
(2015) 02 PAT CK 0093

In the Patna High Court

Case No : Criminal Appeal (DB) No. 584 of 2007

Ram Swaroop Murmu

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313(1)(b)
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2015) 3 PLJR 167

Hon'ble Judges : S.P. Singh, J;Kishore Kumar Mandal, J

Bench : Division Bench

**Advocate : Radha Mohan Singh and Sanjay Kumar Singh, for the Appellant;
Maya Nand Jha, Advocates for the Respondent**

Final Decision : Allowed

Judgement

S.P. Singh, J—This appeal is directed against judgment and order of conviction dated 24.3.2007, passed by the Additional Sessions Judge-cum-Fast Track Court-V, Kishanganj in Sessions Trial No. 693 of 2006/Tr. No. 103 of 2006, arising out of Dighalbank Police Station Case No. 1 of 2006 (G.R. No. 19 of 2006), whereby the appellant, Ram Swaroop Murmu alias Gurdho Santhal (hereinafter referred to as "Ram Swaroop") has been sentenced to imprisonment of life under Section 302 of the Indian Penal Code (hereinafter referred to as the "IPC"), 10 years under Section 364 of the IPC and 3 years under Section 201 of the IPC. However, all the sentences were directed to run concurrently. The prosecution case, as made out on the written report of one Badri Narain Singh, to Officer-in-charge, Kodobari Police Station, in short, is as follows:--

2. At 7 PM on 1.1.2006 informant's elder brother, Dhrub Narain Singh left the house saying that he would be having wine and meat at the house of his Bataidar, Ram Swaroop S/o. late Sukul Sathal, a co-villager of the same village. However, he became traceless since then. On 2.1.2006 his brother's cycle was found at a distance of one and a half kilometer from the house. In spite of hectic

search, his brother was not traceable. He suspects that his brother has been murdered and the dead body has been purposefully hidden.

3. On the basis of the written report, Dighalbank Police Station Case No. 1 of 2006 dated 3.1.2006 was instituted under Section 364 of the I.P.C. against unknown. In course of investigation, the dead body was recovered and Sections 302/201/34 were added in the formal F.I.R. Charge-sheet was submitted against Ram Swaroop under Sections 364, 302 and 201/34 of the I.P.C., while the investigation against Dhana Santhalin, wife of appellant, Ram Swaroop was kept pending. The learned Chief Judicial Magistrate, Kishanganj took cognizance and committed the case to the Court of Sessions, which was transferred to the Court of Additional Sessions Judge-cum-Fast Track Court-5, Kishanganj for trial. At the trial, charges under Sections 364, 302 and 201/34 of the I.P.C. were framed against the accused, Ram Swaroop to which he pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined altogether 7 (seven) witnesses. Out of these witnesses, PW-1 Rekha Devi is wife of deceased Dhruv Narayain Singh, PW-2 Satya Narain Singh is a co-villager and a chance witness, PW-3 is Dr. N.K. Prasad, who conducted autopsy of the dead body, PW-4 Dr. R.P. Singh is a member of the Medical Board, PW-5 is Ganesh Prasad Das, PW-6 Swarg Narain Singh is a cousin of deceased, PW-7 is Badri Narayan Singh is informant of this case.

5. The defence did not choose to examine any witness nor produced any document in support of its case. The appellant in his examination under Section 313(1)(b) of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") denied having committed the crime. The trial court on consideration of the materials on record, convicted the sole appellant under Sections 364, 302/201 of the I.P.C. Being aggrieved, the appellant has filed the instant appeal.

6. The case of the defence is one of false implication. There is no eye witness to the occurrence. The case is based on circumstantial evidence, which do not form a complete chain to point to the guilt of the accused and to rule out any hypothesis of his being innocent. The evidence of witnesses are contradictory and not reliable.

7. As noticed earlier, the prosecution has examined seven witnesses in support of its case. Out of them, PW-7 Badri Narain Singh, is informant and happens to be the brother of the deceased. PW-1, Rekha Devi is the wife of the deceased. PW-6, Swarg Narain Singh is the cousin of the deceased. These three witnesses deposed to the effect that the appellant, Ram Swaroop came to the house of the deceased and took him towards his house for feast in the evening of 1.1.2006 at about 7 PM. PW-2, Satya Narain Singh and PW-5, Ganesh Prasad Das are the chance witnesses. The PW-3, Dr. N.K. Prasad (PW-3) who conducted the post mortem examination in the Sadar Hospital, Kishanganj on 23.1.2006 at 11 AM after 22 days of occurrence found three incised injuries on the person of the

deceased, which are as follows:--

- (i) an incised wound of size about 1" x 1/16" x bone deep on mala region of left side of face,
- (ii) an incised wound of size about 1" x 1/6" x bone deep on left side of face in front of ear, and
- (iii) an incised wound of size about 1/2" x 1/6" x 1/6" on left side of front of upper part of chest.

