

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1304 of 2018

Arising Out of PS. Case No.-200 Year-2016 Thana- KUCHAIKOTE District- Gopalganj

Mohamadin Mian S/o Late Akhtar Mian Resident of Village-Baluwan
Sagar,P.S. Bishwambharpur,Distt.-Gopalganj,Bihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1279 of 2018

Arising Out of PS. Case No.-200 Year-2016 Thana- KUCHAIKOTE District- Gopalganj

Sattar Mian S/o Late Rajdhari Mian, Resident of Village-Rampur Khareya,
P.S.-Kuchaikote, District-Gopalganj, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1353 of 2018

Arising Out of PS. Case No.-200 Year-2016 Thana- KUCHAIKOTE District- Gopalganj

Md. Meraj Son of Sattar Miya Resident of Village- Rampur Khariya, P.S.-
Kuchaikote, District-Gopalganj, Bihar.

... .. Appellant/s

Versus

The State of Bihar

.. ... Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 1304 of 2018)
For the Appellant/s : Mr. Amir Alam, Advocate
Mr. Dhananjay Kumar, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP
(In CRIMINAL APPEAL (DB) No. 1279 of 2018)
For the Appellant/s : Mr. Amir Alam, Advocate
Mr. Dhananjay Kumar, Advocate
For the Respondent/s : Mr. Bipin Kumar, APP
(In CRIMINAL APPEAL (DB) No. 1353 of 2018)
For the Appellant/s : Mr. Amir Alam, Advocate
Mr. Dhananjay Kumar, Advocate



For the Respondent/s : Mr. Bipin Kumar, APP

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

Date : 19-09-2024

All the three appeals have been taken up together and are being disposed of by this common judgment.

2. We have heard Sri Amir Alam, learned Advocate for all the appellants (three in number) in all the appeals and Mr. Bipin Kumar, learned APP for the State.

3. All the three appellants have been convicted under Sections 302, 201/34 and 120B of the IPC vide judgment dated 27.08.2018 passed by the learned Additional Sessions Judge-VIII, Gopalganj in connection with Sessions Trial No. 78 of 2017 (CIS No. 78/17). By order dated 31.08.2018 they have been sentenced to undergo R.I. for life, to pay a fine of Rs. 40,000/- each for the offence under Sections 302/34 of the IPC; to undergo imprisonment for three years, to pay a fine of Rs. 5000/- each for the offence under Sections 201/34 of the IPC and in default of payment of fine to further suffer S.I. for six months each.



4. One Jitendra Yadav is said to have been killed at the hands of the appellants. His dead body was found hanging from a tree somewhere in a desolate place, far away from his house.

5. As the prosecution story goes, co-convict/Bhola (he died during the pendency of his appeal before this Court) came to the house of the deceased and took him to some unknown destination. This was witnessed by very many witnesses. After about two days *i.e.* on 22.09.2016, it was learnt that a dead body is hanging from a tree in a far away field. When the father of the deceased and others went to that place, they found that the deceased of this case *viz.*, Jitendra Yadav was hanging. The body had putrefied and was emitting bad odour. Perhaps the deceased had died some times ago.

6. *Prima facie*, it did not appear to be a case of death because of hanging, as there were other injuries on his body, especially in the groin area. This suggested that perhaps the deceased was killed and then hung from a tree so as to give it a colour of suicide.

7. Hence, the case.



8. The written report was lodged by the father of the deceased *viz.* Khedan Chaudhary (P.W. 5), who had gone out of his house for some work but when he returned on 20.09.2016, he looked for his son (deceased). Later, on not finding him, he inquired from his daughter/Kavita Kumari (not examined), who told him that on 20.09.2016, co-convict/Bhola had come to the house and the deceased had gone along with him. All efforts at locating the deceased came a cropper. It was only on 22.09.2016, at about 11:00 O' Clock in the day that he learnt that in the field of one Munna Chaubey, a dead body is hanging from a *gular* tree. On such information, P.W. 5 along with others went there and found that his son's dead body was hanging. He, therefore, suspected the hands of Bhola and others for the murder of his son.

9. On the basis of the aforementioned written report lodged by P.W. 5, Kuchaikot P.S. Case No. 200 of 2016 was registered for investigation for the offences under Sections 120B, 302/201/34 of the IPC.

10. Since suspicion was raised against Bhola, the police arrested him, who perhaps confessed his guilt and



named the appellants also as having taken part in the killing of the deceased.

11. The story narrated by Bhola (since deceased) is that the deceased was having some kind of an association with one Husna Tara, grand-daughter of appellant/Sattar, which was not to the liking of anyone. The father of the deceased was cautioned by the appellants that in case the deceased did not behave himself and stop visiting the house of Sattar, he would be taken to task. When the deceased did not mend his ways, Bhola brought him to the house of Sattar. The appellants and Bhola killed him. And thereafter, with the help of one Dipak Sah, a common friend, the dead body was hanged by a tree in the field of one Munna Chaubey so as to give it a colour of suicide.

12. This was stated by the investigator/Mahendra Kumar (P.W. 9) before the Trial Court. Beyond this, the investigator had nothing else to offer. He had arrested Bhola from his house and thereafter had arrested the appellants. He had recorded the statements of witnesses including those who have been examined as prosecution witnesses in the Trial.



