

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.536 of 2021

Arising Out of PS. Case No.-34 Year-2018 Thana- LAHERIYASARAI District- Darbhanga

Dhiraj Kumar @ Dhiraj Kumar Mandal, S/o Sri Vijay Mandal @ Vijay Kumar Mandal, R/o Village/Mohalla-Donar, P.S.-Laheriasarai, District-Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 811 of 2021

Arising Out of PS. Case No.-34 Year-2018 Thana- LAHERIYASARAI District- Darbhanga

1. Chandan Das @ Chandan Kumar Das, Son of Late Raju Das @ Raj Kumar Das;
 2. Md. Ashraf, Son of Md. Ayub;
- Both are resident of Village-Sahara India Gali, Donar, P.S.-Laheriasarai (Benta O.P.) and District-Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 536 of 2021)

For the Appellant/s : Mr. Syed Ashfaque Ahmad, Adv.
Mr. Umesh Kumar Verma, Adv.



For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 811 of 2021)
For the Appellant/s : Mr. Kedar Jha, Adv.
Mr. Arun Kumar, Adv.
For the State : 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 taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Syed Ashfaque Ahmad, the learned Advocate for appellant/Dhiraj Kumar @ Dhiraj Kumar Mandal in Cr. Appeal (DB) No. 536 of 2021 and Mr. Kedar Jha & Mr. Arun Kumar, the learned Advocates for the appellants/Chandan Das @ Chandan Kumar Das and Md. Ashraf in Cr. Appeal (DB) No. 811 of 2021 respectively.

3. The State, in the both the appeals, has been represented by Mr. Abhimanyu Sharma, the



learned Addl. Public Prosecutor.

4. All the three appellants in the two appeals have been convicted for the offences under Sections 364, 302, 201 and 120(B) read with Section 34 of the Indian Penal Code (*in short the IPC*) vide judgment dated 29.06.2021 passed by the learned 2nd Addl. Sessions Judge, Darbhanga in Sessions Trial No. 442 of 2018, arising out of Laheriasarai (Benta O.P.) P.S. Case No. 34 of 2018. By order dated 12.07.2021, they all 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 a period of one year for the offence under Section 302 of the IPC; to undergo imprisonment for ten years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer R.I. for a period of six months for the offence under Section 364 of the IPC; to undergo imprisonment for three years, to pay a fine of Rs. 1,000/- each and in default of payment of fine, to



further suffer R.I. for a period of three months for the offence under Section 201 of the IPC and 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 a period of one year for the offence under Section 120(B) of the IPC.

5. All the sentences have been ordered to run concurrently.

6. One Rahul Kumar Das is said to have been kidnapped and then killed by the appellants. Allegedly, the dead-body was recovered on the confession of appellants/Chandan Das @ Chandan Kumar Das and Md. Ashraf.

7. The deceased died of several incised wounds on his body. The *post-mortem* examination on the dead-body was conducted on 01.02.2018 by Dr. Vijay Pratap Singh (P.W. 6). He had found one incised wound on the throat of the deceased of a big dimension. The margins of the wound would be found to be clean



cut and the whole area filled with blood and clots. Because of the afore-noted wounds, all major vessels, trachea and esophagus were damaged. On the right forearm of the deceased also, there were four incised cuts. There were multiple wounds on the chest of the deceased as well. Cumulatively, the injuries led to bleeding, neurogenic shock and ultimate death of the deceased. The time of death was assessed between 14 to 20 hours of the *post-mortem* examination.

8. The Doctor (P.W. 6) had also found traces of alcohol in the stomach of the deceased.

9. For some reason or the other, the *Viscera* was not preserved.

10. The *post-mortem* report (Exhibit-7) as also the deposition of Dr. Vijay Pratap Singh (P.W. 6) completely establish and prove that the deceased died a homicidal death. The deceased was slashed to death brutally.

11. The brother of the deceased, namely,



Rohit Kumar Das (P.W. 5) had lodged the written report regarding the kidnapping of the deceased. On his written report, initially, a case was instituted *vide* Laheriasarai (Benta O.P.) P.S. Case No. 34 of 2018, dated 31.01.2018 under Section 364/34 of the IPC, naming the appellants as also one Nandan Das, who does not appear to have been *charge-sheeted*. With the recovery of the dead-body a day after, Sections 302, 201 and 120(B) of the IPC was added later.

