

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.871 of 2022**

Arising Out of PS. Case No.-123 Year-2011 Thana- PATLIPUTRA District- Patna

Brind Manjhi @ Sukhal Manjhi, Son of Late Budhan Manjhi, R/o- Mushahri Toli, Mainpura Ganga Tower Ke Samne P.S.- Patliputra District- Patna, State-Bihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kumar Pandey, Advocate

Mr. Sushen Kumar kesari, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-04-2024

We have heard Mr. Sanjay Kumar Pandey, learned Advocate for the appellant and Mr. Parmeshwar Mehta, learned APP for the State.

2. The appellant has been convicted under Sections 302 and 201 of the Indian Penal Code *vide* judgment dated 21.10.2019. By order dated 21.10.2019 he has been sentenced to undergo RI for life, to pay a fine of Rs. 20,000/- under Section 302 IPC and RI for three years, to pay a fine of Rs. 5,000/-



under Section 201 IPC.

3. The sentences have been ordered to run concurrently.

4. The appellant is the sole person put on trial for having murdered a ten year old boy. The mother of the deceased, viz., Manju Devi (PW-6) had lodged the FIR on 25.06.2011 at about 11:15 AM, alleging that on the previous day, at about 6 O'clock in the evening the deceased had brought some articles from the *Kirana* shop and had thereafter gone out to the house to play as also to pick up rags. When he did not return after two hours, a search was made for him but to no avail. On 25.06.2011, at about 10:00 AM, while PW-6 was coming back from the police station after giving a written information about her son having gone missing, she learnt that the dead body of a boy is lying near Rajapur Bridge near the brick-kiln of one Puneshwar Singh. The young boys of the village and her father-in-law/ Sidheshwar Manjhi (PW-8) went to see the dead body



and finding it to be the dead body of her son, brought it back. About 15 days prior to the occurrence, the appellant, her neighbour, had fought with the family and had also threatened that he shall decimate the entire family. PW-6, therefore, suspected that the appellant along with his associates had killed the deceased by puncturing him with sharp/ pointed weapon.

5. On the basis of the afore-noted *fardbeyan* statement, which was recorded by one Raj Kumar, who has not been examined at the trial, a case, viz., Patliputra P.S. Case No. 123 of 2011 dated 25.06.2011 was registered for investigation for offences under Sections 302, 201 and 120-B IPC.

6. The police after investigation submitted charge-sheet against the appellant, whereupon he was put on trial.

7. The Trial Court, after having examined 12 witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellant as



aforesaid.

8. The deceased died a homicidal death. Dr. Ram Nandan Choudhary (PW-9) had conducted the postmortem examination on the dead body of the deceased on 25.06.2011 at 2:30 PM. He had found three penetrative wounds of $\frac{1}{2}$ "X $\frac{1}{2}$ " dimensions near the corner of the eye; left side of the neck and below the left ear. All the wounds were bone deep. Four bruises also were found on his body, which were of reasonably big dimensions but all were above the neck of the deceased. On dissection, contusion and haematoma was found. However, the thyroid cartilage was found to be intact. The hyoid bone also was intact. The tracheal and laryngeal rings were injured. The mucosa of trachea and larynx were also congested. He opined that the deceased had died of asphyxia and hemorrhage and shock because of the injuries caused by sharp pointed weapon and brute blunt force. The time of death was fixed somewhere between 18-24 hours.



9. As noted in the *fardbeyan* statement of PW-6, suspicion veered on the appellant because 15 days ago, he had a fight with the family of the deceased and he had threatened that he shall finish off the entire family.

10. At the Trial, three of the witnesses, viz., Rohit Kumar (PW-1), Gautam Kumar (PW-2) and Sanjay Manjhi (PW-4) claimed to have seen the appellant taking away the deceased.

11. It is important to note that both PWs. 1 and 2 are children between the age group of 9-10 years. Both of them have stated before the Trial Court that they were playing with the deceased on the sands at LCT Ghat. It was at that time that the appellant had come and had asked them to pluck brinjals for money. PWs. 1 and 2 and the deceased went along with the appellant to the fields. Thereafter, as PW-1 has stated before the court, the appellant killed the deceased.

