the hypothesis of the guilt of the respondents or that the circumstances were of conclusive nature and tendency, excluding any other possible hypothesis except the one to be proved.

10. The Trial Court ultimately found that the chain of evidence was not complete, leaving gnawing doubts for the conclusion inconsistent with the innocence of the respondents.

11. Apart from this, we have also found that the deceased had suffered injuries in the nature of abrasion in his forearm and elbow and his left temporal bone was found to be fractured. The cranial cavity was found to be filled with blood and blood clots. In the



opinion of the Doctor conducting the post-mortem examination (P.W. 4/ Dr. Pramod Kumar Singh), the death had occurred due to shock and hemorrhage because of head injury caused by hard and blunt substance.

12. With the absence of recovery of weapon of assault and the possibility of the deceased having fallen on ground on accident and having hurt himself cannot be ruled out.

13. It thus, appears, that it was only on the imagination of the appellant/informant and his two associates, viz., his co-villagers/ Kulband Yadav and Ramgovind Yadav, who had informed him about the murder of the deceased and who were curiously not examined by the police, the appellant chose to implicate the respondents.

14. The source of information about Satish being annoyed at the deceased carrying on an affair with his sister and Satish hiring the respondents is absolutely



missing from the records.

15. The Trial Court, in our estimation, was left with no alternative but to reject the prosecution version and acquit the respondents. However, the Trial Court has recommended for payment of compensation of Rs. 3,00,000/- to the kith and kin of the deceased.

16. We do not find any perversity or any illegality in the judgment of acquittal, which requires no interference.

17. The appeal, thus, is dismissed as being without merits.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

manoj/sunil-

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