12. According to the written report, referred to above, P.W. 5 received a message from his home on 31.01.2018 that his brother has been kidnapped. He came back to his maternal home, where both the brothers resided. One Md. Hira (P.W. 2) told him that on the same day at about 11 O'clock, he had seen his brother being assaulted by the appellants in front of the house of one Sahdeo Master. Thereafter, on the point of pistol, his brother was taken away towards Dilawarpur. For the reason that appellant/Chandan Das



had earlier killed his father in the year 2013, P.W. 5 suspected that the kidnapping of his brother is the handy-work of appellant/Chandan Das and his associates, whose names he learnt from Md. Hira (P.W. 2).

13. At the trial, P.W. 5 disclosed certain facts, which clearly account for the false framing of the appellants in the instant case. The deceased was only 18 years of age and had left his studies. For several years, he had been working temporarily as a sales person in a utensil shop.

14. According to P.W. 5, the victim/deceased was searched for at several places including the house of appellant/Chandan Das, but no clue could be found. In all these efforts, his uncles, namely, Baiju Kumar Das (P.W. 3) and Laxman Das (P.W. 4) and one Shatrughan Das (not examined) accompanied him and the policemen. On the next date, *i.e.*, 01.02.2018, the police officer (P.W. 7) called him



on his mobile telephone at about 8 O' clock in the morning and informed him that a dead-body is lying in the D.M.C.H. and that he should come and identify the same. P.W. 5 along with others reached D.M.C.H. and identified the dead-body to be of his brother. Thereafter, the *post-mortem* examination was conducted on the dead-body. After the identification of the dead-body, P.W. 5 claims to have met the mother of appellant/Chandan Das, who could not offer any information about either Chandan or the deceased.

15. The mother of appellant/Chandan Das, namely, Nirmala Devi had earlier filed a case against P.W. 5 and the deceased for the murder of her another son, namely, Kundan Das *vide* Laheriasarai P.S. Case No. 204 of 2015. In that case, the deceased was also arrested, but because of his juvenility, he was confined in children's home for about one and a half year.

16. There is yet another story unfolded by P.W. 5. One married daughter of his uncle/Satrughan



Das had married one Suraj Das for the second time, during the subsistence of her earlier marriage with one Ashok Das. Suraj Das is none else but the cousin of the appellant/Chandan Das. The second marriage of the daughter of the uncle of P.W. 5 had given rise to local controversy, for which a *Panchayati* was convened and socially, the couple were boycotted. However, he admitted that his uncles and Md. Hira (P.W. 2), who was his source of information and which information has been acted upon, had very close association.

17. From the deposition of P.W. 5, therefore, it becomes very clear that there was enmity with appellant/Chandan Das from before. This enmity was further fuelled by the marriage of Laxmi Devi, the daughter of Laxman Das (one of the uncles of P.W. 5) to the cousin of appellant/Chandan Das.

18. The other filtrate of the deposition of P.W. 5 is that from no other source was it confirmed by him that the appellants had, at about 11 O' clock on



31.01.2018, assaulted the deceased and took him to some unknown destination.

19. Thus, for all practical purposes, the information provided by P.W. 2 was the only source which, perhaps, was believed by the investigating agency.

20. In this context, we are pretty amazed to examine the evidence of Md. Hira (P.W. 2). He knew the deceased very well. He claims to have seen the deceased being assaulted by four persons, but he did not know them at all. He had no idea about their names. He had intervened and had separated the deceased from the appellants. After having said that before the Trial Court, he identified the appellants in the dock. However, he did not make any statement before the Trial Court indicating that he saw the appellants taking away the deceased to any unknown destination. All that he said was that those persons who were assaulting the deceased went away but where, he had no idea.



21. What is even more surprising is that P.W. 2 has claimed that he first met P.W. 5 (informant) after two days of the occurrence. Though P.W. 5 has claimed to learn about the earlier incident from P.W. 2 and based on that information he had filed the written report, but P.W. 2 had an opportunity to tell him about what he had seen only two days after the lodging of the case. This only demonstrates that perhaps P.W. 5, because of old enmity, had falsely framed the appellants.

22. In this fact-scenario, it is very difficult for us to believe that P.W. 2 had actually seen the appellants assaulting the deceased and taking him away to an unknown destination and parting such information to P.W. 5 for him to lodge the case of kidnapping against the appellants.