12. From the deposition of the Investigating



Officer (PW-10), it appears that the statement of PW-1 was recorded during the course of investigation, whereafter he gave his statement under Section 164 Cr.P.C. before a Magistrate (PW-11), who has confirmed that he had recorded the statement of PW-1. He had disclosed before PW-11 that the appellant had killed the deceased. The deceased was lifted from the place where the children were playing and was taken near the bank of river Ganges.

13. Similar statement has been made by Gautam Kumar (PW-2) before the Trial Court as also before the learned Magistrate.

14. From a perusal of the deposition of PWs. 1 and 2, it appears that both of them are related to the appellant as also the deceased.

15. It may be noted that the appellant also is stated to be somehow related to the deceased and his family. From the tenor of their statements, especially when compared with their statement before PW-11, it



clearly appears that they had not seen the act of murder. All the three children, viz., P.Ws. 1, 2 and the deceased were playing together. All three of them were asked by the appellant to come over to the field to pluck brinjals. When and how was the deceased isolated from P.Ws. 1 and 2 and was taken to the river bank remains unknown.

16. It further appears from their deposition that they had no idea about the occurrence and that they were only repeating what they had heard; which information was only based on suspicion raised by the mother of the deceased.

17. Sanjay Manjhi (PW- 4) claims to have seen the appellant talking to the deceased. This had happened at 06:00 PM on 24.06.2011. He had seen the appellant carrying a weapon also meant for cutting *Ganja*. On 25.06.2011, at about 9 O'clock in the morning, grass-scrapers had disclosed that the dead-body of the deceased was lying near the brick-kiln of one Puneshwar



Singh. The road was blockaded whereafter the police party had arrived and had made inquiries. His house is situated opposite to the house of the appellant. While he saw the appellant talking to the deceased, there was another person present there *viz.* Bhim. He, on being questioned, further stated before the Court that he was making such statement for the first time after the reporting of the occurrence.

18. Thus, beyond the afore-noted three persons *viz.* P.Ws. 1, 2 and 4, no one else had seen the appellant in the company of the deceased at any point of time.

19. PW-4 had made the statement before the Trial Court for the first time and, therefore, it would be difficult to accept his deposition as a correct version with respect to the offence.

20. We have already noted that P.Ws. 1 and 2 though not *non compos mentis* but their deposition is very different from what they had to say before the



Magistrate (PW-11), while getting their statements under Section 164 Cr.P.C. recorded.

21. Bhim Manjhi (PW-3) is none-else but the maternal uncle of PW-1. He is also related to the father of the deceased. He had no idea about the occurrence. He only learnt later that the dead-body was found near LCT ghat and as a protest there was a blockade on the road. He is said to have been told by PW-1 that the appellant had taken away the deceased.

22. If he is to be believed, then, perhaps, Sanjay Manjhi (PW-4) did not make a correct statement that he had seen the appellant talking to the deceased before taking him away, as according to him, PW-3 was present at the place where the appellant was talking to the deceased. PW-3, however, came to know about the occurrence only through the mouth of PW- 1.

23. Suresh Yadav (PW-5) was absolutely clueless before the Court regarding the occurrence.

24. Manju Devi, the mother of the deceased



(PW-6), on seeing the dead-body, had found that he had been attacked at many places on his neck by a pointed object. She had also participated in the blockade of the road. She was told by P.Ws. 1 and 2 that the appellant had called the deceased and had lured him for giving tomatoes and biscuits. She was candid enough to tell the Court that neither she nor anyone of the grass-scrappers, who had first seen the dead-body lying on the sands, had seen the act of killing.

25. Raj Kumar Manjhi, who is the father of the deceased (PW-7) also claims to have been told by P.Ws. 1 and 2 about the appellant having taking away the deceased. What is noticeable in his deposition is that he denies that the appellant stands in any relation to him, which obviously is not a correct statement. He had made a frantic search for his son in the night and nobody had told him that the appellant had taken away the deceased in the evening of 24.06.2011. The houses of the appellant and PW-7 are contiguous to each other.



According to his information, the appellant is a widower and has married off his only daughter. He has denied the suggestion that the appellant has been made accused in this case only with an oblique motive of appropriating his house as he has no heir.

26. The grand-father of the deceased, who is also a signatory to the FIR, has been declared hostile. He denies to have made any statement before the police that his grandson was playing along with Rohit and Gautam (P.Ws. 1 and 2) and that his dead-body was found on the sands in the land of one Puneshwar Singh.