8. He found the body decomposed and opined that the death was caused due to asphyxia as a result of strangulation. Dr. R.P. Singh (PW-4), who was also a member of the Medical Board, supported the findings of Dr. N.K. Prasad (PW-3). It is evident from the post mortem report (Exhibit-1) and the report of Dr. N.K. Prasad (PW-3) that Dhruv Narain Singh was done to death.

9. The issue is whether it is the appellant, Ram Swaroop, who committed murder of Dhruv Narain Singh or whether the prosecution has been able to prove the case beyond all reasonable doubt.

10. The prosecution has examined five witnesses in support of its case that it was the appellant Ram Swaroop, who committed the murder of Dhruv Narain Singh whereafter he hid the dead body underneath a nearby field.

11. PW-7 (Badri Narain Singh), the informant and brother of deceased in his deposition states that in the evening of 1.1.2006 at about 7 PM he was in his house. His brother, Dhruv Narain Singh was also present in the house. In the meantime, appellant, Ram Swaroop came and asked his brother to accompany him for wine and meat. On invitation of the appellant, his brother went with him. When his brother did not return, he started to search him, the following morning. They went to the house of Ram Swaroop to inquire about Dhruv Narain Singh. However, on query, his wife did not give any satisfactory answer. In course of search, the cycle of his brother was found about 1/2 KM from the house of the appellant from near the river.

12. Similarly, PW-1 (Rekha Devi), wife of the deceased too stated that on the fateful evening, the appellant, Ram Swaroop came to her house and took her husband for wine and meat and when he did not return, she went to the house of Ram Swaroop in the next morning. On query, wife of Ram Swaroop replied that her husband returned after taking food. However, on second day, her husband's cycle was found. She further stated that the entire matter was reported to the police in writing by her husband's brother, Badri Narain Singh (PW-7). After 21 days of the occurrence, police dug out the dead body of her husband from underneath the soil from the field near appellant's house.

13. Ganesh Prasad Das (PW-5) is a chance witness. He stated that at about 7.30 PM on 1.1.1996, while he was returning from Adiwasi Tola, he saw Dhruv Narain Singh with Ram Swaroop near his house. On query, he (Dhruv Narain Singh, the

deceased) said that he had gone there for having Picnic in the house of Ram Swaroop. He stated that Dhruv Narain Singh since then became traceless. His dead body was recovered only after 21 days of occurrence from underneath soil, in a field near to the house of informant (sic--appellants).

14. Satya Narayan Singh (PW-2) is a cousin of Dhruv Narain Singh and a chance witness. He believed that as Ram Swaroop is Bataidar of Dhruv Narain Singh, there might have been some scuffle between the two, as such he did not intervene. The next day he learnt that Dhruv Narain Singh is missing and after 21 days, his dead body was recovered from the Potato field near the house of Ram Swaroop. Satya Narain Singh (PW-2) stated in his evidence that in the evening of 1.1.2006 while he was passing by the house of the appellant Ram Swaroop, he heard cry and wailing of the deceased.

15. Learned counsel for defence argued that PW-2 is not a reliable witness. We would agree with the submissions made by the defence counsel. This witness (Satya Narain Singh), who happens to be the cousin of Dhruv Narain Singh, did not care to inform the family members though he heard the cry and wailing of Dhruv Narain Singh from the house of Ram Swaroop. It is very unnatural that a family member would not disclose the wailing of a close relative, who remained missing and his dead body was recovered only after 21 days. The conduct of PW-2 is most unnatural and unworthy of credence.

16. Learned counsel appearing for the appellant submits that no reliance be placed on the evidence of the informant (PW-7) as well, who has tried to improve the prosecution case during the trial. In the FIR, the informant stated that his brother, Dhruv Narain Singh on his own stated that he was going to the house of his Bataidar, Ram Swaroop (the appellant) for having feast, whereas in the court, he deposed that in the evening of 1.1.2006, the appellant, Ram Swaroop came to his house and asked (Dhruv Narain Singh) to accompany him for a feast to his house.

17. Even Rekha Devi (PW-1), wife of deceased deposed that on the fateful evening at about 6 to 7 PM, the appellant took her husband for feast at his house. When he did not return, she enquired from Ram Swaroop the following morning about him, who replied that her husband had returned in the night after taking food. She narrated all this incident to Badri Narayan Singh (PW-7) who informed about it to the police. But PW-7, nowhere in his deposition stated that PW-1 gave all these informations, whereupon he reported the matter to police station. In our view, the evidence of PW-7 cannot be said to be wholly unreliable or wholly reliable. Now coming to the evidence of PW-1, we find that the defence has not been able to elicit any contradictions worth the name to doubt the evidence of PW-1. There seems no inherent contradictions in her depositions. Similarly, we find no reason to discard the evidence of PW-6 (Swarg Narain Singh) and Ganesh Prasad Das (PW-5), who are chance witnesses. Merely because Swarg Narain Singh is a cousin of the informant, his statement cannot be rejected on the ground of being an interested witness.

