

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.24 of 2023

Arising Out of PS. Case No.-39 Year-2015 Thana- AURAI District- Muzaffarpur

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CHHOTE LAL RAI Son of Late Hira Lal Rai R/v- Halimpur, P.S.- Aurai and
the District- Muzaffarpur

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. AJAY RAI Son of Ranjeet Rai R/o Tole Sugasiya, P.S.- Hathauri, District-
Muzaffarpur
3. DILEEP RAI Son of Nand Kishore Rai R/v- Halimpur, P.S.- Aurai and the
District- Muzaffarpur
4. NAND KISHORE RAI Son of Late Juge Rai R/v- Halimpur, P.S.- Aurai and
the District- Muzaffarpur
5. RAKESH RAI Son of Shiv Lal Rai R/v- Lalpur Tole- Sugasiya, P.S.-
Hathauri, District- Muzaffarpur
6. UMESH RAI Son of Late Ram Sogarath Rai R/v- Prayag Chak, P.S.- Aurai
and the District- Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shiv Shankar Prasad Yadav, Adv.
For the Informant	:	Mr. S. Parasmani, Adv.
		Mr. B. J. Jha, Adv.
For the Respondent No. 1	:	Ms. Shashi Bala Verma, APP
For the Respondent No. 2	:	Mr. M. N. Roy, Adv.
For the Respondent Nos. 3 & 5	:	Mr. Sanjay Kumar, Adv.
For the Respondent No. 4	:	Mr. Sanjay Kumar. Adv.
For the Respondent No. 6	:	Mr. B. K. Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 05-02-2024

1. Heard learned counsel for the appellant, learned



Additional Public Prosecutor appearing on behalf of the State and learned counsel for the respondent nos. 2 to 6.

2. This appeal has been filed against the judgment of acquittal dated 19.09.2022 passed by the learned Sessions Judge, Muzaffarpur in Sessions Trial No. 548 of 2015 arising out of Aurai P.S. Case No. 39 of 2015, whereby and whereunder the respondent nos. 2 to 6 have been acquitted from the charges under Sections 302/34 and 201 of the Indian Penal Code.

3. The relevant facts, *in brief*, are as follows:

- (i) The informant Chhotelal Rai's statement is that his nephew Vikash Kumar (deceased) was called by all the accused persons to accompany them in *Barat*. The deceased did not return home in the night. The next morning his beheaded dead body was found. The informant raised suspicion that all the accused persons killed his nephew due to land dispute.
- (ii) The Sessions Judge, after discussing the evidence of all the witnesses, opined that this trial is based on circumstantial evidence, in which motive, which is an essential link in the chain, is lacking. Apart from this, it was also found that the clothes on the basis of which the deceased was identified were neither



seized nor produced in the trial. Even the watchman, to whom clothes were handed over, has not been produced as a witness. For the aforesaid reasons, the accused persons were acquitted by giving the benefit of doubt.

4. In the appeal, the decision has been challenged on the grounds that the trial court did not take into consideration the fact that the evidence of all the witnesses is that they saw the deceased for the last time along with the accused persons. The evidence of the wife of the deceased (P.W. 7) is that the accused Kiran Devi, who has land dispute with the uncle of the deceased, had come to call the deceased. The materials available in the case diary (which has been written as station diary in the memo of appeal) have not been considered.

5. The learned counsel for the respondents opposed the appeal and submitted that the decision is logical and there is no error in it.

6. Heard the parties and perused the materials available on records.

7. From perusal of the records, the following facts emerge for consideration :

(i) There is no eye witnesses in the appeal and the case is



based only on suspicion.

- (a) All the witnesses of fact produced on behalf of the prosecution are members of the same family or are relatives. There is no independent witness.
- (ii) The witnesses state about the land dispute but they do not give any oral or documentary evidence in this regard.
- (iii) It is the evidence that all the accused persons called the deceased for going in the *Barat* but all are silent on the point as to whose marriage is to be solemnized and as to which place *Barat* has to go. Surprisingly, none of them asks the deceased as to which place he is going in *Barat* although they are father, *Chacha*, *Mama* or wife of the deceased. This question was necessary to be asked by them from the deceased because the deceased was going in the *Barat* with people with whom there was already enmity due to land dispute. The investigating officer is also silent on this important aspect and he has not conducted any investigation on this point.
- (iv) The clothes of the deceased are important in this trial because the dead body was beheaded and he was



identified by his clothes. In the first information report as well as in the evidence, it has been mentioned that the deceased went to his mama's house, asked for a jacket and went from there after wearing the jacket, but the evidence of the wife of the deceased is that he left home wearing the jacket. Clothes were neither seized during investigation nor was produced during the trial.

(v) All the witnesses confidently state that name of the accused persons but they could not tell as to which other persons they met in the village on the date of occurrence.

(vi) The investigation has been done extremely carelessly. The police officer, who has prepared the inquest report, which shows that the dead body was recovered from a road side pit, states in his evidence that he saw the dead body for the first time in the postmortem room. Investigating officer does not conduct any investigation on the important points, does not seize necessary items, does not consider the need of going to the place of occurrence and declares the residence of the



deceased as the place of occurrence.

(vii) The content of the case diary, which has been made grounds in the appeal, was not presented as an evidence in the trial.

8. For the aforesaid reasons, there is no error in the decision of the Trial Court and this appeal is fit to be dismissed. Accordingly, the appeal is dismissed at the stage of admission itself.

(Arvind Srivastava, J)

(Sunil Dutta Mishra, J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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