27. This takes us to the deposition of the investigator (PW-10). He was posted as Sub-inspector in Patliputra Police Station. On 25.06.2011, he received a telephonic information about the occurrence and left for the P.O. along with the mobile police force. When he went near the LCT ghat, he found that a dead-body was kept on the road and the traffic was blockaded.

28. Two Mukhiyas viz. Sudhir and Rajesh, who



have not been examined at the Trial, were called on the spot for the purpose of pacifying the irate crowd. The local BDO also was requested to pay compensation to the family of the deceased because that was the demand of the mob. Raju Kumar, an officer of the police station, was asked to record the FIR of anyone of the family members of the deceased.

29. Afore-noted Raju Kumar recorded the statement of the mother of the deceased which was signed by the father and grand-father of the deceased (Exhibit 2). The inquest was prepared on the road where the dead-body was kept. He has certified before the Trial Court that on 25.06.2011, PW- 6 had given a missing report at about 10:30 AM.

30. Such report has not been brought on record.

31. It appears that there was no such apprehension that the appellant would have committed the crime, when such a missing report was filed by PW-



6.

32. One of the first persons whom the investigator asked about the occurrence was Sidheswar Manhi (PW-8) who is the grand-son of the deceased. Nothing further in particular was disclosed by him. He did not raise any suspicion against the appellant. Beyond this, the investigator had nothing to offer to the Trial Court except that he had recorded the Statements of Raju Manjhi (PW-12), Gautam and Rohit (P.Ws. 1 and 2) and Ranjit Manjhi and Sujay Manjhi, who have not been examined as witnesses.

33. From the deposition of the investigator, it becomes very clear that while the dead-body was kept on the road and the traffic was blockaded, there was no reference of the appellant as the possible perpetrator of the crime. All that the crowd was asking for was compensation for the family of the deceased. If Rohit and Gautam (P.Ws. 1 and 2) would have spoken about their having seen the appellant taking away the



deceased, the entire crowd would have known about the appellant having killed the deceased. There was no such information or knowledge of the people who were blockading the road or else the investigator would have known it.

34. The two local *Mukhiyas* had been summoned and the BDO also was requested to provide for government help. If the name of the appellant would have been in the air, another possible demand of the crowd would have been to arrest him.

35. Raju Manjhi (PW-12) again was clueless about who had killed the deceased. He is the uncle of the deceased. There was no reason why he had no idea about the appellant having taken away the deceased.

36. There is nothing on record about any existing enmity between the family of the deceased and the appellant. They are neighbours and come from poor strata of society. The deceased had gone out to play as also to pick up rags. The Appellant is a rickshaw puller.



They are distantly related as well as it appears from the evidence of some of the witnesses but the relationship of any kind has been denied by the father of the deceased.

37. The mother of the deceased did not have any suspicion on the appellant when at 10 O'clock in the morning of 25.06.2011, she had submitted the missing report.

38. Thus, it appears that it was only later that the family of the deceased realised that there had been some dispute in the past, a fortnight ago, when the appellant had threatened to decimate the family.

39. It could only be a bluster or a *brutum fulmen* and nothing more.

40. Thus, We find that beyond suspicion, there is no other material to justify the conviction of the appellant. P.Ws. 1 and 2 were absolutely incoherent at the Trial. Even if they are to be believed, that would not constituted evidence strong enough to come to the only inescapable conclusion that the appellant had killed the



deceased.

41. Likewise, as we have noted, PW- 4 had made such statement of having seen the appellant in the company of the deceased sometimes in the evening of 24.06.2011, for the first time in Court. No great reliance could be put on his statement as well.

42. Rest all others are hearsay witnesses.

43. For the afore-noted reasons, we are not in a position to put our imprimatur to the findings of the Trial Court.

44. The appellant has to be given the benefit of doubt. Giving benefit of doubt to him, the judgment of conviction and the order of sentence is set aside. The appellant is acquitted of the charges raised against him.

45. He is in custody for about twelve and half years by now. He is directed to be released forthwith from jail, if not required or detained in any other case.

46. The appeal is allowed.

47. Let a copy of this judgment be dispatched to



the Superintendent of the concerned Jail forthwith for compliance and record.

48. The records of this case shall also be transmitted to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Khatim Reza, J)

Rajesh/Manoj

AFR/NAFR	NAFR
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