13. At the Trial, Khedan Chaudhary (P.W. 5), Bindu Devi (P.W. 2; sister-in-law of the deceased), Suganti Devi (P.W. 3; aunt of the deceased), Gulaichi Devi (P.W. 4; mother of the deceased) and Kamlesh Yadav (P.W. 7) confirmed that Bhola had come to the house of the deceased and the deceased had accompanied him to some place about which none of them had any idea.

14. All the aforementioned witnesses did not claim to have seen any part of the occurrence. All that they knew was that the deceased had accompanied Bhola, whereafter, he was not to be heard of till 22.09.2016 when his dead body was found.

15. The post-mortem examination was conducted by a Medial Board of which Dr. Sanjay Kumar Singh (P.W. 8) was one of the members.

16. The Board had found a nylon rope tied around the neck of the deceased. The body was swollen. Putrefaction had already set in. The scrotum and the penis were also swollen.

17. On dissection, cranial bones were found to be intact. However, there were hemorrhagic spots in the neck in



the subcutaneous region. The neck muscles were found to be ruptured. All the organs in the abdomen were found to be intact. It had digested food materials inside. However, there were serious injuries on scrotum. There were clots of blood in the subcutaneous region in both the testicles. The testicles were also found to be crushed. The time elapsed since death was fixed at 36 to 48 hours.

18. The Board was very specific about the cause of death viz. neurogenic shock due to scrotal injuries. The indication of asphyxiation was only post-mortem in nature.

19. With the aforementioned post-mortem examination report and the evidence of P.W. 8, it stands proved that the deceased was killed brutally and thereafter hung to a tree. That the deceased died of scrotal injuries further reflects that perhaps his illicit association with some woman was opposed by some persons, who chose to inflict such injuries on him.

20. Though not very adroitly, but an attempt was made to give the entire episode a colour of self inflicted harm by the deceased.



21. The deceased was a 25 years old person who had been working outside his village as a Painter and visited his village only occasionally. None of the witnesses have spoken about the deceased being at loggerheads with anyone in the village.

22. Thus, for all practical purposes, the evidence against the appellants is only based on confession of a co-accused, which could not ever have been proved and used against the appellants.

23. So far as the independent persons are concerned viz. Madan Mohan Mahto (P.W. 1) and Dhruv Chaurasia (P.W. 6), they too have only spoken about having seen the deceased going somewhere along with Bhola on a motorcycle. Dhruv Chaurasia (P.W. 6), however, has gone a step further and has stated that he also saw that the appellants were present at the cattle house of appellant/Sattar. Both the aforementioned witnesses had learnt in the village that the deceased was carrying on an affair with Husna Tara. This fact was known to every person of the village. They have also spoken about the father of the deceased having been told to stop his son from continuing with



this relationship, lest dangerous consequences might follow. Though there could be some connection between the killing of the deceased and the story of the so-called relationship of the deceased with Husna Tara but there is no evidence to substantiate the aforementioned proposition.

24. The confession of one accused before a police officer cannot be proved. That could only have given materials to the police to proceed on a particular line of investigation.

25. It appears that the investigator finished his task after recording the confession of Bhola and without making any further inquiry or investigation, closed the case by chargesheeting the appellants and Bhola. The investigator has only come up with an additional fact that he had got the telephone number of appellant/Meraj put on surveillance and had found that for sometimes after the location at U.P., the phone was switched off.

26. This leads to no conclusion whatsoever.

27. Times without number, it has been reiterated by Courts that suspicion can never take the place of proof and



suspicion howsoever strong cannot be the basis for convicting any person.

28. The principles enunciated in ***Hanumant vs. State of M.P., (1952) 2 SCC 71; Tufail vs. State of U.P., (1969) 3 SCC 198*** and ***Sharad Birdichand Sarda vs. State of Maharashtra, (1984) 4 SCC 116*** have now become too well known to be extracted here.

29. However, it needs to be reiterated that circumstances relied upon by the prosecution must be established. That an occurrence may have taken place is no way to proceed in the matter. The Courts, in a very apt manner have drawn distinction between “**may be proved**” and “**must be proved**”. Both the expressions do not differ from each other only grammatically, but in their import and consequences as well. [also refer to ***Ram Niwas vs. State of Haryana, (2022) 15 SCC 306; Ballu & Anr. vs. State of Madhya Pradesh, (2024) SCC Online SC 481*** and ***Parubai vs. State of Maharashtra, (2021) 18 SCC 353***].

30. We are at complete loss to understand as to how the Trial Court has declared that the prosecution has



been able to prove the charge against the appellants beyond all shadow of doubts.

31. But for the confession of co-convict/Bhola, there is no other material to even remotely connect the appellants with the offence. An accused is presumed to be innocent unless proved guilty beyond reasonable doubts. This proposition has been reiterated a number of times in a plethora of judicial pronouncements.

32. There is, thus, no reason to justify the conviction of the appellants in this case.

33. We find the findings of the Trial Court to be totally unjustified and not fit to be sustained in the eyes of law.

34. For the aforementioned reasons, we set aside the judgment and order of conviction and sentence and acquit the appellants of all the charges.

35. Appellants/Sattar Mian [in Cr. App (DB) No. 1279 of 2018] and Md. Meraj [in Cr. App (DB) No. 1353 of 2018] are on bail, they are discharged of their liabilities under the bail bonds.



36. Appellant/Mohamadin Mian [in Cr. App (DB) No. 1304 of 2018] is in jail. He is directed to be released forthwith, if not required or detained in any other case.

37. All the three appeals are thus allowed.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/sarwar
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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.09.2024
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