23. Testing the case further, we have found that Baiju Kumar Das and Laxman Das (P.Ws. 3 and 4 respectively) have also, in their deposition,



narrated about the earlier case lodged by the mother of appellant/Chandan for the murder of the brother of Chandan and Laxmi, a married niece having married the cousin of appellant/Chandan, which was socially boycotted. Apart from this, they had nothing else to offer. All the information which they had, therefore, was based on what P.W. 5 had told them.

24. However, as the investigation proceeded, the appellants were arrested.

25. On 01.02.2018, in presence of P.W. 4, the police had seized three mobile telephones from the possession of Md. Ashraf (Ext.- 1). From that place only, which was the house of the in-laws of appellant/Chandan, blood stained T-shirts of Chandan and Ashraf were also recovered. Apart from the wearing apparels, referred to above, a knife, a pistol, one cartridge of rifle and two bullets were also recovered from the possession of appellant/Chandan (Ext.- 2). blood stained earth, too, was seized (Ext.- 3).



Appellants/Ashraf and Chandan were arrested in his presence (Exts.- 4 and 5).

26. We have referred to such part of the deposition of P.Ws. 3 & 4 only for the purposes of demonstrating that when the names of the appellants were made known to the police, arrests and recoveries were made.

27. The Investigator (P.W. 7) though confirmed before the Trial Court that he had recovered those articles and that appellants/Chandan and Ashraf had made confessional statements leading to the recovery of the dead-body from the banks of river Kamla, but there is no recovery *memo* on record. There is no witness to such recovery.

28. The story of recovery of dead-body at the instance of two of the appellants is thus absolutely incorrect. We say so also for the reason that P.W. 5 (informant) had earlier deposed that he was asked to come to D.M.C.H. to identify a dead-body. Till that



time, it was not known that the dead-body was of Rahul Kumar Das. In this connection, the absence of recovery *memo* or P.W. 7 not naming any witness to the recovery, assumes significance.

29. The appellants would not be too off the mark in suggesting that such recovery was only a paper work and nothing else.

30. Though P.W. 7 claims to have recorded the statement of P.W. 2 on the day of the occurrence, but the same has not been confirmed by P.W. 2. It further appears from the deposition of P.W. 7 that P.W. 2 was made to give his statement under Section 164 of the Cr.P.C. after fifteen days of the lodging of the FIR. However, the deposition of P.W. 2 makes it very clear that he was deposing before the Court for the first time.

31. This also completely demolishes the prosecution case so far as the earlier incident of the appellants assaulting the deceased is concerned.

32. With respect to the recovery of the



dead-body, P.W. 7 has candidly accepted that he did not record any recovery *memo* nor did he inform the Officer-in-Charge of the concerned police station about such recovery.

33. We must also indicate that whichever articles were seized by the Investigator, *viz.*, the blood stained T-shirts belonging to two of the appellants, blood stained knife, etc., were sent for forensic examination.

34. The FSL report is on record.

35. No blood could be detected on the T-shirts. Some blood was found on some of the articles, but the serological reports were of no value, especially when the recovery itself has become doubtful.

36. All this, therefore, leads to the only conclusion that the deceased was killed while he was intoxicated. Traces of alcohol was found in his gut. Who killed him, remains a mystery.

37. What is further evident is that the appellants have only been named in this case by P.W. 5



for the reason of the earlier dispute, viz., the murder of the brother of appellant/Chandan Das and one of the married daughters of the family marrying the cousin of appellant/Chandan Das.

38. Nothing has come on record to point towards the involvement of appellant/Chandan Das in the killing of the father of P.W. 5 in the year 2013, about which, P.W. 5 has only casually referred to in his written report.

39. For the afore-noted reasons, we are unable to sustain the judgment and order of conviction and sentence.

40. The judgment and order of conviction and sentence, therefore, is set aside and the appellants are acquitted of all the charges levelled against them.

41. The appeals stand allowed.

42. All the appellants, above named, are in jail. They are directed to be released forthwith from jail, if not detained or wanted in any other case.



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

44. The records of these cases be returned to the Trial Court forthwith.

45. Interlocutory application/s, if any, in both the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Praveen-II/Saurav

AFR/NAFR	NAFR
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