18. Learned counsel for the defence submits that even if the evidence of PW-1 (Rekha Devi), PW-6 (Swarg Narain Singh), PW-5 (Ganesh Prasad Das) and Badri Narain Singh (PW-7) assumed to be true, the maximum that is proved against the appellant is that he was last seen with the deceased and no further. No one has seen as to when Dhrub Narayan Singh was done to death. Moreover, no one has seen the appellant in captivity of deceased either before his murder or soon thereafter. The deceased was last seen at about 7 PM in the evening of 1.1.1996 with the appellant. The dead body of the deceased was unearthed on 22.1.2006 from the bank of the local river, situated at some distance from the house of the appellant. Furthermore, no motive has been assigned for commission of the gory incident.

19. We are in agreement with the submission of learned counsel for the appellant that the prosecution has not been able to establish any motive against the appellant, rather the prosecution witnesses stated that the deceased had good relation with appellant and often feasted together. It is well settled that the prosecution case cannot be discarded merely because no motive has been pleaded in the case. A murder can take place for more than one reasons. At the same time, it is also not necessary that there has to be any previous motive. A case would not fail only because motive has not been pleaded or proved.

20. Since it is a case not based on core issue whether the prosecution has been able to prove direct evidence or a chain of circumstance against the appellant.

21. While dealing with one such matter, where conviction or acquittal of an accused was based on circumstantial evidence, in case of Vijay Kumar Arora Vs. State Govt. of NCT of Delhi, (2010) CLT 520 : (2010) 1 Crimes 63 : (2010) 1 JT 277 : (2010) 1 SCALE 434 : (2010) 2 SCC 353 : (2010) 2 SCR 1069 : (2010) 2 UJ 709 , the Hon'ble Apex Court has observed as follows:--

"Essential ingredients to prove the guilt of an accused by circumstantial evidence are:--

16.1. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion, however, strong cannot be allowed to take place of proof and, therefore, the Court has to be watchful and ensure that conjectures and suspicions do not take place of legal proof. However, it is no derogation of evidence to say that it is circumstantial. Human agency may be faulty in expressing picturisation of actual incident, but the circumstances cannot fail. Therefore, many a times it is aptly said that "men may tell lies, but circumstances do not".

16.2. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle, a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from

them, on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies.

16.3. Although, there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case.

16.4. The Court thereafter has to consider the effect of proved facts. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, Court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is, or are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis, except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be.

16.5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused; and where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court."

22. Again in case of State of Goa Vs. Sanjay Thakran and Another, (2007) 5 JT 146 : (2007) 3 SCALE 740 : (2007) 3 SCC 755 : (2007) 3 SCR 507 , the Hon"ble Apex Court highlighted the circumstances which the prosecution must satisfy in order to prove its case against the accused. Paragraph 13 of the said judgment which is relevant in the context of the case is quoted herein-below:--

"13. The prosecution case is based on the circumstantial evidence and it is a well-settled proposition of law that when the case rests upon circumstantial evidence, such evidence must satisfy the following tests:--

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a 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; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

23. It is evident from guidelines and law laid down by the Hon''ble Apex Court that conviction can be sustained on circumstantial evidence, if the chain of circumstances is complete against an accused, so as to point to the guilt of accused and accused itself and should not admit of any hypothesis admitting of his innocence. Furthermore no assumption howsoever strong would not take place of proof.

24. In the instant case, the chain of circumstances are not complete to pin the guilt on the appellant culminating into his conviction. As noticed in earlier paragraph, the prosecution has been able to establish only two circumstances i.e. the deceased was last seen in company of appellant and the recovery of the dead body after 20 days, from a place near the house of the appellant. There is no credible evidence to the effect that any one has seen the appellant, Ram Swaroop taking the deceased, Dhrub Narain Singh in his house. Furthermore, no one has seen the appellant taking the deceased from his house to the place, from where his dead body buried under soil, was recovered. Besides this, the prosecution has not alleged any motive against the appellant which could have been a relevant consideration in cases where the conviction or acquittal is sought to be based on circumstantial evidence.

25. In view of the discussions made in the foregoing paragraphs, we do not find it safe to sustain the conviction of the appellant only on the theory of only last seen, and without any supportive or corroborative evidence and in absence of motive. In the result, the appeal succeeds and is allowed. The appellant Ram Swaroop Murmu @ Gurdho Santhal is acquitted of the charges he had been held guilty of, by setting aside the judgment of conviction and the order of sentence. The appellant is in jail since January, 2013. He shall be released forthwith, if not wanted in any other case.