

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.45 of 2022**

Arising Out of PS. Case No.-635 Year-2016 Thana- BANKA District- Banka

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Fuleshwar Sah, Son of Doman Sah, Resident of Village- Gouripur Dudhari,
P.S. and District- Banka.

... .. Appellant/s

Versus

1. The State of Bihar
2. Shankar Sah, Son of Maheshwar Sah, Resident of Village- Gauripur Dudhari, P.S. and District- Banka.
3. Brajesh Sah @ Bittu, Son of Shankar Sah, Resident of Village- Gauripur Dudhari, P.S. and District- Banka.
4. Santosh Kumar @ Santosh Sah, Son of Mahendra Ram, Resident of Village- Santhali, P.S.- Jasidih, District- Deoghar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Diwakar Singh, Advocate Mr. Om Prakash Singh, Advocate
For the State	:	Mr. Manish Kumar No2, APP
For Respondent No. 4	:	Mr. Akshansh Ankit, Advocate Mr. Prakash Kumar, Advocate Mr. Manoranjan Kumar, Advocate

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

Date : 26-06-2024

1. We have heard Mr. Diwakar Singh,

assisted by Mr. Om Prakash Singh, Advocates for the

appellant and Mr. Akshansh Ankit for respondent No. 4.



2. Nobody has appeared on behalf of respondent Nos. 2 and 3.

3. Respondent Nos. 2 to 4 have been acquitted of the charges of murder *vide* judgment dated 16.09.2021, passed by the learned Additional District & Sessions Judge-II, Banka in Sessions Trial No. 148 of 2017 (Trial No. 234 of 2021), arising out of Banka P.S. Case No. 635 of 2016.

4. One Rahul had died.

5. According to the allegation, aforesaid Rahul was asked by respondent No. 3/Brajesh Sah @ Bittu to come along with him for working as an electrician. The FIR was lodged by the grandfather of deceased/Rahul, who has been examined as P.W. 5. After Rahul left with respondent No. 3, he was not to be traced as his telephone was found to be switched off. Later, the respondents brought the dead-body of Rahul. As the allegation stands, there was severe insistence on the part of respondents to cremate the dead-body of



Rahul as fast as it was possible. The hesitation of the family members of the deceased was not liked by the respondents. However, on their insistence, the dead-body was cremated on 04.07.2016.

6. Be it noted that the dead-body was brought by the respondents themselves on 03.07.2016.

7. A complaint was lodged initially by P.W. 5 after about eight days of the last rites of the deceased. The last rites were performed by the younger brother of the deceased. The complaint was sent under Section 156(3) of the Cr.P.C. for institution of a regular case, whereafter Banka P.S. Case No. 635 of 2016 dated 01.08.2016 was registered for investigation against the respondents under Sections 302/34 of the IPC.

8. The police submitted the charge-sheet against the respondents whereupon they were put up on trial.

9. The Trial Court came to the finding of no evidence against the respondents on the basis of



deposition of six witnesses including the Investigating Officer of this case.

10. Most of the witnesses, who are related to the deceased, have stated the same thing as has been narrated by P.W. 5/informant in his fardbeyan statement and in his deposition before the Court.

11. Suresh Sah (P.W. 1) is one of the uncles of the deceased who was aware of the fact that the deceased had left his home with respondent No. 3 for learning the work of electric wiring or perhaps for working with respondent No. 3. Soon thereafter, his dead-body was brought back home and there was insistence for immediate cremation of the dead-body. He had seen some black patch on the neck of the deceased.

12. Similarly, Bhikhari Sah (P.W. 2) has also narrated the same story but expressing complete ignorance about the reason for not filing the case on time.

13. Dilip Sah (P.W. 3) is the father of the



deceased who claimed to have gone to Bhagalpur when the dead-body was brought back home. He has stated before the Trial Court that when the dead-body of Rahul was brought by the respondents and there was an insistence for early cremation, he asked for Rahul to be taken to hospital by the same vehicle but the same was denied. At that time, many villagers had also arrived at his house. All efforts at having the post-mortem examination of the deceased done was stoutly occluded by the respondents.

14. The father has come out with a story that the marriage of Brajesh/respondent No. 3 was, perhaps, fixed with the sister-in-law of respondent No. 4/Santosh Kumar @ Santosh Sah but the girl had a liking for Rahul (deceased). This was the reason for the respondents to eliminate Rahul so as to secure the marriage of respond No. 3 with the sister-in-law of respondent No. 4/ Santosh Kumar @ Santosh Sah.

15. Similar statements have been made by



Rajendra Sah (P.W. 4) and Fuleshwar Sah/the informant (P.W. 5). However, in the statement of P.W. 5, one thing which is very noticeable is that he does not claim to have gone to police station immediately when the dead-body was brought. He had visited the police station after eight to ten days of the cremation and the police had refused to take his complaint. Then the complaint before the CJM was filed, which was send under Section 156(3) for institution of a regular case. This case was filed after four to five days of the *shradh* ceremony of the deceased. He has categorically stated that there was consultation in the family and only thereafter, the case was lodged.

16. The Investigator (P.W. 6) did not have anything substantial to state before the Trial Court for coming to any definite conclusion. All that he has stated before the Trial Court is the names of the persons who made their statements before him during the course of investigation. Curiously, none of those persons have



been examined at the trial.

17. The Trial Court found that there was no eyewitness to the occurrence and every accusation was based on conjectures and surmises. The prosecution has not even been able to prove that the marriage of sister-in-law of respondent No. 4 was fixed with respondent No. 3, which was not to the liking of the bride to be. For proving all these facts, the bride had to be interrogated. It was all a story out of the imagination of the witnesses. The records further reveal that Brajesh/respondent No. 3 never got married to that girl.

18. The Trial Court has rightly found that since the case is based on circumstantial evidence where every link in the chain of circumstance was necessarily to be established by the prosecution beyond reasonable doubts and that not having been done, there was no way in which the respondents could have been held guilty for the offence charged against them. Even the circumstance of the deceased being last seen with the



respondents does not help the prosecution as the gaps in the prosecution version could not be explained.

19. The law in this regard is absolutely clear that in cases of circumstantial evidence, all the facts must be consistent only with the hypothesis of the guilt of the accused, that is to say, that they should not be explainable on any other hypothesis except that the accused is guilty.

20. The Trial Court did not find the circumstance to be of any conclusive nature and tendency and the circumstances did not reflect that only the respondents had committed the crime. The chain of events remained unforged and, therefore, no reliance was put on such vague imagination of the prosecution witnesses.

21. As we have already noted, even the bride-to-be was never examined by the police to ascertain whether her marriage was fixed with respondent No. 3 and that she had a liking for Rahul.



The entire prosecution case hinges on this very fact that Rahul was an obstacle in the way of marriage of the sister-in-law of respondent No. 4/Santosh Kumar with respondent No. 3/Brajesh and, therefore, he was killed. This could not be proved at all.

22. From the perusal of the judgment and records of this case, we find that the Trial Court has rightly acquitted the respondents.

23. No interference is required to be made with the judgment of acquittal.

24. The appeal is without merits and is dismissed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Sauravkrsinha/
Sunilkumar-

AFR/NAFR	NAFR
CAV DATE	NA
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