
(1999) 07 PAT CK 0071

In the Patna High Court

Case No : Criminal Appeal (DB) No. 87 of 1987

Achhelal Koeri @ Achhelal Prasad and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364, 395

Citation : (1999) CriLJ 4171 : (1999) 3 PLJR 864

Hon'ble Judges : R.N. Prasad, J;M.L. Visa, J

Bench : Division Bench

Advocate : Soni Srivastava, for the Appellant; Lala Kailash Bihari, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The appeal has been preferred against the Judgment and order dated 13-1-1987 passed by 1st Addl. Sessions Judge, Gopalganj in S.T. No. 34/81 of 1985, whereby all the appellants have been convicted for the offence u/s 302/34 of the Penal Code and have been sentenced to undergo imprisonment for life. They have further been convicted for the offence u/s 201 of Penal Code and have been sentenced to undergo R. I. for seven years and also to pay a fine of Rs. 500/-each, in default of payment of fine to undergo R. I. for one year each. Appellant-Kanhaiya Koeri and appellant-Krishna Bin have further been convicted for the offence u/s 364 of the Penal Code and have been sentenced to undergo imprisonment for life.

2. The prosecution case is that one Bhagan Baitha gave his fardbeyan at his village Niranjana on 29-2-1985 at 5 p.m. before the Sub-Inspector of Police of Jadopur Police Station stating therein that he and his son Bikrama Baitha on 28-12-1983 at about 9.10 p.m. were sitting near fire place after taking meal. Appellants-Kanhaiya Koeri and Krishna Bin came and asked his son to accompany them. His son went with them. On the next morning he did not find his son. He went to the house of appellant-Kanhaiya and Krishna but they were

not in their house. He along with his villagers started search of his son and found huge quantity of blood under a Pakri tree near the house of appellant-Sajawal Koeri. He suspected that his son was killed. He followed trail of blood and reached village Jamunia and found headless dead body in the bush. He identified the headless dead body as the dead body of his son Bikrama Baitha by clothes. The motive of occurrence was that there was altercation with appellant-Achhelal and also with Bishwanath Awadhia. He expressed suspicion that appellants-Kanhaiya Koeri, Krishna Bin, Achhelal Koeri, Sajawal Koeri and Bishwanath Awadhia had killed his son by cutting the head and head had been thrown somewhere else.

3. On the aforesaid fardbeyan formal First Information Report was drawn and the investigation was taken up. During investigation the Investigating Officer inspected the place of occurrence. He found blood under the Pakri tree. He followed the trail of blood, reached village Jamunia and found headless dead body. He seized blood and prepared seizure list. He inspected the headless dead body and prepared inquest report. On 30-12-1983 head was found and after completion of investigation he submitted charge-sheet against six persons. On receipt of charge-sheet cognizance was taken and the case was committed to the Court of Sessions for trial. The trial Court convicted the appellants as stated above and acquitted one Brij Raj Prasad.

4. The defence of the appellants was denial of participation in the alleged occurrence and false implication in this case. The deceased was man of doubtful character and was involved in several criminal cases. He was done to death by some unknown persons and the appellants have been implicated in this case due to enmity.

5. The prosecution in support of its case examined 7 witnesses, out of whom P.W. 1 proved the fardbeyan, Ext. 1. P.W.4 proved formal First Information Report, Ex. 2, P.W. 6 proved the material exhibit. P.W. 5 is Investigating Officer and P.W.7 is Doctor who held post-mortem over the headless dead body. P.W.3, father of the deceased, the informant and P.W.2 widow of the deceased are material witnesses in this case.

6. There is no eye-witness to the occurrence. The case is based on circumstantial evidence. P.W.3 is father of the deceased. He stated in his evidence that he, his son the deceased and his daughter-in-law were sitting near the fire place after taking meal. Appellants-Kanhaiya and Krishna came and asked his son to accompany them. His son went with them. On the next morning when he did not turn up he went to the house of aforesaid appellants but they were not in their house. He along with villagers started searching his son and found blood under Pakri tree near the house of appellant-Sajawal. They following the trail of blood reached village Jamunia and found headless dead body which he identified to be of his son by clothes. His son had enmity with the appellants and Bishwanath Awadhia. In cross-examination the witness stated that appellant Kanhaiya Koeri was not on visiting terms as there was enmity since long. It has further been

stated that appellants were not on visiting terms. He did not see any weapon in the hands of appellant Kanhaiya. The head of the deceased was found on the same day. Suggestion was given that deceased was man of bad character which he denied. P.W. 2 is wife of the deceased. She stated in her evidence that she, her father-in-law and her husband, the deceased, were sitting near the fire place. All the appellants came and asked her husband to accompany them. She asked her husband not to go but her husband accompanied them. He did not return. On search blood was found under Pakri tree and also in village Jamunia. She identified the dead body to be of her husband. Cattle of appellant Sajawal had grazed her crops due to which there was altercation and he had threatened him. In cross-examination the witness has stated that no information to the police was given with regard to threatening. Accused persons were not on visiting terms. Her husband was not ready to go with them but he was taken forcibly by the appellants. Suggestion was given to the witness that her husband was man of bad character and he was made accused in Jadopur P.S. Case No. 12(9) 80 u/s 395 of the Penal Code which she denied.

7. It is evident from the material on record that evidence of P.Ws. 3 and 2 is not consistent. In the First Information Report the informant P.W.3 did not say that P.W.2 was also present when the deceased had gone with the appellants-Kanhaiya and Krishna. However, in evidence the witness stated that she was also there. P.W.2 stated that all the appellants had come and had taken away her husband. P.W. 3 stated that the deceased did not resist in going with the appellants but P.W.2 stated that the deceased resisted and he was forcibly taken by the appellants. The witnesses have stated that there was enmity with the appellants and they were not on visiting terms. In such a situation the story of going of the deceased with the appellants in the night itself becomes suspicious and the evidence of the witnesses itself appears to be contradictory.

8. Moreover, it is a case of circumstantial evidence. The evidence which has come on the record is that the deceased was taken by appellants-Kanhaiya and Krishna and thereafter he did not turn up. There is no evidence on the record that thereafter anybody had seen the deceased with the appellants either at the place of occurrence or in village Jamunia. Moreover, on the point of taking away the evidence of P.W. 2 and 3 is contradictory as indicated above. The Investigating Officer has no doubt found blood under Pakri tree and trail of blood to village Jamunia but the aforesaid finding is not sufficient to say that chain of circumstances was complete as there is no evidence on the record to show that appellants were seen going towards Pakri tree or to village Jamunia where headless dead body was found on the next day. In the case of circumstantial evidence circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established, those circumstances should be of definite tendency unerringly pointing towards guilt of the accused and the circumstances taken cumulatively should form chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none-else. In the instant case no such complete

chain of circumstances has been brought on the record to establish the guilt of the appellants.

9. Thus on consideration as discussed above the conviction of the appellants cannot be upheld. Thus the appeal is allowed. The Judgment and order of conviction and sentence are hereby set aside. The appellants are acquitted from the charges levelled against them and are discharged from the liability of their bail bonds.