IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.246 of 2022

Arising Out of PS. Case No.-122 Year-2016 Thana- RUNISAIDPUR District- Sitamarhi

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Md. Ajmat @ Ajmat, S/o Late Sheikh Akbar, R/o village- Suhai, P.S.- Dumra, District- Sitamarhi

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. N.K. Agrawal, Sr. Advocate
		Mr. Jyoti Ranjan Jha, Advocate
		Mr. Kumar Rajdeep, Advocate
For the State	:	Ms. Shashi Bala Verma, APP
For the Informant	:	Mr. Ajay Kumar Thakur, Advocate
		Md. Inteyaz Ahmad, Advocate
		Mr. Ritwik Thakur, Advocate
		Mrs. Vaishnavi Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

13 03-07-2023 The applicant/appellant who is convicted of the offence punishable under Sections 302 and 201 of the Indian Penal Code and who is sentenced to suffer imprisonment for life is seeking his release on bail by suspension of sentence.

2. Heard the learned counsel of the appellant, who argued that the prosecution is relying on testimony of PW 3, PW4 and PW 5 for substantiating its case against the accused but medical evidence is not supporting the case of prosecution. He argued that though the incident of missing of Ahmad (since deceased) took place at about 07 PM of 30.03.2016, the FIR of

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the subject crime was lodged at 12:15 PM of 01.04.2016.

3. The learned Additional Public Prosecutor assisted by the learned counsel for the informant opposed the prayer for grant of bail and argued that the deceased was seen in the company of the accused, who is having criminal antecedents.

4. We have considered the submissions so advanced. We have examined the record and proceedings.

5. Case of the prosecution is based on circumstantial evidence and the law on this aspect is very clear. The prosecution is required to prove chain of circumstances leading to the sole hypothesis of guilt of the accused for making him liable for penal consequences.

6. According to the prosecution case, initially at about 07 PM of 01.04.2016, appellant/convicted accused Md. Ajmat had called Ahmad (since deceased) to his terrace through someone for attending Panchayat. Several others were also sitting on the terrace of the appellant/convicted accused. Ahmad refused to go to the terrace of the appellant/convicted accused. Then his wife Biwi Khatoon **(**PW 6) left the house for bringing milk and when she returned she found her husband Ahmad (since deceased) missing. She searched him and inquired about him with several persons and also visited Muzaffarpur hospital

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to trace out her husband. Ultimately, dead body of Ahmad was found in the pond at Prem Nagar and that is how the FIR was lodged on 01.04.2016.

7. The prosecution is resting its case on the last scene theory. The last scene theory comes into play when the gap between the victim seeing alive in company of the accused and subsequently found dead is so short that in all probability only the accused was in a position to commit his murder. In the case in hand, Ahmad went missing at about 07 PM of 30.03.2016 and his dead body was found in the pond at Prem Nagar on 01.04.2016. The FIR was lodged thereafter by his widow.

8. PW 3 Avtari Khatton and PW 4 Sheikh Hayat have stated before the Court that they saw Ahmad (since deceased) going for easing himself towards four-lane and the appellant/convicted accused along with several others had gone towards the four-lane subsequently. PW 5 Md. Like Ansari, a driver of the tempo has deposed that he had seen deceased Ahmad in company of the appellant and at least nine named persons on 30.03.2016 and they were going towards Prem Nagar.

9. Thus, the only inference which at the most can be drawn from the evidence of PW 5 Md. Like Ansari is to the

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effect that deceased Ahmad was in company of eleven persons on 30.03.2016. Other two witnesses have just stated that they had seen the appellant/convicted accused along with ten others going towards four-lane after deceased Ahmad had gone in that direction.

10. Dead body of Ahmad was subjected to Autopsy at about 03.10 PM on 01.04.2016. The Autopsy Surgeon had opined that probable time of death was within 36 hours. This, prima facie implies that Ahmad was done to death at about 03 AM of 31.03.2016 and this finding is not supporting the case of prosecution.

11. Witnesses have stated that they had informed PW 6 Biwi Khatoon, the widow regarding the fact that the appellant/convicted accused and others had gone in the direction where her deceased husband had gone. She has claimed that she had searched him even by visiting the hospital. However, the FIR was lodged on 01.04.2016 by this witness despite the fact that she claims that the appellant/convicted accused and others were calling her deceased husband to the terrace of the appellant/convicted accused.

12. In this view of the matter, prima facie case is made out by the appellant/convicted accused for suspension of

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sentence. Therefore, the following orders:

1. The substantive sentence of imprisonment imposed on the appellant is suspended and he is directed to be released on bail on executing P.R. bond of Rs.10,000/- (Rupees ten thousand) and on furnishing sureties of the like amount to the satisfaction of the learned Additional Sessions Judge IX, Sitamarhi, in connection with Sessions Trial No. 404/2016 arising out of Runnisaidpur P.S. Case No. 122 of 2016, till the disposal of the instant appeal. During pendency of the appeal, the recovery of fine is stayed.

2. The applicant/appellant is directed to cooperate this Court for expeditious disposal of the appeal.

(A. M. Badar, J)

(Harish Kumar, J)

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